

PURCHASE AGREEMENT

This Purchase Agreement (“Agreement”) is made and entered into this _____ day of _____, 20__ by and between Coachella Valley Water District, a public agency of the State of California (“District”) and _____ (“Seller”).

RECITALS

- A. Seller shall sell to the District and the District shall purchase from the Seller such equipment and personal property as more particularly described herein.
- B. The parties desire to enter this Agreement for the purpose of setting forth the terms and conditions upon which the equipment and personal property shall be sold to the District.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. Seller shall deliver [and install] the equipment and personal property specified on Exhibit “A” attached hereto and by this reference incorporated herein (“Equipment”).
2. Seller shall deliver [and install] the Equipment at District’s [insert facility name] located at [insert address], at such time or times as set forth on the schedule attached hereto as Exhibit “B” and by this reference incorporated herein.
3. District shall compensate Seller for the purchase [and installation] of the Equipment in such amounts and at such times as set forth on the schedule attached hereto as Exhibit “C” and by this reference incorporated herein.
4. Unless otherwise specified by this Agreement, Seller shall install the Equipment at the District’s [insert facility name] and shall make any adjustments which are necessary or appropriate to cause any such Equipment to operate properly as installed, at such costs as shall be indicated by this Agreement.
5. The purchase [and installation] of the Equipment is subject to the terms and conditions set forth on Exhibit “D” attached hereto and by this reference incorporated herein.
6. All notices, requests, demands or other communications under this Agreement must be in writing and sent to the address of each party set forth below. Notice will be sufficiently given for all purposes as follows:

Personal Delivery-When personally delivered to the recipient. Notice is effective on delivery.

Certified Mail-When mailed certified mail, return receipt requested, postage prepaid. Notice is effective on receipt, if a return receipt confirms delivery.

Overnight Delivery-When delivered by an overnight delivery service such as Federal Express, charges prepaid, or charged to the sender's account. Notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile Transmission-Notice is effective on receipt, provided that the facsimile machine provides the sender a notice that indicates the transmission was successful and that a copy is mailed by first-class mail on the facsimile transmission date.

Addresses for purposes of giving notice are as follows:

DISTRICT:

Coachella Valley Water District
P O Box 1058
Coachella CA 92236-1058
Telephone: 760-398-2651
Facsimile: 760-398-3711

SELLER:

Any party may, from time to time, by written notice to the other party as provided herein, designate a different address which shall be substituted for that specified above.

7. This Agreement may be signed and delivered in any number of counterparts, each of which, when signed and delivered, shall be an original, but all of which shall together constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

DISTRICT:

Coachella Valley Water District, a public agency
of the State of California

By _____
Its: _____

SELLER:

By _____

Its: _____

By _____

Its: _____

EXHIBIT LIST

EXHIBIT "A"	Equipment [and Installation] Specification
EXHIBIT "B"	Delivery Schedule
EXHIBIT "C"	Payment Schedule
EXHIBIT "D"	Terms and Conditions

EXHIBIT "A"

Equipment [and Installation] Specification

QUANTITY

QUALITY

EXHIBIT “B”

Delivery Schedule

EXHIBIT “C”

Payment Schedule

EXHIBIT "D"

Terms and Conditions

1. *Deliveries, Time.* Time is of the essence of this Agreement. If deliveries are not made at the time agreed upon, District reserves the right to cancel or to purchase elsewhere, and hold Seller accountable therefor. Seller shall be liable to District for any loss or damage caused by Seller's failure to make timely delivery and/or installation of the Equipment, including, without limitation, consequential and incidental damages and costs of obtaining replacement Equipment.

2. *Shipment.* (a) All Equipment shall be packed, marked and shipped in suitable containers and in accordance with all regulatory requirements, the requirements of the carrier or as otherwise determined by District. In addition to the foregoing, the Equipment shall be packed in accordance with good commercial practice to insure against damage from weather and/or transportation. On the date of shipment, Seller shall mail to District all shipping lists and the original of any bill of lading regarding the Equipment placed in the possession of any consignee. Any Equipment not shipped by Seller or received by District in accordance with those terms may be rejected by District without liability. District assumes no obligation for Equipment shipped in excess of the quantities specified in this Agreement. District may, from time to time, change shipping schedules or direct that Seller temporarily suspend any shipments. (b) Unless this Agreement states otherwise, no charge shall be made for packing, crating, drayage or other similar costs. (c) All sales are F.O.B. District's headquarters. Seller shall be fully responsible for the Equipment and bear all risk of loss or damage until such Equipment are delivered to the District's headquarters. Seller shall bear all risk of loss or damage to the Equipment after written notice from District of its rejection or the cancellation of the Agreement.

3. *Warranty.* In addition to all warranties which may be provided by law, Seller warrants that the Equipment delivered hereunder shall, (a) be free from defect of material or workmanship and conform strictly to the specifications, drawings, or sample specified or furnished; (b) conform to drawings, plans, specifications, samples or other descriptions furnished, specified, accepted or approved by District; and (c) be merchantable and fit for the purposes intended. The warranty shall be for a period of one (1) year from the installation of the Equipment. This warranty shall survive any inspection, delivery, acceptance, or payment by District of the Equipment. Seller, at its own expense, shall repair or replace any defective Equipment within two (2) business days after receipt of notice from District or within four (4) hours in case of emergency, as determined by the District. Seller warrants that it is conveying good title to the Equipment to the District free and clear from any liens and encumbrances and no person has any rightful claim of infringement or violation of proprietary rights with respect to the Equipment. Such warranties, including warranties provided by law, shall survive acceptance of the Equipment.

4. *Inspection and Rejection.* The Equipment shall be received subject to District's inspection and right of rejection. The Equipment shall not be considered accepted until, on inspection, testing or use the Equipment is found to be in accordance with District specifications. Final inspection of the Equipment shall be at location specified herein, unless otherwise agreed in writing. If the Equipment is found at any time to be defective in material or workmanship, or otherwise not in conformance with specifications, District shall have the right, in addition to any other rights which it may have under warranties or otherwise, to reject such Equipment in whole or in part. Rejected Equipment shall be held at Seller's risk for a reasonable time thereafter and shall be returned or disposed of at Seller's expense according to Seller's instructions. No Equipment returned shall be replaced by Seller without written instruction or authorization from District.

5. *Patent Protection.* To the extent that the Equipment are not manufactured pursuant to design originated by District, Seller agrees it will save District and its directors, officers, representatives, agents and employees ("District Indemnitees") harmless from any loss, damage, liability, demands, claims, costs or expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Costs") which may be incurred on account of any alleged infringement of any intellectual proprietary rights, including United States patents with respect to the Equipment, and that it will, at its own expense, defend any action, suit or claim in which such infringement is alleged. District agrees to notify Seller promptly of any suit or claim against District for any alleged infringement of patent.

6. *Federal, State and Local Taxes.* All prices stated herein include, unless otherwise specified, all Federal, State or local taxes that may be levied or assessed as a result of this Agreement, or are otherwise applicable to this Agreement.

7. *Assignment.* Seller shall not delegate any duties, nor assign any rights or claims under this Agreement, without prior written consent of District, which consent may be withheld in District's sole and absolute discretion. Any attempted delegation or assignment shall be void. Subject to the foregoing, this Agreement shall be binding upon the heirs, administrators, successors and assigns of the parties hereto.

8. *Setoffs and Counterclaims.* All claims for moneys due or to become due to Seller shall be subject to deduction by District for any setoff or counterclaim arising out of this or any other of District's agreements with Seller.

9. *Changes.* District shall have the right to make changes as to packing, testing, destinations, specifications, designs, and delivery schedules (postponements only). Seller shall immediately notify District of any increases or decreases in costs caused by such changes and an equitable adjustment in prices or other terms hereof shall be agreed upon in a written amendment to this Agreement.

10. *Bankruptcy.* In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, the inability of Seller to meet its debts as they become due, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then District shall be entitled, at its sole option, to cancel any unfilled part of this Agreement without any liability whatsoever.

11. *Governing Law.* This Agreement and the acceptance of it shall be a contract made in the State of California and be governed by the laws thereof.

12. *Title to Drawings and Specifications.* District shall at all times retain title to all technical information, trade secrets, samples, blueprints, patterns, drawings and specifications and other materials (collectively, "Work Product") furnished, or paid for by District and intended for use in connection with this Agreement. Seller shall use such Work Product only in connection with this Agreement, and shall not disclose such Work Product to any person, firm, or corporation other than District's or Seller's employees, subcontractors, or government inspectors without the prior written consent of the District, which consent may be withheld in District's sole and absolute discretion. Seller will take such steps as are necessary to perfect the ownership interest of District in the Work Product. Upon District's request or upon completion of this Agreement, Seller shall promptly return all Work Product to District.

13. *Termination.* (a) District may terminate or cancel this Agreement, in whole or in part, without liability to Seller, if deliveries are not made at the time and in the quantities specified, or in the event of a breach of any of the other terms or conditions hereof; and (b) District may also terminate this Agreement, in whole or in part, even though Seller is not in default hereunder and no breach hereof has occurred, by notice in writing at any time, such notice shall state the extent and effective date of termination and upon the receipt by Seller of such notice, Seller will, as and to the extent prescribed by District, stop work under the order and placement of further orders or subcontracts hereunder, terminate work under order and subcontracts outstanding hereunder, and take any necessary action to protect property in the Seller's possession in which District, has or may acquire an interest. Seller acknowledges District's right to terminate this Agreement as provided in this Section and hereby waives any and all claims for damages that might arise from District's termination of this Agreement.

14. *Compliance with Laws.* Seller shall, in the performance of this Agreement, comply with all federal, state and local laws and regulations and orders issued under any applicable law.

15. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, then the parties agree that such invalidity or unenforceability shall have no effect whatsoever on the balance of this Agreement.

16. *Entire Agreement.* This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and any agreement or representation with respect to the same or the obligations of either

party with respect to the same which is not expressly provided in this Agreement or in a written document which is signed by the party to be charged, shall be null and void.

17. *Attorneys' Fees and Costs.* If any action in law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each party shall pay its own attorneys' fees.

18. *No Waiver.* The fact that District has made payment under this Agreement shall not be interpreted so as to imply District has inspected, approved or accepted the Equipment. No delay or omission in the exercise of any right or remedy by the nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Agreement.

19. *Authority to Execute.* Each party represents and warrants to the other party that all necessary action has been taken by such party to authorize the undersigned to execute this Agreement and to bind it to the performance of its obligations hereunder.

20. *Venue.* The parties agree that any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the federal or state courts located in Riverside County, California, and the parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

21. *Insurance.* Seller shall carry and maintain, at Seller's expense, at all times during the term of this Agreement, not less than the following coverage and limits of insurance which shall be maintained with insurers and under forms of policies satisfactory to District.

(a) Commercial General Liability for Bodily Injury and Property Damage including coverage for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations: \$1,000,000 per occurrence; \$1,000,000 annual aggregate..

(b) Automobile Liability for Bodily Injury and Property Damage including coverage for owned, nonowned, leased and hired cars: \$1,000,000 per occurrence; \$1,000,000 annual aggregate.

(c) Worker's Compensation and Employer's Liability:

(i) State Worker's Compensation - coverage as required by law;

(ii) Employer's Liability with limits of at least \$1,000,000 per occurrence.

The commercial general liability and automobile liability policies must be on an "occurrence" basis, not a claim-made basis. The foregoing policies may contain an aggregate limit not less than the occurrence limit. The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy.

All insurance required pursuant to the express provisions of this Agreement shall:

(a) Provide that coverage shall not be revised, cancelled or reduced until at least thirty (30) days' written notice of such revision, cancellation or reduction shall have been given to District. In the event any policies of insurance are revised, cancelled or reduced, Seller shall prior to the revision, reduction or cancellation date, submit evidence of new insurance to the District complying with this Section.

(b) Be issued by insurance companies which are qualified to do business in the State of California and which have a current rating of A-VII in Best's Insurance Report.

(c) Be reasonably satisfactory to District in all other reasonable respects.

(d) The policies required pursuant to this Agreement or a certificate of the policies shall be provided to District upon the execution of this Agreement.

(e) The commercial general and automobile liability insurance to be maintained by Seller pursuant to this section shall name District, its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder.

(f) If Seller fails or refuses to procure or to maintain the insurance as required by this Agreement or fails or refuses to furnish District with required proof that the insurance has been procured and is in force and paid for, District shall have the right, at District's election and upon twenty (20) days' notice to Seller to procure and maintain such insurance. The premiums paid by District shall be treated as an amount due from Seller with interest at the rate of ten percent (10%) (but in no event shall interest be charged in excess of the maximum rate permitted by California law), to be paid on the first (1st) day of the month following the date on which the premiums were paid. District shall have the right to offset any amounts District pays hereunder with amounts due Seller for services rendered pursuant to this Agreement. District shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the date of the notice.

(g) Seller shall require the carriers of the above-required coverages, to waive all rights of subrogation and contribution against the District and its officers, employees, agents, volunteers, contractors, subcontractors and their respective insurers.

(h) All policies above-required are to be primary and non-contributory with any insurance or self-insurance programs carried by or administered by the District.

(i) The existence of the required insurance coverage under this Agreement shall not be deemed to satisfy or limit Seller's indemnity obligations under this Agreement. Seller acknowledges that the insurance coverage and the policy limits set forth in this Article constitute the minimum coverage and policy limit required.

22. *Indemnity.* Seller shall defend, indemnify and hold the District Indemnitees harmless from and against any and all Costs which may be made against the District Indemnitees arising out of or in connection with (a) improper design, manufacture or installation of the Equipment, (b) any violation or alleged violation by Seller of any law or regulation now or hereafter enacted; (c) any death, injury, property damage, accident or casualty caused or claimed to be caused by Seller or its Representatives (as defined herein) or to or involving Seller or its Representatives or its or their property; (d) any breach by Seller of its obligation under this Agreement; and (e) any enforcement by District of any provision of this Agreement. The foregoing indemnity shall not apply to the extent any such Costs are ultimately established by a court of competent jurisdiction to have been caused by the gross negligence or willful misconduct of the District Indemnitees or any of them. District shall make all decisions with respect to its representation in any legal proceeding concerning this section. If Seller fails to do so, District shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental Costs of such defense, including fees and costs, to Seller and to recover the same from Seller. The term "Representatives" shall mean employees, representatives, agents, contractors, subcontractors or any other persons directly or indirectly employed by any one of the foregoing or reasonably under the control of any of the foregoing or for whose acts any of the foregoing may be liable.

23. *Default.* Upon a default hereunder, the non-defaulting party shall have such rights and remedies as are provided herein and such additional remedies as now or hereafter exist, at law or in equity, including, without limitation, consequential damages.

24. *Disputes.* If any dispute should arise between the parties, unless otherwise directed by the District herein, Seller shall nevertheless proceed to provide and install the Equipment pending settlement of the dispute.

25. *Seller's Books and Records.* (a) Seller shall maintain any and all documents and records relating to Seller. Seller shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks or other documents or records evidencing or relating to the Equipment and disbursements charged to District under this Agreement. Any and all such documents or records must be maintained in accordance with generally accepted accounting principles. Any and all such documents or records must be maintained for three (3) years following the final payment under this Agreement.

(b) Any and all records or documents required to be maintained by this section must be made available for inspection, audit and copying, at any time during regular business hours, upon written request by District or its designated representative. Copies of such documents or records must be provided directly to District for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records must be made available at Seller's address indicated for receipt of notices in this Agreement.