SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors **AGENDA NO. VI-C**

FROM: Ed Fortner, General Manager

Meeting Date: April 4, 2019

Subject: SOLE SOURCE CONTRACTS FOR MONTE RIO FILTER PROJECT

RECOMMENDED ACTION: Approve sole source contracts as drafted by legal counsel for the CIP Monte Rio filter replacement project and approve direct purchase for materials and control work to complete project. Legal Council will send contracts prior to April 4 board meeting.

FISCAL IMPACT: Total cost of $228,360.94

DISCUSSION:

At the March Board meeting we discussed the current CIP project for filter replacement of our green sand filters at the Monte Rio treatment plant with Pyrolusite filtration supplied by ATEC. One draft contract is for the filter vendor, ATEC for $143,130.16 for filter materials. The other contract is with Piazza Construction for all labor and materials for $50,890. Other piping materials and control work will be funded directly by the District to save Capital cost. Total cost of the project is estimated at $228,360.94

The earlier bid we received from ATEK's suggested contractor totaled $385,635.13. By using local contractors and buying materials directly, the District saved $157,276.19 and kept the project under the budgeted amount of $250,000. Table 1 below details broken out costs for project.

Table 1.
ATEC FILTRATION SYSTEM FOR MONTE RIO TREATMENT PLANT

VENDOR	COST	ITEM	ARRANGEMENT	ALTERNATIVE BID
ATEC	$143,130.16	FILTERS	CONTRACT	**$385,635.13**
PACE	$15,340.78	MATERIALS	DISTRICT	
PIAZZA	$50,890.00	LABOR/ MATERIALS	CONTRACT	
ATEC	$12,500.00	DESIGN	PRE-PAID BY DISTRICT	
CSW	$6,500.00	CONTROL WORK	DISTRICT	
TOTAL	**$228,360.94**			
BUDGET	**$250,000.00**			

Resolution No. 19-03

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SWEETWATER SPRINGS WATER DISTRICT WAIVING DISTRICT POLICY 3700.50 REQUIRING COMPETITIVE BIDS FOR PROJECTS OVER $25,000 AND AWARDING THE CONTRACT FOR ATEC FILTER REPLACEMENT., TO PIAZZA CONSTRUCTION IN THE SUM OF $50,890.00, AND THE BOARD OF DIRECTORS OF THE SWEETWATER SPRINGS WATER DISTRICT WAIVING DISTRICT POLICY 3700.50 REQUIRING COMPETITIVE BIDS FOR PROJECTS OVER $25,000 AND AWARDING THE CONTRACT FOR ATEC FILTERS TO ATEC SYSTEMS, INC. IN THE SUM OF $143,130.16.

WHEREAS, the green sand filters at the Monte Rio Water Plant are failing and a new ATEC system has been designed and bid; and

WHEREAS, a local contractor who can do this specialized work is mobilized in the area; and

WHEREAS, this contractor, Piazza Construction, has, at District request, submitted a proposal to do the work for a total cost of $50,890.00; and ATEC has bid $143,130.16 for the sole source filters; and

WHEREAS, the District has Policy 3700.50 which requires sealed, competitive bids for projects costing more than $25,000 and has Policy 3700.80.09 which allows exceptions to this policy, and

WHEREAS, staff believe Policy 3700.50 should be waived in this situation because of the urgency of the project, the availability of a contractor who can do the work and has a history of competitive bids, and the added cost and time required to do a competitive bid process, and

WHEREAS, the District has funds available to do this project, and

WHEREAS, the Project involves the replacement or reconstruction of existing facilities and will result in negligible or no expansion of capacity, thus the Project is exempt from environmental review, pursuant to the California Environmental Quality Act ("CEQA") and Title 14, the California Code of Regulations ("CEQA Guidelines"), section 15301(b) and 15302(c); and

WHEREAS, notwithstanding the above-referenced bid amount, it is anticipated that the Project will have a certain amount of lead time issues

WHEREAS, it is of importance to the contractor and District alike that construction not be unduly delayed; and

WHEREAS, the General Manager is familiar with the project and will be monitoring construction.

NOW, THEREFORE BE IT RESOLVED, that the District Board of Directors hereby:

1. Waives District Policy 3700.50 as allowed by District Policy 3700.80.09; and

2. Approves the Project construction contract in the amount of $50,890.00; and

3. Approved the Project materials contract in the amount of $143,130.16; and

4. Awards the construction contract for ATEC filters replacement. to Piazza Construction; and

5. Awards the materials contract for ATEC filters to ATEC Systems, Inc.; and

6. Authorizes the General Manager to approve change orders on the Project without Board approval with total change order approval not to exceed $10,000.00

I hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted and passed by the Board of Directors of the SWEETWATER SPRINGS WATER DISTRICT, Sonoma County, California, at a meeting held on April 4, 2019, by the following vote.

Director	**Aye**	**No**
Sukey Robb-Wilder	_____	_____
Tim Lipinski	_____	_____
Richard Holmer	_____	_____
Gaylord Schaap	_____	_____
Pip Marquez de la Plata	_____	_____

_____
Tim LIpinski
President of the Board of Directors

_____
Attest: Julie A. Kenny
Clerk of the Board of Directors

CONSTRUCTION AGREEMENT (MINOR)

Monte Rio Filter Replacement Project

THIS CONSTRUCTION AGREEMENT ("Agreement") is entered into and effective as of the ____ day of _____ in the year 2019, by and between the Sweetwater Springs Water District ("District") and Piazza Construction ("Contractor") (collectively, "Parties").

District and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

Contractor shall complete the work as described and/or depicted in **Exhibit A** ("Work"), attached hereto and incorporated by reference herein, upon the terms and conditions set forth herein.

ARTICLE 2. COMPLETION OF WORK

The Work shall be completed to the satisfaction of District by _____, 2019.

ARTICLE 3. CONTRACT PRICE /PAYMENT

A. District shall pay Contractor the aggregate sum of Fifty Thousand Eight Hundred Ninety Dollars and No Cents ($50,890.00), for the full and satisfactory completion of the Work in accordance with the terms and conditions of this Agreement ("Contract Price").

B. Such compensation shall be paid by District within thirty (30) days following written notice of District's acceptance of the Work.

ARTICLE 4. INSURANCE

Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, Contractor's agents, representatives and employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

2. Insurance Services Office form covering automobile Liability, code 1 (any auto), or code 8, 9 if no owned auto.

3. Workers' Compensation Insurance as required by the State of California and Employers' Liability Insurance. If no employees are utilized, the Contractor shall sign a declaration as described in California Health and Safety Code Section 19825.

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1. General Liability: $2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $2,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation statutory limit and Employer's Liability: $1,000,000 per accident for bodily injury or disease.

C. Deductibles and Self-Insured Retention. Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers, or the Contractor shall provide a financial guarantee satisfactory to the District guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. The District, its officers, officials, employees and volunteers are to be covered as Insureds as respects: liability arising out of work or operations as performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.

2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the District , its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, unless thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District .

4. The Workers' Compensation endorsement shall contain a Waiver of Subrogation against the District. The Contractor shall provide to the District an endorsement from the Worker's Compensation insurer, if any, agreeing to waive all rights of subrogation against the District for injuries to employees of the Insured resulting from work for the District or use of the District's premises or facilities.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District .

F. Verification of Coverage. Contractor shall furnish the District with original certificates and amendatory endorsements effective coverage required by this clause. The endorsements should be on forms provided by the District or on other than the District's forms provided those endorsements conform to the District's requirements. All certificates and endorsements are to be received and approved by the District before work commences. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

G. Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to all of the requirements stated herein.

ARTICLE 5. BONDS/CONTRACTOR'S GUARANTEE

A. A labor and materials (payment) bond is **_X___ required / __ not required** for this Agreement. If required for this Agreement, before beginning the Work, Contractor shall provide a labor and materials bond in the amount of one hundred percent (100%) of the Contract Price, and which conforms with the requirements of Civil Code section 3248, as may be amended from time to time.

B. A performance bond is **____ required / __X__ not required** for this Agreement. If required for this Agreement, before beginning the Work, Contractor shall provide a performance bond in the amount of one hundred percent (100%) of the Contract Price to guarantee faithful performance of the Work.

C. Contractor shall guarantee the Work to be free of defects in material and workmanship for a period of one (1) year following the District's acceptance of the Work ("Contractor's Guarantee"). As part of Contractor's Guarantee, Contractor agrees to make, at Contractor's own expense, any repairs or replacements made necessary by defects in material or workmanship which become evident within the one-year guarantee period. The Contractor's Guarantee is effective regardless of whether or not a maintenance bond is required by the District for this Agreement.

D. A maintenance bond is **____ required / __X__ not required** for this Agreement. If required for this Agreement, prior to acceptance of the Work, Contractor shall provide a maintenance bond in the amount of ten percent (10%) of the Contract Price as a security for the Contractor's Guarantee. The maintenance bond shall remain in force for one (1) year following the District's acceptance of the Work.

E. Any and all bonds required for this Agreement shall be in a form acceptable to the District Counsel. Any such bond must be issued by a corporate surety which is an admitted surety insurer in the State of California. Any bond signed by an agent must be accompanied by a certified copy of such agent's authority to act. If the surety on any bond provided by Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Work is located, Contractor shall, within seven (7) days thereafter, substitute another bond and surety in accordance with the requirements set forth herein.

ARTICLE 6. CONTRACT DOCUMENTS

The contract documents which comprise the entire agreement between District and Contractor consist of this Agreement and exhibits thereto and the following ("Contract Documents"):

- District- approved drawings and specifications for the Work;
- Any written amendment or change order approved by the District after the effective date of this Agreement;
- Any bonds required pursuant to Article 5 of this Agreement;
- **Other:_____.**

The Contract Documents may only be amended by prior written authorization of the General Manager or his designee.

ARTICLE 7. LIQUIDATED DAMAGES

A. District and Contractor recognize that time is of the essence of this Agreement and that the District will suffer financial loss if the Work is not completed within the time specified in Article 2 herein, plus any extensions previously authorized in writing by the General Manager or his designee. It is and will be difficult and/or impossible to ascertain and determine the actual damage which District will sustain in the event of and by reason of Contractor's failure to fully perform the Work or to fully perform all of its contract obligations that have accrued by the time for completion as specified in Article 2 herein and/or as specified for completion of any scheduled operations or works described in the Contract Documents. It is agreed in accordance with California Government Code Section 53069.85, as may be amended from time to time, that Contractor will forfeit and pay to District liquidated damages in the sum of _$500_ per day for each and every calendar day that expires after the time for completion specified in Article 2 herein and/or as specified for completion of any scheduled operations or works described in the Contract Documents except as otherwise provided by extension of time previously authorized in writing by the General Manager or his designee. It is further understood and agreed in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time this contract was made, and that District may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due to Contractor.

B. Liquidated damages will continue to accrue at the stated rate until final completion of the Work. Accrued liquidated damages may be deducted by District from amounts due or that become due to Contractor for performance of the Work. Liquidated damages may not be waived or reduced by District unless expressly waived or reduced in writing by the General Manager or his designee.

ARTICLE 8. PREVAILING WAGES

A. Pursuant to California Labor Code Section 1771, Contractor and any subcontractor shall pay all workers employed in execution of the Work in accordance with the general rate of per diem wages specified for each craft, classification, or type of worker needed to execute the Work. Copies of the prevailing rates of per diem wages are on file at the Recording Secretary's office, and shall be made available to any interested party on request.

B. Contractor is required to pay all applicable penalties and back wages in the event of violation of prevailing wage law, and Contractor and any subcontractor shall fully comply with California Labor Code Section 1775, which is incorporated by this reference as though fully set forth herein.

C. Contractor and any subcontractor shall maintain and make available for inspection payroll records as required by California Labor Code Section 1776, which is incorporated by this reference as though fully set forth herein. Contractor is responsible for ensuring compliance with this section.

D. Contractor and any subcontractor shall fully comply with California Labor Code Section 1777.5, concerning apprentices, which is incorporated by this reference as though fully set forth herein. Contractor is responsible for ensuring compliance with this section.

E. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Work shall constitute a legal day's work under this Agreement. Contractor and any subcontractor shall pay workers overtime pay as required by California Labor Code Section 1815. Contractor and any subcontractor shall, as a penalty to the Town, forfeit twenty-five dollars ($25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation so the provisions of Article 3 of Chapter 1 of Part 7, Division 2 of the California Labor Code, which is incorporated by this reference as though fully set forth herein.

ARTICLE 9. INDEMNIFICATION

Contractor shall indemnify, defend with counsel acceptable to District, and hold harmless to the full extent permitted by law, District and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorney fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the Work or its

failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the active negligence, sole negligence or willful misconduct of the District. Pursuant to California Public Contract Code Section 9201, District shall timely notify Contractor of receipt of any third-party claim relating to this Agreement.

ARTICLE 10. DISCLAIMER CONCERNING LABOR CODE SECTION 6400

Contractor understands and agrees that with respect to performance of the Work, and notwithstanding any provision in this Agreement to the contrary, Contractor, and/or its privities, including, without limitation, subcontractors, suppliers and other engaged by Contractor in the performance of the Work shall be "employers" for purposes of California Labor Code Section 6400 and related provisions of law, and that neither District nor its officials, officers, employees, agents, volunteers or consultants shall be "employers" pursuant to California Labor Code Section 6400.

ARTICLE 11. TERMINATION

Notwithstanding any other provision set forth herein, District may terminate or suspend this Agreement immediately for cause. Cause for immediate termination or suspension shall include, but not be limited to, any breach of this Agreement by Contractor, including, without limitation, a breach of any of Contractor's covenants, representations or guarantees provided herein. Upon receipt of notice of termination or suspension, Contractor shall immediately stop all work in progress under this Agreement. Without limiting the generality of the foregoing, District may terminate this Agreement if Contractor fails to perform the Work within the time specified in Article 2, or any written extension thereof. If District terminates this Agreement for cause, District may undertake to have the Work completed by its own workforce or by substitution of contractor, and Contractor shall be liable to District for any excess cost incurred by District as a result. In the event of such termination, Contractor shall be entitled to payment for all Work performed to date of termination to the extent such services were actually performed in accordance with this Agreement. Upon termination, any and all of District's documents or materials provided to Contractor and any and all of Contractor's documents and materials prepared for or relating to this Agreement shall be delivered to the District as soon as possible, but not later than ten (10) days after the cessation of the Work.

ARTICLE 12. CONTRACTOR CLAIMS

Contractor claims shall comply with **Exhibit B**, attached and incorporated herein by reference.

ARTICLE 13. INDEPENDENT CONTRACTOR

It is understood and agreed that in the performance of this Agreement, Contractor (including its employees and agents) is acting in the capacity of an independent contractor, and not as an agent or employee of the District . Contractor has full control over the means and methods of performing said services and is solely responsible for its acts and omissions, including the acts and omissions of its employees and agents.

ARTICLE 14. LICENSES/PERMITS

Contractor represents that Contractor has all licenses, permits, or qualifications of whatsoever in nature, which are legally required for Contractor to perform the Work. Contractor shall, at Contractor's sole cost and expense, keep in effect at all times during the term of this Agreement, any such licenses, permits or qualifications. **Contractor is required to possess current B-_____ licenses.**

ARTICLE 15. INSPECTION

All Work done and materials furnished, if any, shall be subject to inspection and approval by the District .

ARTICLE 16. SUBCONTRACTORS

Contractor must obtain the District's prior written consent for subcontracting any Work pursuant to this Agreement, including safety orders under Title 8 of California Code of Regulations. Any such subcontractor shall comply, to the extent applicable, with the terms and conditions of this Agreement. Any agreement between Contractor and a subcontractor pursuant to this Agreement shall provide that the subcontractor procure and maintain insurance coverage as required herein and which shall name District as an additional insured.

ARTICLE 17. COMPLIANCE WITH LAWS/NON-DISCRIMINATION

Contractor shall comply with all applicable local, state and federal laws, regulations and ordinances in the performance of this Agreement. Contractor shall not discriminate in the provision of service or in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, religion, gender, marital status, sexual orientation, age, physical or mental disability in violation of any applicable local, state or federal laws or regulations.

ARTICLE 18. NOTICES

All notices required or permitted by this Agreement, including notice of change of address, shall be in writing and given by personal delivery or sent postage prepaid and addressed to the parties intended to be notified, as set forth herein. Notice shall be deemed given as of the date of delivery in person or as of the date deposited in any post office or post office box regularly maintained by the United States Postal Service, unless otherwise stated herein. Notice shall be given as follows:

District : Ed Fortner, General Manager
Sweetwater Springs Water District
Post Office Box 48
Guerneville, CA 95446

Contractor:	Piazza Construction Post Office Box 573 Penngrove, CA 95445 Attention: James A. Piazza

ARTICLE 19. GOVERNING LAW/VENUE

This Agreement shall be construed and its performance enforced under California law. Venue shall be in the Superior Court of the State of California in the County of Sonoma.

ARTICLE 20. NON-WAIVER

The District's failure to enforce any provision of this Agreement or the waiver of any provision in a particular instance shall not be construed as a general waiver of any part of such provision. The provision shall remain in full force and effect.

ARTICLE 21. NO THIRD PARTY BENEFICIARIES

The Parties do not intend, by any provision of this Agreement, to create in any third party any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

ARTICLE 22. ASSIGNMENT

No assignment in transfer in whole or in party of this Agreement shall be made without the prior written consent of District.

ARTICLE 23. SEVERABILITY

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise enforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

ARTICLE 24. HEADINGS

The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

[SIGNATURES ON FOLLOWING PAGE.]

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

FOR DISTRICT	FOR CONTRACTOR
_____	By_____
Ed Fortner General Manager	(Print Name) _____ Piazza Constriction

APPROVED AS TO FORM:

_____
Robin Donoghue
District Counsel

EXHIBIT A

SCOPE OF WORK AND CONTRACT PRICE

See attached two-page Contractor proposal to the District.

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EXHIBIT B

See attached ten-page Dispute Resolution document.

3209305.1

SWEETWATER SPRINGS WATER DISTRICT
MONTE RIO FILTER REPLACEMENT PROJECT
PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is entered into and effective as of _____, 2019 ("Effective Date"), by and between the Sweetwater Springs Water District ("District") and ATEC Systems Associates ("Vendor") (collectively, the "Parties").

WHEREAS, the Parties enter into this Agreement for the purpose of Vendor providing products to District under the terms and conditions set forth herein.

THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **Products.** Vendor shall provide to District the products described in this Agreement at the times, in the manner, for the prices, and otherwise in accordance with this Agreement. The products that will be provided are described herein and are summarized as follows:

   Iron and Manganese Treatment System for Monte Rio Wellfield

   and as further described in Exhibit "A" attached hereto and incorporated by reference.

   The products will be provided for the prices ("Bid Prices") submitted in the Vendor's Bid which is attached as Exhibit "A" to and made a part of this Agreement. The bid prices will be in effect throughout the Term of this Agreement and may not be modified except by an amendment of the Agreement in accordance with its terms.

2. **Compensation.**

   A. The District will pay Vendor for the products that are actually provided in accordance with this Agreement. To be eligible for payment, Vendor's invoices must be submitted not more often than monthly to the District and list the products provided/performed and the amounts to be paid according to the Bid Prices.

   B. The total compensation for the full performance by Vendor under this Agreement shall not exceed One Hundred Forty-Three Thousand One Hundred Thirty Dollars and Sixteen Cents ($143,130.16), said amount being referred to herein as the "not-to-exceed" amount for work set forth in Exhibit "A".

   C. Vendor shall be compensated for products in addition to those described in Section 00300 "Bid Form" only if Vendor and District execute a written amendment to this Agreement describing the additional products to be supplied and the compensation to be paid for such products. In no case shall the total compensation under this Agreement exceed the "not-to-exceed" amount specified

in Paragraph B above, without prior written authorization of the District General Manager.

D. Vendor shall be paid in three installments as set forth in Exhibit "A".

3. **Term.** The term of this Agreement commences on the Effective Date, and terminates on _____, 2019, unless sooner terminated in accordance with Article 4, below.

4. **Termination.**

District acknowledges that all product is custom ordered. Following District's authorization to proceed with fabrication, product is non-returnable.

District may immediately terminate or suspend this Agreement for cause. Cause for immediate termination or suspension shall include, but not be limited to, any breach of this Agreement by Vendor, or Vendor's bankruptcy or insolvency. Upon receipt of notice of termination or suspension for cause, Vendor shall immediately stop all work in progress under this Agreement. In the event of early termination of this Agreement by the District:

A. Vendor shall be entitled to payment for all products provided to the date of termination to the extent such products were provided to the satisfaction of the District in accordance with the terms and conditions of this Agreement;

B. District may retain and/or recover from the Vendor at no additional cost to the District, the plans, specifications, drawings, reports and other design documents and work products prepared by Vendor pursuant to this Agreement, whether or not completed;

C. District may complete the unfinished products itself or have the unfinished products completed;

D. District may charge Vendor, or deduct from monies that may be due or become due to the Vendor under this Agreement, the difference between the cost of completing the unfinished products pursuant to this Agreement and the amount that would otherwise be due to the Vendor had Vendor completed the products in accordance with this Agreement; and/or.

E. District may employ any other legal remedies the District may have.

5. **Vendor's Representation as Independent Vendor.** District and Vendor agree that Vendor will provide products pursuant to this Agreement as an independent contractor and not as an employee or agent of the District. Persons employed or utilized by Vendor in the performance of this Agreement will not be employees or agents of the District. This Agreement shall not be construed as an agreement for employment.

6. **Facilities and Equipment.** Vendor shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing products pursuant to this

Agreement. District shall furnish to Vendor no facilities or equipment, unless the District otherwise agrees in writing to provide the same.

7. **Licenses, Permits, Etc.** The Vendor shall, at Vendor's sole cost and expense, keep in effect and require its subcontractors, if any, to keep in effect at all times during the Term of this Agreement any licenses, permits or other such approvals which are legally required for providing products.

8. **Time.** Vendor shall devote such time to the provision of products as may be reasonably necessary for satisfactory performance of Vendor obligations pursuant to this Agreement.

9. **Liquidated Damages.** The Vendor shall pay to the District the sum of **$___** per day, for each and every calendar days delay in furnishing the products in excess of the estimated time for delivery noted in Exhibit "A".

10. **Inspection.** All products furnished shall be subject to inspection and approval by the District. The inspection of such work shall not relieve Vendor of any of its obligations pursuant to this Agreement.

11. **Conflict of Interest.** Vendor represents that it presently has no interest, and covenants that it shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with its performance under this Agreement. Vendor further covenants that, in the performance of this Agreement, it shall not employ any subcontractor or person having such a conflict of interest. Vendor represents that no one who has or will have any financial interest under the Agreement is an officer or employee of District. If such conflict of interest arises during this Agreement or any extension, Vendor will immediately advise District and District may, at its sole discretion, immediately terminate this Agreement. If the District determines that the Vendor must file a Form 700 Statement of Economic Interests, as required by the District's Conflict of Interest Code, Vendor shall do so in a timely manner as required by the District.

12. **Vendor No Agent.** Except as District may specify in writing, Vendor shall have no authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Vendor shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever.

13. **Standard of Performance.** Vendor shall provide products in the manner and according to the standards observed by a competent practitioner of the business in which Vendor is engaged in the geographical area in which Vendor operates and will perform as required by this Agreement in a substantial, first-class manner.

14. **Assignment/Transfer.** Vendor shall make no assignment or transfer in whole or in part of this Agreement without the prior written consent of District.

15. **Subcontractors.** Vendor shall directly provide all products, and shall not subcontract any portion of performance under this Agreement without the prior written consent of the District. Any such subcontractors shall be required to comply, to the full extent applicable, with the terms and conditions of this Agreement. Upon execution of this Agreement, Vendor shall furnish a separate schedule of names and addresses of subcontractors, if any, and shall notify District if changes in subcontractors occur.

16. **Internal Revenue Service Form W-9.** District may determine that the Vendor must file an Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification, as required by the District to comply with regulations of the United States Department of the Treasury. If such is the case, District shall provide the Vendor with the required form. Vendor shall complete and file the form with the District before any payment under this Agreement is rendered.

17. **Compliance With All Laws.** Vendor and any subcontractors shall fully comply with all applicable local, state and federal rules, laws, regulations and ordinances pertaining to performance required hereunder, including the Americans with Disabilities Act and any copyright, patent or trademark law. To the extent that any other government agency or entity provides compensation for any services, Vendor shall comply with all rules and regulations applicable to such fiscal assistance. Vendor's failure to comply with any law(s) or regulation(s) applicable to the performance under this Agreement shall constitute a breach of Purchase Agreement.

18. **Notice.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Article. All such notices shall be sent by: (1) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt, or (2) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

District:	Ed Fortner, General Manager Sweetwater Springs Water District Post Office Box 48 Guerneville, California 95446
Vendor:	ATEC Systems, Inc. Post Office Box 1528 Hollister, California 95023 Attention: Bill Ketchum

19. **Ownership of Documents.** All plans, specifications, reports, designs and other documents prepared by the Vendor pursuant to this Agreement shall be and remain the property of the District. Except as may be otherwise required by law, Vendor shall not disclose data, plans, specifications, reports or other documents pertaining to the products provided pursuant to this Agreement without the prior written consent of the District.

20. **Indemnification.** To the full extent allowed by law, Vendor shall indemnify, defend with counsel acceptable to District, and hold harmless District and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, suits, actions, arbitrations proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with Vendor 's performance under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of District.

Vendor 's obligation to defend and indemnify shall not be excused because of Vendor's inability to evaluate Liability or because Vendor evaluates Liability and determines that t Vendor is not liable to the claimant. Vendor must respond within thirty (30) days to the tender of any claim for defense and indemnity by the District, unless this time has been extended by the District. If Vendor fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due the Vendor under and by virtue of this Agreement as shall reasonably be considered necessary by the District, may be retained by the District until disposition has been made of the claim or suit for damages, or until the Vendor accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Vendor, the Vendor waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Vendor to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

Notwithstanding the foregoing, to the extent that this Agreement includes design professional services under Civil Code Section 2782.8, as may be amended from time to time, such duties of Vendor to indemnify shall only be to the full extent permitted by Civil Code Section 2782.8.

If any term of portion of this section is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, said section shall be interpreted to allow the broadest indemnity permitted by law.

21. **Amendment.** This Agreement may be amended only by a written instrument executed by both Parties.

22. **Litigation.** If litigation ensues between District and a third-party which pertains to the subject matter of Vendor products furnished hereunder, Vendor, upon request from District, agrees to testify therein at a reasonable and customary fee.

23. **Construction.** This Agreement is the product of negotiation and compromise on the part of both Parties and the Parties agree that, notwithstanding Civil Code Section 1654, any uncertainty in the Agreement shall not be construed against the drafter of the Agreement.

24. **Governing Law; Venue.** This Agreement shall be enforced and interpreted under the laws of the State of California. Any action arising from or brought in connection with this Agreement shall be venued in a court of competent jurisdiction in the County of Sonoma, State of California.

25. **Non-Waiver.** District's failure to enforce any provision of this Agreement or the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such provision. The provision shall remain in full force and effect.

26. **Severability.** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

27. **No Third Party Beneficiaries.** The Parties do not intend to create, and nothing in this Agreement shall be construed to create, any benefit or right in any third party.

28. **Mediation.** The Parties agree to make a good faith attempt to resolve any dispute arising out of this Agreement through mediation prior to commencing litigation. The Parties shall mutually agree upon the mediator and shall divide the costs of mediation equally.

29. **Headings.** The headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of any provisions herein.

30. **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between District and Vendor shall survive the termination of this Agreement.

31. **Entire Agreement.** This Agreement, including the exhibits attached hereto and incorporated herein, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements or understandings, oral or written, between the Parties in this regard.

IN WITNESS WHEREOF, the Parties hereto have executed this document the day, month and year first above written.

PURCHASE AGREEMENT

For District:

_____
Ed Fortner
General Manager

For Vendor:

_____
Name:
Title:

Approved As to Form:

_____
Robin Donoghue
District Counsel

EXHIBIT A

See attached four-page price quote.