

Action Brief

BOARD OF DIRECTORS



Agenda Number 2.c.

CONTACT: Tom McCann
623-869-2343
tmccann@cap-az.com

Tim Kacerek
623-869-2563
tkacerek@cap-az.com

DATE: February 4, 2010

AGENDA ITEM: Approval of Contract Award to Telvent USA, Inc. for SCADA Replacement Project and Authorize the General Manager, or his Designee, to Execute an Agreement up to \$1,577,969, plus an Additional \$157,797 (10%) for Contingencies

RECOMMENDATION:

Staff recommends the Board of Directors approve the award of a contract between CAWCD and Telvent USA, Inc. to provide a complete and functional SCADA system, and authorize the General Manager or his Designee to execute an agreement for up to \$1,577,969 plus an additional \$157,797 (10%) for contingencies (totaling \$1,735,766).

FINANCIAL IMPLICATIONS:

Impact on Budget: Account 5825 – Capital Computer Equipment

This contract is expected to begin in February 2010 and end December 2011. Funding was included in the 2010-2011 approved budget.

	Budget		
Budget Year	Funds Requested	Funds Included in the Budget	(Over) / Under Budget
2010	\$818,523	\$900,000	\$81,477
2011	\$917,243	\$1,300,000	\$382,757
Total	\$1,735,766	\$2,200,000	\$464,234

Additional spending authority requested: \$0 – funds are available in the current capital budget.

Impact on Reserves: Costs are currently included in the reserve forecast.

Impact on Rates: Costs were included in the 2009-2010 rate setting process.

RELEVANT POLICY, STATUTE OR GUIDING PRINCIPLE:

Strategic Issue: Effectively operate and maintain the system

Strategic Objective: Provide reliable water deliveries

PREVIOUS BOARD ACTION/ACTIVITY:

At the September 3, 2009, CAWCD Board Meeting, the Board approved the award of a professional services contract to EMA, Inc., to provide project management services for the SCADA system replacement project. The Board Brief for this item explained the advantages of purchasing the replacement system directly from Telvent. As a result of that Board action, EMA has been hired to develop a sole-source contract with Telvent Automation, then manage the development and installation of the replacement system. The Telvent contract before you is a result of the EMA work.

ISSUE SUMMARY/DESCRIPTION:

Staff recommends awarding a contract to Telvent USA, Inc., for a complete and functional SCADA system to replace CAWCD's current system. The Telvent contract will be about \$464,000 under the \$2.2 million budget because (1) CAWCD will procure all of the new hardware directly for approximately \$200,000, thus realizing a substantial savings; and (2) staff will assist with some of the custom programming.

PROJECT OVERVIEW

CAWCD is preparing to replace the existing Telvent SCADA master station. The master station is nearing the end of its operating life and a new system is necessary for reliable operations of the water conveyance system.

The existing SCADA system has reliably monitored and effectively controlled operations of CAWCD water conveyance system assets since 1998. Operations staff is pleased with the performance of the existing system and support from the supplier, Telvent. Operations staff perform all system administration functions with minimal assistance from Telvent.

CAWCD's current SCADA system consists of a Telvent Automation OASyS version 6.0 Master Station controlling about 100 Programmable Logic Controllers (PLC's) in the field. The OASyS system was installed in 1998 and most PLC's were installed in the last three years.

This SCADA system upgrade project will update the existing Telvent master station to the current Telvent platform. The replacement Telvent system will need to seamlessly integrate with all of the existing CAWCD PLC's.

CAWCD has determined that upgrading to the current Telvent platform will be more economical and have less risk than a complete system replacement from a different vendor. The existing Telvent displays, database and reports will be uploaded into the new Telvent system.

SUGGESTED MOTION

I move that the Board of Directors approve the award of a contract between CAWCD and Telvent USA, Inc. to provide a complete and functional SCADA system, and authorize the General Manager or his Designee to execute an agreement for up to \$1,577,969 plus an additional \$157,797 (10%) for contingencies (totaling \$1,735,766).

Telvent OASyS SCADA System Agreement

This Agreement is made this ___ day of _____, 2010, between:

Central Arizona Water Conservation District, a multi-county water conservation district and political subdivision of the state of Arizona organized pursuant to A.R.S. §48-3701 et seq. for the purposes, among others, of contracting with the United States for the delivery of Central Arizona Project (CAP) water, repayment of CAP costs and operation and maintenance of the CAP aqueduct, with offices at 23636 North 7th Street, Phoenix Arizona 85024 USA, (hereinafter called "CAWCD")

and

Telvent USA, Inc.

a corporation organized under the laws of Texas with offices at 7000 Hollister Street, Houston, Texas 77040 and 10333 Southport Road S.W., Calgary, Alberta T2W 3X6, (hereinafter called "Telvent").

Telvent shall provide a complete and functional SCADA system in accordance with the terms and conditions of the contract as set out in the Contract Documents. The Contract Documents consist of the following:

Agreement

- Schedule A – Statement of Work
- Schedule B – OASyS DNA SCADA Suite Overview
- Schedule C – Project Schedule
- Schedule D – Price Schedule and Payment Terms
- Schedule E – Deliverables List
- Schedule F – Telvent Software License Agreement
- Schedule G – OSIsoft PI Software License Agreement
- Schedule H – OSI PI Software Overview
- Insurance Certificate

This Agreement Witnesses that in consideration of the mutual covenants contained herein the Parties agree as follows:

Article 1 - Definitions

1.1 Definitions. In this Agreement, the following terms shall have the following meanings:

“ADD's” mean the application definition documents as described in Article 2;

"Agreement" means this agreement and all schedules attached to this Agreement as the same may be amended from time to time and the expressions "hereof", "hereto", "hereunder" and similar expressions refer to this Agreement, including all schedules and not to any particular article or section.

"Deliverables" means the Software, equipment, materials and documentation described in Schedule “E” and all other documents, plans, specifications, tools, testing equipment and other materials not specifically identified but which Telvent is required to furnish under this Agreement. Telvent does not provide source code for its standard software except under escrow arrangements at the cost of the CAWCD.

“FAT” means the Factory Acceptance Testing of the System to be jointly conducted by Telvent and CAWCD in accordance with the provisions of Article 4 of this Agreement.

“Hardware” means the equipment described in the Deliverables List.

"Person" includes an individual, corporation, partnership, joint venture, trust, unincorporated organization, or any agency or instrumentality thereof or any other judicial entity recognised by law.

"Project Schedule" means the schedule for the completion of the Work as set out in Schedule "C" of this Agreement.

"OAD" means the Operational Availability Demonstration of the System to be jointly conducted by Telvent and CAWCD at CAWCD's facilities in accordance with the provisions of Article 5 of this Agreement.

"Resale Products" means all Deliverables supplied by Telvent for use in the System which are not manufactured by Telvent.

"SAT" means the Site Acceptance Testing of the System to be jointly conducted by Telvent and CAWCD at CAWCD's facilities in accordance with the provisions of Article 5 of this Agreement.

"Software" means the SCADA and application computer programs in object code/binary format only, to be provided by Telvent under this Agreement, as described in Schedules "A" and "E".

"SOW" means the Statement of Work set out in Schedule "A."

"System" means the CAWCD's SCADA system to be supplied by Telvent in accordance with this Agreement and which will be located at 23636 North 7th Street, Phoenix Arizona 85024 USA.

"Technical Specifications" means the technical specifications set out in Schedule "A."

"Telvent Products" means all products supplied by Telvent to form part of the System, except for Resale Products.

"Work" means the services, information, labor, training, documentation and materials to be provided hereunder by Telvent in accordance with the provisions of this Agreement.

1.2 Schedules. The following are the schedules attached to and forming part of this Agreement:

- Schedule "A" - Statement of Work
- Schedule "B" - OASyS DNA SCADA Suite Overview
- Schedule "C" - Project Schedule
- Schedule "D" - Price and Payment Terms
- Schedule "E" - Deliverables List
- Schedule "F" - Telvent Software License Agreement
- Schedule "G" - OSIsoft PI Software License Agreement
- Schedule "H" - OSI PI Software License Agreement

1.3 Order of Precedence. In the event of any ambiguity or conflict between any of the Contract documents listed above, the order of precedence shall be the following:

- (a) This Agreement (other than the Schedules);
- (b) Statement of Work (Schedule "A");
- (c) OASyS DNA SCADA Suite Overview (Schedule "B");
- (d) The other schedules to this Agreement listed in Article 1.2 above.

Article 2 - Performance Of The Work

- 2.1 General Description. Telvent responsibilities are described in Section 1.5 in Schedule “A.”
- (a) Telvent shall carry out the Work in a prompt, skillful and careful manner, using qualified personnel and in accordance with the latest recognised industry standards and practices applicable thereto. The Work shall be performed and the Software and other Deliverables and training shall be supplied in accordance with this Agreement.
 - (b) Telvent shall assemble the Hardware and configure the System at its facilities in Calgary, Alberta.
 - (c) After successful completion of FAT, Telvent shall deliver the System to CAWCD. In the event delivery is delayed by CAWCD, Telvent may store the system at a place of its choice and the storage costs shall be the responsibility of CAWCD.
- 2.2 Project Schedule. Telvent shall perform the Work in accordance with Section 2.1 in Schedule “A” and the Project Schedule contained in Schedule C.
- 2.3 Permits and Licenses. Telvent shall obtain all permits, with CAWCD’s help, licenses and other governmental authorizations which must be obtained in Telvent’s name and which are necessary for the performance of the Work, or necessary for the exportation of Telvent’s software from the country of origin.
- 2.4 Documentation. Telvent shall provide documentation in accordance with Schedule “A”. CAWCD may make copies of Telvent supplied documentation for CAWCD’s own internal purposes relating to the use of the System, provided that all of Telvent’s copyright, patent, trademark, or other notices, proprietary legends, or restrictions are not removed or altered. In the case of documentation for third party products supplied by Telvent, Telvent will provide the documentation in the form and quantity as received by Telvent from the third party vendor.
- 2.5 Training. Telvent shall provide training for CAWCD personnel in accordance with Section 2.19 of Schedule “A”.
- 2.6 Additional Services.
- (a) If CAWCD wishes Telvent to carry out any additional services, CAWCD shall provide Telvent with a written request specifying the services to be performed. Telvent shall promptly provide CAWCD with a proposal with respect thereto, including proposed pricing and an implementation schedule. All such changes shall be authorized in advance by a written change order signed by CAWCD’s Project Manager.
 - (b) Telvent shall not commence work on additional services without a signed change order by the CAWCD’s Project Manager.
- 2.7 Management. Both Telvent and CAWCD shall designate a Project Manager from their respective companies. The Project Manager for each party shall represent and act for that party in connection with all matters related to this agreement. All notices, instructions, information, and other communications by one party to the other party shall be given to the other party’s Project Manager at the address shown in the Article of this Agreement dealing with notices.
- 2.8 Key Personnel.
- (a) Telvent shall assign to the performance of the Work, the employees whose names and positions are set out below (the “Key Personnel”). Telvent shall not, without CAWCD’s prior written consent, which will not be unreasonably withheld, change the Key Personnel for the performance of the Work. Telvent’s Key Personnel assigned to the performance of the Work are:

Name	Position
Richard Parks	Project Manager
Craig Parkin	Project Leader

(b) If any of the Key Personnel leave the employment of Telvent or cannot perform their area of responsibility of the Work for other reasons beyond the reasonable control of Telvent, they shall be replaced by other qualified personnel.

2.9 Subcontractors. Telvent shall not subcontract any portion of the Work without the prior written approval of CAWCD.

2.10 Responsibility for Equipment / Risk of Loss. The risk of loss and damage with respect to the value of Equipment or Work, or any part thereof, upon receipt by Telvent, shall be and remain with Telvent until FOB delivery and placement within the CAWCD Operations Center Building, 23636 N 7th St., Phoenix, Arizona and Waddell Control Center, 39300 North Lake Pleasant Road, Peoria, Arizona.

2.11 CAWCD Responsibilities. CAWCD responsibilities are defined in Section 1.5 of Schedule “A.”

Article 3 - Project Reporting And Schedules

3.1 Progress Meetings. Progress meetings are defined in Section 2.5 of Schedule “A.”

3.2 Reports. Telvent shall provide Project Reports for the CAWCD in accordance with Section 2.7 of Schedule “A.”

3.3 Updating of Project Schedules. Telvent shall provide updated project schedules for CAWCD in accordance with Section 2.6 of Schedule “A.”

Article 4 - Factory Acceptance Testing

4.1 Factory Acceptance Testing. Factory Acceptance Test (FAT) is defined in Section 2.15 of Schedule “A.”

Article 5 - Site Acceptance Testing and Operational Availability Demonstration

5.1 Site Acceptance Test. Site Acceptance Test (SAT) is defined in Section 2.16 of Schedule “A.”

5.2 Operational Availability Demonstration. Operational Availability Demonstration (OAD) is defined in Section 2.17 of Schedule “A.”

Article 6 - Charges And Payment

6.1 General.

(a) The price payable by CAWCD to Telvent for the Work shall be as set out in Schedule “D” – Price and Payment Terms (the “Contract Price”). The Contract Price shall be paid to Telvent on the basis of the milestones and percentages of the Contract Price as set out in Schedule “D.” Overdue accounts are subject to interest at the rate of one (1%) per cent per month (twelve per cent (12%) per annum) on all sums not paid when due hereunder. In the event that a payment to Telvent remains unpaid sixty (60) days after its due date, Telvent reserves the right, without any liability and without prejudice to its other rights, to:

- (i) suspend the performance of its obligations under this Agreement; and
- (ii) Invoice CAWCD for the value of the work done to the date of suspension, including partially completed Work and milestones.

Telvent will resume work upon the written request by CAWCD provided that prior to Telvent restarting work, CAWCD shall pay all outstanding Telvent invoices and all additional costs related to the said delays.

- (b) Except as otherwise provided herein, Telvent shall furnish and pay for all overhead, project management, supervision, labor, equipment, materials, tools and all other items necessary to complete the Work, except for any equipment which this Agreement expressly requires CAWCD to provide.
 - (c) All invoices shall be paid on a Net 30 basis upon receipt of an accurately prepared and approved invoice and must be emailed to the following address: invoices@cap-az.com.
- 6.2 Taxes. Prices quoted by Telvent do not include any excise, sales, use, property, customs, value added, or other similar taxes or duties of any kind that are assessed upon or with respect to any sums paid or owing or any rights, materials or services provided hereunder all of which shall be paid by the Purchaser in addition to the purchase price, but excluding Canadian income taxes or any other taxes or duties imposed by Canadian tax authorities.
- 6.3 Delays by CAWCD. In the event that the Work is delayed by CAWCD by more than sixty (60) days, Telvent reserves the right to invoice CAWCD for the portion of the Work completed on the next partially completed milestone. Telvent will complete the project upon the written request by CAWCD provided that CAWCD reimburses Telvent for any additional costs incurred by Telvent as a result of the delays.
- 6.4 Final Payment. As a condition of the release of the final payment due to Telvent under this Agreement, Telvent shall execute and deliver to CAWCD a release expressly releasing CAWCD from all claims against CAWCD under this Agreement except those made in writing prior to that time and still unpaid.

Article 7 - Warranty

- 7.1 Warranty. Warranty is defined in Section 2.14 of Schedule "A."

Article 8 - Confidentiality And Licensing Of Software

- 8.1 Confidentiality.

- (a) In this Article, "Confidential Information" means all data and information relating to the business and management of either party, including without limitation the Software and other proprietary and trade secrets, technology and accounting records to which access is obtained hereunder by the other party, provided, however, the Confidential Information shall not include any data or information which:
 - (i) is or becomes publicly available through no fault of the other party;
 - (ii) is already in the rightful possession of the other party prior to its receipt from the other party and without any obligation of confidentiality;
 - (iii) can be demonstrated by written records was independently developed by a party without reference to any of the confidential information of the other party;
 - (iv) is rightfully obtained by the other party from a third party and without any obligation of confidentiality;
 - (v) disclosed pursuant to court order or other legal compulsion, provided that the party which is required to disclose the confidential information shall give the other party reasonable prior written notice of any legal proceeding in order to allow the other party an opportunity to seek a protective order or otherwise oppose such disclosure.
- (b) Each party agrees that it shall not use any Confidential Information received from the other party for its own or any other purposes, except for purposes related to the performance of this Agreement. Each of the parties shall use reasonable efforts (and, in any event, efforts that are no less than those used to

protect its own Confidential Information) to protect from disclosure all Confidential Information obtained from the other party. Each of the parties shall divulge such Confidential Information only to its employees or agents who require access to it for purposes related to the performance of this Agreement.

- (c) Each party (the “Indemnifying Party”) agrees to indemnify the other (the “Indemnified Party”) for all damages, costs, and expenses (including court costs and reasonable legal fees) incurred by the Indemnified Party as a result of a failure of the Indemnifying Party to comply with its obligations under this Article. This Article shall survive the termination of this Agreement.
- (d) Both Parties acknowledge that CAWCD is a multi-county water conservation district and political subdivision of the state of Arizona organized pursuant to A.R.S. §48-3701 et seq. and as such must comply with the Arizona Public Records laws pursuant to A.R.S. §39-101 et seq. If a request is made pursuant to this article of law, CAWCD shall notify Telvent in writing immediately after receiving such request in order to permit Telvent to obtain a protective order against or otherwise to limit such disclosure.
- (e) Notwithstanding the Arizona Public Records Law, the Parties agree that certain schedules identified as Confidential contain information that if released to the public could cause substantial harm or be detrimental to the security of CAWCD. Therefore, neither Party shall release to or allow inspection by the public of the following schedules:
 - Schedule A – Statement of Work
 - Schedule B – OASyS DNA SCADA Suite Overview
 - Schedule E – Deliverables List
 - Schedule F – OASyS DNA Software License Agreement
 - Schedule G – OSIsoft PI Software License Agreement

8.2 Irreparable Harm. Each party acknowledges and agrees that the breach of any of its obligations in this Article would cause serious and irreparable harm to the other party which could not adequately be compensated for in damages and, in the event of a breach of any of such provisions, each party consents to an injunction being issued against it restraining it from any further breach. The granting of an injunction shall not limit or restrict any other remedy which may be available to a party in the event of a breach of those obligations.

8.3 Software License. Title to all Telvent software shall remain with Telvent which shall grant a perpetual, non-exclusive, non-transferable, royalty free, license to CAWCD to use the software in connection with the System. The Software License shall be in the form of Telvent standard OASyS Software License, a copy of which is attached to this Agreement as Schedule “F”. The Software License shall be executed by CAWCD and delivered to Telvent prior to delivery of the System to CAWCD.

Article 9 - Termination On Default

9.1 Events of Default.

CAWCD shall have the right to terminate this Agreement if:

- (a) Telvent shall file a voluntary assignment in bankruptcy or insolvency or a petition for reorganization under any bankruptcy laws or other laws for the benefit of insolvent debtors;
- (b) An order is made by any court of competent jurisdiction appointing a trustee, liquidator or receiver for all or a substantial part of the property of Telvent;
- (c) Telvent defaults in performing any of the other obligations set forth in this Agreement and fails to commence appropriate action to remedy the default within a period of ten (10) business days after receiving written notice of default and thereafter to prosecute such remedy with diligence to completion.

9.2 Termination by Telvent

Telvent shall have the right to terminate this Agreement if:

- (a) CAWCD shall file a voluntary assignment in bankruptcy or insolvency or a petition for reorganization under any bankruptcy laws or other laws for the benefit of insolvent debtors;
- (b) An order is made by any court of competent jurisdiction appointing a trustee, liquidator or receiver for all or a substantial part of the property of the CAWCD;
- (c) CAWCD defaults in performing any of the other obligations set forth in this Agreement and fails to commence appropriate action to remedy the default within a period of ten (10) business days after receiving written notice of default and thereafter to prosecute such remedy with diligence to completion.

9.3 Survival. The provisions of this Agreement with respect to confidentiality, warranties and indemnities shall survive the termination of this Agreement.

Article 10 - Insurance, Indemnities And Limitation Of Liability

10.1 Insurance Requirements.

- (a) Telvent shall procure and maintain insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Telvent, his agents, representatives, employees or subcontractors, until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied.
- (b) Telvent will maintain in force throughout the entire term of this Agreement, the insurance described below with insurance companies acceptable to CAWCD. The limits set forth below are minimum limits and will not be construed to limit Telvent's liability. All costs and deductible amounts will be for the sole account of Telvent.
- (c) ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:
 - (i) The policy shall be endorsed to include the following Additional Insured language: "Central Arizona Water Conservation District, its officers, directors, employees, agents and contractors, and each and any of them shall be named as Additional Insured with respect to liability arising out of the activities performed by or on behalf of Telvent."
 - (ii) Coverage provided by Telvent shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- (d) NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the Central Arizona Water Conservation District. Such notice shall be sent directly to (Central Arizona Water Conservation District, Risk and Insurance Administrator, P. O. Box 43020, Phoenix, AZ 85080-3020) and shall be sent by certified mail, return receipt requested.
- (e) ACCEPTABILITY OF INSURERS: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The Central Arizona Water Conservation District in no way warrants that the above-required minimum insurer rating is sufficient to protect Telvent from potential insurer insolvency.

- (f) **VERIFICATION OF COVERAGE:** Telvent shall furnish the Central Arizona Water Conservation District with certificates of insurance (ACORD form or equivalent) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the Central Arizona Water Conservation District before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to (Central Arizona Water Conservation District, Risk & Insurance Administrator, P. O. Box 43020, Phoenix, AZ 85080-3020). The Contract number and Contract description shall be noted on the certificate of insurance. The Central Arizona Water Conservation District reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

- (g) **SUBCONTRACTORS:** Telvent's certificate(s) shall include all subcontractors as insured's under its policies or Telvent shall furnish to the Central Arizona Water Conservation District separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above.
- (h) **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made in writing as a formal Contract amendment.
- (i) **EXCEPTIONS:** In the event Telvent or sub-contractor(s) is/are a government entity, then the Insurance Requirements shall not apply. Such government entity shall provide a Certificate of Self-Insurance.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Telvent shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

General Aggregate	\$ 5,000,000
Products – Completed Operations Aggregate	\$ 2,000,000
Personal and Advertising Injury	\$ 5,000,000
Blanket Contractual Liability – Written and Oral	\$ 5,000,000
Fire Legal Liability	\$ 50,000
Each Occurrence	\$ 5,000,000

- a. Using form CG 2010 (10/01) and CG 2037 (10/01), or equivalent, the policy shall be endorsed to include the following Additional Insured language: “Central Arizona Water Conservation District, its officers, directors, employees, agents and Telvents, and each and any of them shall be named as Additional Insured with respect to liability arising out of the activities performed by or on behalf of Telvent.”
- b. The policy shall be endorsed with Aggregate Limits of Insurance CG 2504 or 2503 as appropriate on the Commercial General Liability policy.

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.
Combined Single Limit (CSL) \$ 1,000,000

3. Worker's Compensation and Employers' Liability
Workers' Compensation Statutory
Employers' Liability
Each Accident \$ 1,000,000
Disease – Each Employee \$ 1,000,000
Disease – Policy Limit \$ 1,000,000
- a. Policy shall contain a waiver of subrogation against the Central Arizona Water Conservation District, its officers, directors, employees, agents and Telvents for losses arising from work performed by or on behalf of Telvent.
 - b. This requirement shall not apply to: Separately, EACH Telvent or subcontractor exempt under A.R.S. 23-901, AND when such Telvent or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Telvent) form.

4. Professional Liability (Errors and Omissions Liability)
Each Claim \$ 5,000,000
Annual Aggregate \$ 5,000,000
- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Telvent warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
 - b. Policy shall contain a waiver of subrogation against the Central Arizona Water Conservation District, its officers, directors, employees, agents and Telvents for losses arising from work performed by or on behalf of Telvent.
 - c. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

5. Commercial Umbrella or Excess Liability – occurrence form
Each Occurrence \$ 5,000,000
- a. This coverage is optional. It may be used in conjunction with underlying coverage to meet the minimum limits as outlined above.

10.2 Compliance with Laws. Telvent shall comply with all laws, regulations, codes, standards and by-laws applicable to the performance of the Work and shall indemnify and hold harmless CAWCD and its agents and employees from and against all liability for or penalties that may be imposed by reason of any violation by Telvent of any such laws, regulations, codes and by-laws.

Telvent warrants that all services supplied hereunder have been performed in strict compliance with all applicable laws and regulations to which Telvent is subject, including but not limited to the Civil Rights Act of 1964, Executive Order 11246, the Walsh-Healy Act and the Occupational Safety and Health Act. To the extent applicable, the Equal Opportunity Clause provided for in the Regulations issued pursuant to Executive Order 11246; the Affirmative Action Clause for Handicapped Workers provided for in the Regulations issued pursuant to the Rehabilitation Act of 1973; and the Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam era provided for in the Regulations issued pursuant to the Vietnam Veterans Adjustment Act of 1974, are hereby incorporated by reference as though fully written herein. The provisions of this Section shall be included in every subcontract unless exempted. Telvent

shall execute and deliver to CAWCD such documents as may be required to effect or evidence compliance with such laws, rules, regulations, executive orders, permits and other authorizations.

10.3 Indemnity. Telvent and CAWCD (the "Indemnifying Party") agree to indemnify the other (the "Indemnified Party") and Telvent agrees to indemnify the Federal Government of the United States against all claims, demands, losses, costs, damages, actions, suits or proceedings by third parties for bodily injury or death, or destruction or damage of property (hereinafter called "claims"), to the extent caused by negligent acts or omissions of the Indemnifying Party. The Indemnified Party shall give prompt notice of any such claim and the Indemnifying Party shall have the right to control and direct the investigation, preparation, action and settlement of each such claim.

10.4 Liens. Telvent shall indemnify and hold harmless CAWCD and its agents and employees from and against all liens and or claims upon the property of CAWCD or upon the property of others for whom CAWCD may be responsible, and upon materials, equipment or structure or the premises upon which those are located, that arise out of or are attributable to Telvent's performance of this agreement.

10.5 Infringement.

(a) Telvent shall indemnify, hold harmless and, at CAWCD's option, defend CAWCD from and against any and all losses, claims, demands, damages, costs (including, without limitation, legal fees (on a solicitor and own client basis), expenses, liabilities, proceedings, suits, actions, restrictions, injunctions, fines, judgments, penalties and assessments) which CAWCD may suffer for, on account of, by reason of or in connection with any claim that any portion of the Software constitutes an infringement or misappropriation of any patent, copyright, trademark or trade secret. If any portion of the Software is held to constitute an infringement or misappropriation and its use is enjoined (or if Telvent believes that any such portion may be so held and enjoined), Telvent shall promptly and at its own expense:

- (i) procure for CAWCD the right to continue using such portion of the Software;
- (ii) replace it with a non-infringing and non-misappropriating functional equivalent; or
- (iii) modify such portion of the Software in a way satisfactory to CAWCD so that it becomes non-infringing and non-misappropriating.

(b) CAWCD shall give Telvent prompt notice of any claim of infringement and Telvent will retain and pay counsel to defend any such claim, action or suit. Telvent shall have the right to control and direct the investigation, preparation, defence and settlement of each such claim. If CAWCD does not give Telvent such notice and CAWCD incurs any cost or expense with respect to any such claim, or compromises or settles any such claim, or allows any fine, judgment, penalty or assessment to be made or entered against it with respect to any such claim, Telvent shall not be liable to CAWCD under this Article for such cost, expense, compromise, settlement, fine, judgment, penalty or assessment.

(c) Telvent shall have no liability for any claim of infringement based on: (i) use of a superseded or altered release of the System if the infringement would have been avoided by the use of a current unaltered release of the System that Telvent provides to CAWCD; or (ii) the combination, operation or use of the System with software, hardware, or other materials not furnished by Telvent if such infringement would have been avoided by the use of the System without such software, hardware or other materials.

(d) The foregoing states the entire obligation and liability of Telvent with respect to infringement claims. The provisions of this Article shall survive any termination of this Agreement.

10.6 Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOSS OF USE OR PRODUCTION, OR ANY LOSS OF DATA, PROFITS OR REVENUES, OR ANY CLAIMS RAISED BY CUSTOMERS OF CAWCD, REGARDLESS OF THE FORM OF ACTION (WHETHER FOR BREACH OF WARRANTY, BREACH OF CONTRACT OR IN TORT) AND WHETHER ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR NOT. TELVENT'S LIABILITY IS LIMITED TO

CAWCD'S ACTUAL DIRECT DAMAGES AND SHALL NOT EXCEED THE AMOUNT RECOVERABLE UNDER TELVENT INSURANCE COVERAGE AS REQUIRED UNDER THIS AGREEMENT.

Article 11 - General

- 11.1 Independent Contractor Status. Telvent shall act as and be an independent contractor for all purposes. Nothing in this Agreement shall be interpreted as constituting Telvent, or any of Telvent's employees, subcontractors, agents or representatives, as employees or agents of CAWCD. Telvent agrees to indemnify and hold CAWCD harmless from any and all claims for taxes or contributions for unemployment insurance, pensions and withholdings for income taxes payable in respect of wages payable to persons employed by Telvent.
- 11.2 Assignment. Telvent shall not assign this Agreement or any portion thereof without the written consent of CAWCD. Notwithstanding the above, Telvent shall be entitled to wholly or partially assign any payment obligations arising from this Agreement.
- 11.3 Applicable Law. This Agreement shall be interpreted according to the laws of the State of Arizona, and the parties expressly submit to the non-exclusive jurisdiction of the courts of Arizona.
- 11.4 Waiver of Jury Trial. The parties hereby waive trial by jury in any action or proceeding or counter-claim brought by either party hereto against the other party on any and every matter, directly or indirectly arising out of or with respect to this Agreement, and any claim of injury or damage relating to this Agreement.
- 11.5 Arbitration. All disputes arising under the terms of this Agreement (other than a failure to pay any amounts payable under this agreement), including any failure to agree on a matter requiring mutual agreement, shall be submitted to arbitration in accordance with the provisions of Commercial Rules ("Rules") of the American Arbitration Association. Such arbitration shall be conducted by a mutually agreed upon single arbitrator or, failing such agreement, by a panel of three arbitrators, one appointed by each party and the third appointed by the two arbitrators or if they cannot agree, by the court. The place of arbitration shall be Arizona.
- 11.6 Currency. Unless otherwise stated herein or in any other agreement between the parties, all payments required to be made hereunder are expressed in and shall be made in US Dollars.
- 11.7 Entire Agreement. This Agreement constitutes the entire Agreement between the parties in relation to the matter herein described, and supersedes all previous written or oral communications, understandings and agreements between the parties unless specifically stated herein. There are no representations, warranties, conditions or other agreements between the parties in connection with the subject matter of this agreement except those specifically set out herein. This Agreement shall not be changed except by an agreement in writing between the parties hereto or their assigns.
- 11.8 Notices. Any notice, communication, payment or demand required or permitted to be given or made hereunder shall be sufficiently given or made for all purposes if:
- (a) delivered personally during normal business hours on a business day to the party or to an officer or receptionist or other responsible employee of the party to whom the same is directed; or
 - (b) sent by any electronic means of sending messages, including facsimile transmission, which produces a paper record during normal business hours on a business day.

Until changed in accordance with the provisions of this clause, the addresses of the parties for notices are as follows:

Telvent:
200-10333, Southport Road SW
Calgary, Alberta, T2W 3X6

Phone: (403) 253-8848
Attn: Legal Counsel

Fax No.: (403) 259-2926

Central Arizona Water Conservation District:

P.O. Box 43020

Phoenix, Arizona 85080-3020

Phone: (623) 869-2359

Fax No.: (623) 869-2301

Attn: Purchasing Supervisor

- 11.9 Waivers. No waiver of, or consent to depart from, the requirements of any of the provisions of this agreement by either of the parties hereto shall be effective unless it is in writing signed by the party giving the waiver. No such waiver shall be construed as a waiver of any succeeding breach thereof or of any other covenant, agreement or obligation contained in this Agreement. No delay or omission on the part of either of the parties hereto to exercise any right shall be construed as a waiver of such right.
- 11.10 Binding Effect. This Agreement shall be binding upon and enure to the benefit of the parties hereto and, to the extent permitted hereunder, their respective successors and assigns.
- 11.11 Force Majeure.
- (a) Neither party shall be liable for delays, loss or damage due to any failure or delay in performance hereunder resulting from any cause beyond the reasonable control of such party, including but not limited to acts of God, fire, flood, war, riot, act of terrorism, governmental laws or regulations, acts of civil or military authorities, epidemics, strikes, walk-outs, delays in transportation, and actions of the other party.
- (b) Within fourteen (14) days of the commencement of any excusable delay, Telvent shall provide CAWCD with written notice of the cause and extent thereof as well as a request for a schedule extension for the estimated duration thereof. Within fourteen (14) days of the cessation of the event causing delay, Telvent shall provide CAWCD with written notice of the actual delay incurred, upon receipt of which, the Project Schedule shall be extended for the time actually lost by reason of the excusable delay.
- 11.12 Severability. In the event any provision of this Contract shall be declared invalid, such provision shall be deemed severable from the remaining provisions of this Contract, which shall remain in full force and effect.
- 11.13 Weapon Free Workplace. It is the intention of CAWCD to maintain a safe and productive work environment free from threats or acts of violence. CAWCD is committed to maintaining a workplace free from violence for all employees, consultants, vendors, customers, and visitors. All CAWCD employees, third-party contract workers, consultants, vendors, and visitors are prohibited from bringing or possessing firearms, explosives, or dangerous or offensive weapons on CAWCD property or in CAWCD vehicles. Only public law enforcement officials with proper and documented training or CAWCD Protective Services employees are authorized to carry firearms. This provision shall not create an obligation on the part of CAWCD to take any action beyond what is required by law.
- 11.14 Safety And Health. Telvent shall not require any worker employed in the performance of this Contract, (including sub-contractors) to work under conditions that are unsanitary, hazardous, or dangerous to the worker's health or safety, as determined under the state and federal Occupational Safety and Health Administration (OSHA) regulations for general industry and the U.S. Bureau of Reclamation Safety and Health Standards (RSHS), and CAWCD's Safety Resource Manual (SRM). In the event there is a conflict between the requirements contained in any of the safety documents reference herein, the more stringent requirements shall prevail. Telvent shall immediately report to CAWCD's representative all cases of Telvent related death, occupational diseases, or traumatic injury to employees, and/or any property damage.

Telvent shall also be responsible for providing to all its employees and to CAWCD, a Material Safety Data

Sheet (MSDS) for all chemicals or hazardous materials used in performing the work. The information in the MSDS shall include the environmentally acceptable disposal of the commodity used at CAWCD. The MSDS must be supplied and approved by CAWCD prior to commencement of work. Telvent warrants it has an OSHA compliant safety program addressing the service to be performed, and must be made available to CAWCD upon request. Telvent will also provide CAWCD with a Job Safety Analysis (JSA) of the Work prior to commencing any work.

If the work hours to complete this Contract are Five hundred (500) or more hours in any one-quarter the following shall apply:

Telvent will report the number of work hours and incidents of injury/illness (including any lost time injury) quarterly as a result of work performed for this Contract on the form provided by CAWCD.

Telvent shall provide training and supporting documentation, in accordance with the requirements of OSHA, RSHS, and SRM. This applies to all employees performing the Contract work, and at a minimum, shall include the following:

Training about hazards and hazard control methods specific to their particular job.

Telvent shall be responsible for providing these instructions, together with ensuring that Telvent and all sub-contractor's employees possess the necessary qualifications, licenses, and permits required to perform the work.

Telvent shall provide an orientation on provisions of their Safety and Health program. The orientation shall include applicable requirements of safety and health policies, reporting accidents and injuries, first aid and medical care, emergency response, applicable safety and health standards, and sources of information on safety and health questions.

All training shall be documented in writing with, at least, the title, date, and length of training, instructor or provider, and names of Telvent's and sub-contractor's employees completing the training. The records for all training applicable to the work performed by this Contract shall be made available to CAWCD upon request within ten working days from the date of such request.

Prior to the start of the Services, Telvent shall appoint an employee as the Safety Representative and contact person for this Contract. The employee should be capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees.

If CAWCD determines noncompliance of any safety requirement or condition that creates a serious or imminent threat to the health or safety of CAWCD personnel or the public, CAWCD will provide verbal notice to Telvent or its Safety Representative at the work location. Upon verbal notice, Telvent shall take immediate corrective action. If Telvent fails or refuses to immediately take corrective action, CAWCD may issue an order stopping all or part of the work until satisfactory corrective action has been taken. Telvent shall not be entitled to any equitable adjustment of the Contract price or extension of the performance schedule on any Stop Work order issued under this section. A written confirmation of noncompliance shall be delivered to Telvent within 24 hours of a noncompliance determination.

Telvents shall notify CAWCD's Purchasing Supervisor when a Contract requires explosives, nail guns, or similar items be brought on to CAWCD property.

- 11.15 Additional Eligibility Data Under A.R.S. SECTIONS 41-4401. Telvent shall comply with and ensure that each subcontractor complies with the federal immigration laws and regulations that relate to their employees and the provisions of Arizona Revised Statutes ("ARS") Section 23-214, subsection A. Telvent agrees that it shall comply and ensure that each subcontractor complies with all of the following provisions of this Article 11.15:

- (a) Telvent and each and every subcontractor warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with ARS Section 23-214, subsection A.
- (b) A breach of a warranty under Article 11.15 (a) above shall be deemed a material breach of this Contract that is subject to penalties up to and including termination of this Contract.
- (c) CAWCD retains the legal right to inspect the papers of any Telvent or subcontractor employee who works on the Contract to ensure that Telvent or any subcontractor is complying with the warranty under Article 11.15 (a) above.
- (d) If Telvent or any of its subcontractors employs any subcontractor(s) in performance of this Contract, Telvent shall notify CAWCD in writing and shall provide evidence of each subcontractor's agreement to the requirements of this Article 11.15 by providing a certification satisfactory to CAWCD.
- (e) CAWCD shall not deem Telvent or any of its subcontractors in material breach of this Contract if Telvent or any affected subcontractor(s) establishes that it has complied with the E-verify program prescribed by sections 274a and 274b of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by ARS Section 23-214, subsection A.
- (f) All costs necessary to verify compliance with Article 11.15 are the responsibility of Telvent.
- (g) For the purposes of this Article 11.15:
 - (i) "E-verify program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.
 - (ii) "subcontractor" means a person who contracts to perform work or render service to Telvent or to another subcontractor as a part of this Contract.

11.16 Time Is Of The Essence. Time is of the essence respecting performance under this Contract.

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

Central Arizona Water Conservation District

Telvent USA, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____