

# Santa Clara Valley Water District



**REQUEST FOR PROPOSALS NO – GM4742-TW**

**For**

**Avaya Maintenance Contract and Preferred Support Advantage and Upgrade Advantage**

**ISSUE DATE:**

June 8, 2016

**PROPOSALS DUE:**

**June 22, 2016 at 2:00 p.m.**

In the Office of the  
Procurement, Consultant Contract and Warehouse Services Unit  
Santa Clara Valley Water District

US Postal Service Mailing Address  
5750 Almaden Expressway  
San Jose, CA 95118

Courier / FedEx/ DHL/ UPS Mailing Address  
5905 Winfield Blvd  
San Jose, CA 95123

Public Bid Opening: June 22, 2016 at 2:30 p.m.  
5750 Almaden Expressway, Conf Rm B-124  
San Jose, CA 95118

BUYER: Thomas Wilkus  
(408) 630-2246  
[twilkus@valleywater.org](mailto:twilkus@valleywater.org)

**Request For Proposal: GM4742-TW  
Avaya Maintenance Contract and Preferred Support Advantage and Upgrade Advantage**

**RECEIPT ACKNOWLEDGEMENT OF PROPOSAL**

Please submit this page upon receipt.

For any clarifications, please contact Thomas Wilkus, Buyer II, e-mail: [twilkus@valleywater.org](mailto:twilkus@valleywater.org)

Please fax or email this page upon receipt of RFP package

Fax: (408)979-5628 or email: [twilkus@valleywater.org](mailto:twilkus@valleywater.org)

If you are unable to send your proposal, kindly indicate your reason for "No Proposal" below and fax back. This will insure you remain active on our vendor list.

Date \_\_\_\_\_

Yes, I will be able to send a Proposal.

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Phone \_\_\_\_\_

Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

No, I will not be able to send a Proposal for the following reason:

Date \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Phone \_\_\_\_\_

Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

For future proposal consideration, please register your firm (Create an Account) in the CAS database. The expertise code to register is:

**541618 – Telecommunication Management Consulting Services**

By doing so your firm will receive automatic notifications for addendums when posted to the Website.  
GM4742-TW SCVWD – Avaya Maintenance Contract and Preferred Support Advantage and Upgrade Advantage

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## **Notice of Invitation to Proposers**

Notice is hereby given that the Santa Clara Valley Water District through its Purchasing, Consultant Contracts and Warehouse Services Unit located at 5750 Almaden Expressway, San Jose, CA 95118 is seeking Proposals from qualified firms for Avaya Preferred Support Advantage and Upgrade Advantage.

The Proposal Deadline is **June 22, 2016 @ 2:00 p.m.** The System accepts PDF and Word documents. The maximum file size is 5 megs.

You must create an account to respond to the Request for Proposal (RFP).

Go to <http://cas.valleywater.org>. The expertise code assigned to this Contract is: [541618](#) – Telecommunications Management Consulting Services.

Please submit questions up until June 15, 2016 @ Noon. Responses to the question will be in the form of an Addendum and posted on the CAS Website.

Electronic responses should be submitted to the Districts' Contract Administration System (CAS) before the 2:00 p.m. deadline, as the system will lock promptly at 2:00 p.m.

The District will not accept electronic and/or hard copies of proposals submitted after the Invitation due date and time. Further, the District will not be responsible for slow or delayed electronic invitations submissions regardless of whether it is caused by, but not limited to, the World Wide Web, Internet Service Provider, third party system, or District firewall or infrastructure; nor will the District be responsible for delayed hard copies of Invitation regardless of whether it is caused by, but not limited to, the United States Postal Services, common carrier service, or hand-delivery.

Written responses must be enclosed in a sealed envelope and delivered to the District before 2:00 p.m. deadline.

For assistance with CAS please contact CAS Hotline 408-265-2600 x2992.

## **Contact Person**

Questions regarding this RFP must be in writing and addressed to:

Thomas Wilkus, Buyer II, email: [twilkus@valleywater.org](mailto:twilkus@valleywater.org)

All questions will be answered and solicitation addendum will be posted to the website to benefit all bidders. Last day for questions is one week before due date.

The website to view solicitation and any addendums can be found at:

<http://www.valleywater.org/Business/DoingBusiness/CurrentBids.aspx>

## **About the District**

The District is a wholesale water supplier to approximately 1.8 million residents of Santa Clara County. As a signatory to the California Urban Water Conservation Council's Memorandum of Understanding, the District is committed to implementing cost-effective Best Management Practices (BMPs) for urban water conservation. The District implements the BMPs regionally on behalf of its member retail water providers: California Water Service Company, City of Gilroy, Great Oaks Water Company, City of Milpitas, City of Morgan Hill, City of Mountain View, San Jose Municipal Water System, San Jose Water Company, City of Santa Clara and the City of Sunnyvale. For extensive information about the District, visit [www.valleywater.org](http://www.valleywater.org).

**Project Background** –Avaya Preferred Support Advantage and Upgrade Advantage with 8 by 5 onsite support with terminal coverage.

## **Scope of Services-**

**Introduction:**

The Santa Clara Valley Water District’s (District) Water Utility Enterprise is seeking the services of a Avaya Partner to provide Avaya Preferred Support Advantage and Upgrade Advantage with 8 by 5 onsite support with terminal coverage.

The District’s current maintenance contract is Avaya Preferred Support Advantage and Upgrade Advantage with 8 by 5. The District has two contracts one for our Communication Manager and Modular Messaging for all phone system locations and one for our new Aura Messaging.

The replacement should include the same coverage as Avaya Preferred Support Advantage and Upgrade Advantage with 8 by 5 onsite support with terminal coverage.

This contract is for three years. This contract should start July 2016, with two one year renewals July 2017 and July 2018. The Sold To Locations listed below are the numbers Avaya gives to identify our telephone system locations. CM or Communication Manager is the software for the phone system. Aura unified messaging is the voice mail system that combines voice mail and emails in Outlook. Currently, the Aura messaging has a different renewal date than the phone system. When Avaya issues the new maintenance contract the District is asking Avaya have one contract due at the beginning of our fiscal year for the term of the contract so the District always has coverage during the contract period. All, Sold to locations, CM, Aura, Unified Messaging, to co-terminus will be billed on invoice starting in July 2016 and renewing in all future years without a lapse in service.

Santa Clara Valley Water District will provide any reports or LOA access to qualified Avaya Partners.

Avaya Maintenance Account Locations:

Location	Sold To #
Rinconada	2933039
Coyote	2933052
Winfield	2933050
Zanker	5392954
Penitencia	5048381
Santa Teresa	2933041
Headquarters	2933033
Vasona	5133833

- Avaya Preferred Support Advantage and Upgrade Advantage with 8 by 5, expires June 2016.
- Aura Unified Messaging is currently being installed in June 2016, but is already on Avaya Maintenance since 10-15 16.
- Avaya Modular Messaging will be retired as soon as Aura Messaging is active, estimated date is June 2016. **Please remove Modular Messaging from the contract and replace with Aura Messaging.**
- There should not be any key systems on this contract, i.e. Merlin Legend

**Proposals are due June 22, 2016 @ 2:00 p.m.**

**Both** must be received on or before due date.

Submission of Proposal is a two (2) Step Process:

**Step 1:- Electronic Response**

**Refer to CAS Web Portal Instructions Attachment –**

**Proposer shall submit (1) electronic copy clearly marked "Original"** of the completed proposal together with any required attachments or explanatory materials, prior to the time and date set for receiving proposals as stated above and the cover page of this Request for Proposal or any modifying Addenda:

Log onto CAS Web Portal: [cas.valleywater.org](http://cas.valleywater.org)

Create an Account – This will allow you to receive updates and notifications electronically.

The Expertise Code assigned to this ITB is: [541618](#) – Telecommunications Management Consulting services

Any technical problems or questions, please contact the CAS Hotline 408-630-2992 or the Purchasing Hotline for ITB questions and assistance 408-630-2888.

Step 2. **Submission of Proposal** - Proposers shall submit two (2) hard copies (clearly marked 'Copy') of the completed proposal form, together with any required attachments or explanatory materials, prior to the time and date set for receiving proposals as stated on the cover page of this Request for Proposal or any modifying Addenda. To receive notice of Addenda or future solicitations, Proposer's are encouraged to return the Receipt Acknowledgement of Proposal (Page 2).

**If mailing response via US Postal Service or in person delivery:**

Santa Clara Valley Water District  
Attn: Thomas Wilkus – ITB: **GM4742-TW (Avaya Maintenance Contract)**  
5750 Almaden Expressway  
San Jose, CA 95118

**If mailing response via Fed Ex, DHL, UPS Courier Service:**

Santa Clara Valley Water District  
Attn: Thomas Wilkus – ITB: **GM4742-TW (Avaya Maintenance Contract)**  
5905 Winfield Blvd.  
San Jose, CA 95123

All materials should be printed double-sided on paper with a minimum 30% post-consumer recycled content. Proposal shall be delivered in a sealed envelope **clearly marked with the applicable proposal number** addressed as stated above.

**Schedule for Selection and Award** - The following timeline applies to this Request for Proposals, however, the District may change the estimated dates and process as deemed necessary:  
The following is an estimated schedule of the RFP selection and award process:

<b><u>Activity</u></b>	<b><u>Date (tentative)</u></b>
RFP Issued:	June 7, 2016
Last Day Questions will be allowed	June 15, 2016 @ 12:00 p.m. (Noon)
Proposal Due Date	June 22, 2016 @ 2:00 p.m.

Questions regarding the RFP must be in writing and should be forwarded to Thomas Wilkus, Buyer II, Purchasing, Consultant Contracts and Warehouse Services Unit, email: [twilkus@valleywater.org](mailto:twilkus@valleywater.org). All questions received on or before June 15, 2016 @ Noon will be answered in writing via an Addendum.

\*In order to steam line the selection process, the District reserves the right to conduct interviews with qualified vendors by conference calls.

**The above schedule is subject to change at the sole discretion of the District.**

**Responsible Firms and Qualifications** - Proposals will be considered only from responsible firms who have, in the sole judgment of the District, the financial ability, experience, resources, skills, capability, reliability and business integrity necessary to provide Avaya Preferred Support Advantage.

**Telegraphic Modifications** - Any Proposer may modify its Proposal by telegraphic communication at any time prior to the scheduled closing time for receipt of Proposals, provided such telegraphic communication is received by the District prior to the closing time and, provided further, the District is satisfied that a written confirmation of the telegraphic modification over the signature of the Proposer was mailed prior to the Proposal Deadline.

The telegraphic communication should not reveal the Proposal bid price but should provide the addition or subtraction or other modification so that the final bid price or terms will not be known by the District until the sealed Proposal is opened. The District will require written confirmation of any telegraphic modification prior to award of the Proposal.

**Basis of the Award** - The evaluation factors reflect a wide range of considerations. While cost is important, other factors are also significant. Consequently, the District may select other than the lowest cost Proposal. The objective is to choose a Proposer capable of providing quality services that will help the District achieve the goals and objectives of the requested services at a reasonable price.

All vendors proposals will be reviewed by appropriate District staff knowledgeable in Avaya Preferred Support Advantage, based on rating criteria developed by key District personnel.

Evaluations will be based on the criteria described below. All Proposals will be evaluated using the same evaluation criteria' and 'possible points'.

<b>Evaluation Criteria</b>	<b>Maximum Possible Points</b>
<b>Price (based on the total amount specified in the Proposal Form)</b>	<b>0-60</b>
<b>Qualifications</b>	<b>0-30</b>
<b>Registered and certified as a small business or micro-business with the State of California Department of General Services</b>	<b>0 or 5</b>
<b>Local Business Declaration Form (Attachment D) to the District's Procurement and Operation Services Division, Procurement Unit as a local business pursuant to District Ordinance 13-02.</b>	<b>0 or 5</b>
<b>Total Points Possible</b>	<b>100</b>

**Character of Employees** - Vendor shall employ only competent supervisors and trained staff; and if required by the District, vendor shall discharge any person who commits trespass or is, in the sole opinion of the District, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable. Such discharge shall not be the basis of any claim for compensation or damages against the District or any of its officers, employees or agents as to the performance of the work.

**Non-Collusion Certification** - By submitting a proposal, proposer is certifying that it has not directly or indirectly been collusive with any other bidder in the preparation and submission of the proposal. If at any time it shall be found that the proposer to whom a contract has been awarded has, in presenting the proposal, colluded with any other party or parties, said proposer shall be liable to the District for all loss or damage which the District has or may suffer as the result of the collusive activity, including, but not limited to, the cost of advertising and awarding a new contract.

**Gifts** - No employee shall accept gifts from firms or individuals with whom the District conducts business. "Gifts" are defined to mean a voluntary transfer of anything, service, payment or value to the extent that legal consideration of equal or greater value is not received. It is the policy of the District to advise consultants, contractors, vendors and others with whom the District does business that they should not send or give gifts or things of value that are not within their contracted scope of services to District employees or Directors. Adherence to this policy will assist District employees in earning and deserving a reputation for honesty, truthfulness, and efficiency in dealing with vendors, contractors and other governmental agencies. Each employee shall be responsible for upholding this policy.

**Contract Term** - The contract term is for three years to be issued one year at a time. The initial term of the contract will begin on the date of the contract award and expire one (1) year after that date unless renewed or terminated in accordance with the terms of the Agreement. All contracts are subject to the appropriation of funds by the District's Board of Directors.

**Contract Documents** - After the parties agree to the final negotiated terms to perform services as Contractor of Record for the District, those terms will be memorialized in a written agreement signed by each parties authorized representative.

Contract documents will consist of this request for proposal, its attachment(s) and addenda, if any; the successful proposers original proposal, and a Purchase Order issued by the District.

**Contractual Obligations** - A sample Non-Consultant Agreement for Services is attached to this Request for Proposals (Attachment A). The terms and conditions relative to any contract resulting from this solicitation will be those set forth in the attached sample although it may be modified somewhat to reflect the procurement described in this solicitation document. Please note in your submittal exceptions to district Terms and Conditions.

**Small Business Enterprise** - It is the goal of the District to increase the use of small businesses in awarding procurement contracts. During the evaluation of bids, the District will grant a five percent (5%) preference to bidders who are currently registered and certified by the State of California Department of General Services as a small business pursuant to California Public Contract Code Section 2002.

**Local Business** - It is the goal of the District to increase the use of local businesses in awarding procurement contracts. During the evaluation of proposals, the District will grant a five percent (5%) preference to proposers who have submitted a Local Business Declaration Form (Attachment D) to the District's Procurement and Operation Services Division, Procurement Unit as a local business pursuant to District Ordinance 13-02.

**Insurance Requirements** -The successful Proposer(s) shall comply with the District insurance requirements as set forth in (Attachment B) included in this Request for Proposals.

**Proposal Content** - The SCVWD discourages overly lengthy proposals. However, the proposal will include the following information at a minimum:

1. Proposer's complete name, business address, and telephone number and the name, mailing address, and telephone number of person the SCVWD should contact regarding the proposal.
2. A description of the proposer's organization, including names of principals, number of employees, longevity, client base, areas of specialization and expertise and any other pertinent information that will assist in formulating an opinion about the stability and financial strength of the organization.
3. Whether proposer has defaulted in its performance on a contract during the past five (5) years which has led the other party to terminate the contract and, if so, the identity of the parties involved and the circumstances of the default or termination.
4. Names, qualifications, and experience of key personnel who will perform the services described in this Request for Proposals.
5. Three references for which proposer has performed similar services of similar scope within the past three years. Include the organization name and address, the name and telephone number of a contact person, and a brief description of the services performed.
6. A narrative statement that illustrates proposer's understanding of the requirements of this Request for Proposals.
7. A narrative statement that sets out the methodology proposer intends to employ and that illustrates how its methodology will serve to perform the required services.
8. A timeline for completion of the required services.
9. Describe your company's Green Business Practices.
10. Detailed cost estimate for completion of the project described in this Request for Proposals and a proposed payment schedule. No other charges will be accepted once proposals are submitted.

**Avaya Maintenance Contract**                      Cost Per Year:                      \$\_\_\_\_\_                      Total Cost: \$\_\_\_\_\_

**Preferred Support Advantage**                      Cost Per Program:                      \$\_\_\_\_\_



## Upgrade Advantage

Cost Per Program: \$\_\_\_\_\_

The SCVWD prefers, but does not require, a fixed price contract. If a time and materials contract is proposed, the proposal must include an estimate of personnel time and reimbursable expenses, if any; a not-to-exceed total contract cost; and proposer's current rate schedule for those persons who will perform the services.

If payment schedule includes payments prior to completion of the services, payments must be tied to milestones and deliverables.

**PLEASE NOTE: The SCVWD does not pay for services before it receives them. Therefore, do not propose contract terms that call for up-front payments or deposits. Also, the SCVWD reimburses direct expenses only at actual cost---not cost plus some percentage or markup.**

11. Signature of company officer empowered to bind the firm.

**Safety Gear for Personnel on District Work Site** – Bidder shall ensure that any of its personnel entering a District work site dons on all necessary safety equipment, including but not limited to, gloves, hardhat, and an orange reflective vest.

**Permits and Licenses** – The bidder shall procure all permits and licenses, pay all charges and fees, give all notices necessary and incidental to the due and lawful prosecution of the provision of services provided to the District. A Contractor's C-7- Low Voltage Systems Contractor License is required.

**California Code of Regulations, Title 16, Division 8, Article 3. Classifications** - A communication and low voltage contractor installs, services and maintains all types of communication and low voltage systems which are energy limited and do not exceed 91 volts. These systems include, but are not limited to telephone systems, sound systems, cable television systems, closed-circuit video systems, satellite dish antennas, instrumentation and temperature controls, and low voltage landscape lighting. Low voltage fire alarm systems are specifically not included in this section.

*Authority cited: Sections 7008 and 7059, Reference: Sections 7058 and 7059 (Business and Professions Code)*

**Condition of Vehicles** – Bidder shall maintain all vehicles in good, clean, safe operating condition.

**Security** – The vendor shall at all times be responsible for the security its equipment.

**Contract Award** - Contract awarded to the firm that receives the highest evaluation score and has met all the requirements of this RFP. All contracts are subject to the appropriation of funds by the District's Board of Directors.

### **Disclaimers**

This Request for Proposal does not commit the District to award a contract or to pay any costs incurred in the preparation of a proposal in response to this Request.

The District reserves the right to accept or to reject any or all proposals received, to negotiate with qualified proposers or to cancel the Request.

The District may require proposer to submit additional data or information the District deems necessary to substantiate the costs presented by the proposer. The District may also require proposer to revise one or more elements of its proposal in accordance with contract negotiations.

The District reserves the right to evaluate proposals for a period of ninety (90) days before deciding which proposal, if any, to accept.

Proposals will be opened and checked for the presence of the required information as outlined in this RFP. The absence of required information may render the proposal non-responsive and may be cause for rejection.

Each proposal will be checked in detail to determine compliance with RFP requirements.

If, during the evaluation process, the District is unable to determine a proposer's ability to perform the services, District has the option of requesting from the proposer any information, which the District deems necessary to determine the proposer's ability to perform. If the information submitted by the proposer, or from other sources considered by the District, is insufficient to satisfy the District as to the proposer's ability to satisfactorily perform the required services, the District may reject the proposal. The District's determination of proposer's ability to perform, for the purposes of this RFP, will be final.

**“Vendor submission of a proposal implies vendor acceptance of the evaluation technique and vendor recognition that some subjective judgments shall be made by the Santa Clara Valley Water District during assignment of points.”**

**Protest** - All protests must be in writing and physically received by the District's Procurement Unit Manager in accordance with section 3 below. Any protests received after the deadlines set forth below will not be considered.

1. Content of the Protest. The following must be written on the cover of the protest: “Invitation to Bid #GM4742-TW”. The written protest must contain the following information:
  - a. The name, street address, electronic mail address, telephone and facsimile numbers of the Protestor;
  - b. Signature of the Protestor or its representative;
  - c. A clear statement of the basis for the bid protest;
  - d. Copies of any relevant documents; and
  - e. The form of the relief requested.
  
2. Basis for the Protest. Protest shall be based only on the Protestor's belief that one or more of the following situations occurred:
  - a. The District failed to follow the procedures and adhere to requirements set forth in the solicitation or any addendum thereto;
  - b. The bid solicitation contained restrictive specifications.
  - c. There was misconduct or impropriety by District officials or consultant review board members; and
  - d. There was abuse of process or abuse of discretion by District officials or consultant review board members.
  
3. Filing a Protest. Protests must be sent in writing, by certified and registered mail or personally deliver, to:

Santa Clara Valley Water District  
Attn: Procurement, Consultant Contract and Warehouse Services Unit Manager  
Protest of Award: ITB No. GM4742-TW (Avaya Maintenance Contract)  
5750 Almaden Expressway  
San Jose, CA 95118

  - a. Protest alleging restrictive specifications or improprieties in the solicitation documents or process must be received at least three (3) work days prior to the bid or proposal due date and time.
  - b. All other protests occurring after award of the contract must be submitted within 5 work days after the protestor received a Notice of Intent to Award to another bidder or proposer. Protest that are not timely received shall be dismissed and the proposer waives all further rights to have the District consider or reconsider the District's decision to award the contract.
  - c. Protest Resolution Process. The District will provide a response within ten (10) work days of receiving the bid protest.
  - d. Appeal of the District's Notice of Decision. The District, after the 10 calendar day appeal waiting period, may elect to withhold a pending contract award until the protest is resolved or proceed with the award and implementation of the contract. The District's Deputy Administrative Officer (DAO) will issue the Final Determination by certified mail to the protestor.

**Living Wage Requirement** - The District's Board of Directors has adopted the Living Wage policy (Attachment A, Exhibit D) that is substantially similar to the City of San Jose Living Wage policy. The Proposer will have a contractual obligation to abide by this Living Wage policy, which includes, but is not limited to, providing a living wage as described in the Living Wage policy to Proposer's personnel assigned to the District.

Therefore, Proposers' Proposal amount should take into consideration its contractual obligation to abide by this Living Wage policy.

**Prevailing Wage Rates** –

1. Workers employed on this project must be paid at rates at least equal to the prevailing wage rates as determined by the State of California Department of Industrial Relations pursuant to §1770 of the Labor Code. Said wage rates are incorporated herein by reference and may be inspected upon request. The rates are also available on the State of California Department of Industrial Relations website at <http://www.dir.ca.gov/>. See Standard Provisions — Articles 6.04 through 6.06 for related requirements.
2. This Project is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. The Contractor and subcontractors must furnish the records specified in Section 1776 directly to the Labor Commissioner monthly, in a format prescribed by the Labor Commissioner.

**Attachment A**  
**SANTA CLARA VALLEY WATER DISTRICT**  
**NON-CONSULTANT SERVICES AGREEMENT NO. GM4742-TW**

**FOR Avaya Maintenance Contract and Preferred Support Advantage and Upgrade Advantage**

This NON-CONSULTANT SERVICES AGREEMENT ("Agreement") is made at San Jose, California, as of \_\_\_\_\_, by and between the Santa Clara Valley Water District, a special district ("District"), and Name of Contractor:

Address:

Phone/Fax:

("Contractor"), who agree as follows:

**1. Agreement.** The following documents (if applicable) are incorporated into this Agreement by this reference:

Request for Proposal No. \_\_\_\_\_, any all attachments and addenda  
Contractor's Proposal /Proposal Submitted in Response to the Above-Referenced Request for Proposal  
Certificate(s) of Insurance and Endorsements

In the event of conflict between any of the terms and conditions contained in the above documents and any of the terms and conditions contained in this Agreement, the parties agree that the terms and conditions contained in this Agreement will control.

**2. Services.** Subject to the terms and conditions set forth in this Agreement, Contractor agrees to provide District the services described in the Scope of Services, attached hereto as Exhibit A ("Services"). Contractor must, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing the Services. Contractor will not be compensated for services outside the scope of the Services as described in Exhibit A, unless prior to the commencement of such out of scope services: (a) Contractor notifies District and District agrees that such services are out of scope services; (b) Contractor estimates the additional compensation required for such out of scope services; and (c) District, after notice, approves in writing an amendment specifying such out of scope services and amount of compensation for performing those out of scope services. District does not have any obligations whatsoever under this Agreement and/or any amendment unless and until this Agreement and/or any amendment is approved by the District's Purchasing Manager or authorized designee.

**3. Exhibits.** The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

\_\_\_ Exhibit A – Scope of Services  
\_\_\_ Exhibit B – Fee Schedule  
\_\_\_ Exhibit C – Insurance Requirements  
\_\_\_ Exhibit D - Living Wage Policy Requirements

**4. Payment.** District must pay Contractor for the Services in the manner specified in Exhibit B. The payments specified in Exhibit B are the only payments to be made to Contractor for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, District approves additional compensation for additional services. Contractor must submit all billings for said services to District in the manner specified in Exhibit B.

**5. No Guarantee of Compensation for On-Call Services.** If this Agreement is an agreement for "on-call" Services, District makes no guarantee to Contractor as to the amount of Contractor-provided on-call Services will be requested by the District or the amount of compensation that will be provided Contractor pursuant to this Agreement. Under no circumstances, will Contractor or any of its subcontractors be entitled to or compensated for any direct or indirect loss arising from or relating to District's failure to authorize performance of services under this Agreement. Such direct and indirect loss includes, but is not limited to, loss of expected profits, business overhead, loss of productivity, and loss of opportunity to work on other projects.

**6. Standards of Performance.** Contractor must perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of Contractor's industry in California. Contractor must prepare all deliverables provided to District pursuant to this Agreement in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Contractor's industry, and must be provided in accordance with any schedule of performance specified in Exhibit A. Contractor must assign only competent personnel to perform Services. Contractor must also devote such time and effort to the performance of Services as is necessary for the satisfactory and timely performance of Contractor's obligations under this Agreement. Neither party will be deemed in default of

this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

**7. Independent Contractor.** It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel must be entitled to any benefits payable to employees of District. District is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement. It is further understood and agreed by the parties hereto that Contractor, in the performance of its obligations hereunder, is subject to the control and direction of District as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use District facilities, space, equipment or support services in the performance of this Agreement, this use is at the Contractor's sole discretion based on the Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the District does not require that Contractor use District facilities, equipment or support services or work in District locations in the performance of this Agreement. If, in the performance of this Agreement, any third persons are employed by Contractor, then Contractor must ensure that such persons are entirely and exclusively under Contractor's direction, supervision, and control.

**8. Contractor Not Agent of District.** Except as District may specify in writing, Contractor and Contractor's personnel do not have authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Contractor and Contractor's personnel do not have the authority, express or implied, to bind District to any obligations whatsoever.

**9. Conflicts of Interest.** Contractor covenants that neither it, nor any officer or principal of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the interests of District or that would in any way hinder Contractor's performance of the Services. Contractor further covenants that in the performance of this Agreement, no person having any such interest will be employed by Contractor as an officer, employee, agent or subcontractor, without the written consent of District. Contractor agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of District at all times during the performance of this Agreement.

**10. Licenses and Permits.** Contractor represents and warrants that Contractor has all licenses, permits, qualifications, and approvals that are legally required for Contractor to provide the Services. Contractor represents and warrants that Contractor will, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for Contractor to provide the Services. Without limiting the generality of the foregoing, if Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

**11. Indemnification.** Contractor agrees to defend, hold harmless and indemnify District, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably attorney fees and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by Contractor, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the negligence or willful misconduct of District.

**12. Insurance Requirements.** During the entire term of this Agreement, Contractor must maintain the insurance coverage described in Exhibit C.

**13. Living Wage Policy.** The District's Board of Directors has adopted the Living Wage policy that is substantially similar to the City of San Jose Living Wage policy. The Proposer will have a contractual obligation to abide by this Living Wage policy, which includes, but is not limited to, providing a living wage as described in the Living Wage policy to Proposer's personnel assigned to the District. Therefore, Proposers' Proposal amount should take into consideration its contractual obligation to abide by this Living Wage policy.

**14. Non-Discrimination.** Contractor represents and warrants that it has and adheres to a policy of equal opportunity non-discrimination, and non-harassment of all persons regardless of race, religion, color, national origin, ancestry, disability, medical condition, marital status, gender, age, veteran status, or sexual orientation. Such policy must be in conformance with applicable State and Federal guidelines including the California Government Code "Section 12940 (h), 12940(i)," and the Federal Equal Opportunity Clause "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations" and must apply to all employment practices including recruitment, candidate selection, training, compensation, promotion, demotion, and recreation. Contractor will designate a specific person responsible for assuring nondiscrimination and non-harassment as provided in the Agreement. That named individual will be responsible for investigating all complaints directed to him/her by District. District will refer complaints in writing, and investigations will be deemed concluded only upon submission of a written investigation report from the Contractor to the District. The scope of such investigations includes not only officers, employees, and agents of the Contractor, but also all subcontractors, subcontractors, material, men, and suppliers of the Contractor. In cases where such investigation results in a finding of discrimination, harassment, or hostile work environment, Contractor must take prompt, effective disciplinary action against the offender. Failure to take appropriate action may be considered a material breach of the Agreement.

**15. Compliance with Laws.** In the performance of this Agreement, Contractor must at all times comply with all applicable governmental laws, statutes, ordinances, rules, codes, regulations, orders and other requirements. Upon the District's request, Contractor must provide the District with documentation demonstrating Contractor's compliance with such governmental requirements. After reasonable notice and under reasonable conditions, Contractor agrees that the District has the right to inspect and copy any records of Contractor regarding such compliance. Contractor represents and warrants that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any government department or agency.

**16. Term; Suspension; Termination.** This Agreement will become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and continues in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein. District must have the right at any time to temporarily suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. If District gives such notice of suspension, Contractor must immediately suspend its activities under this Agreement, as specified in such notice. District may terminate this Agreement at any time by giving at least 10-days prior written notice of termination to Contractor. If District gives such notice of termination, Contractor must immediately cease rendering Services pursuant to this Agreement. If District terminates this Agreement, Contractor must, no later than five days after such notice of termination, deliver to District all Work Product prepared pursuant to this Agreement. District must pay Contractor the reasonable value of Services rendered by Contractor prior to termination.

**17. Confidentiality of District Information.** During performance of this Agreement, Contractor may gain access to and use District information regarding personnel, future plans, business affairs, governmental affairs, processes, trade secrets, and security of facilities, customer account information, and other sensitive information (hereafter collectively referred to as "District Information"). Contractor agrees to protect all District Information and treat it as strictly confidential, and further agrees not at any time, either directly or indirectly, to divulge, disclose or communicate in any manner any District Information to any third party without the prior written consent of District. A violation by Contractor of this Section is a material violation of this Agreement and must justify legal and/or equitable relief.

**18. Ownership of Work Product.** Contractor agrees that District has full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by Contractor pursuant to this Agreement ("Work Product"). Contractor is not responsible for any unauthorized modification or use of such Work Product for other than its intended purpose by District. Contractor agrees to fully defend, indemnify and hold harmless District, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by Contractor pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights.

**19. California Public Records Act.** All proprietary and other information received from Contractor by District, whether received in connection with Contractor's proposal to District or in connection with any Services performed by Contractor, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to District, District must give notice to Contractor of any request for the disclosure of such information. The Contractor has five (5) days from the date it receives such notice to enter into an agreement with the District, satisfactory to the District Counsel, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by District in any legal action to compel the disclosure of such information under the California Public Records Act. The Contractor has sole responsibility for defense of the actual "trade

secret" designation of such information. The failure of Contractor to respond to the notice provided by District constitutes a complete waiver by Contractor of any rights regarding the information designated "trade secret" by Contractor, and such information will be disclosed by District pursuant to the California Public Records Act.

**20. Quality and Environmental Policy Statement.** The District maintains a quality and environmental management system to help meet the Ends and Executive Limitations governance policies established by the Board of Directors: meet customer requirements; provide for active, uniform, and systematic deployment of key processes to implement its "getting cleaner...together" vision; and to establish a culture of continual improvement to implements its "getting leaner" vision. Each individual is expected to fully engage in deploying the mission and use resources in a manner that maximizes effectiveness and contributes to environmental stewardship.

**21. Severability.** The parties agree that if any portion of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable, then the remainder of this Agreement will remain effective and is enforceable to the greatest extent permitted by law.

**22. Waiver.** Neither District acceptance of, or payment for, any Service or Additional Service performed by Contractor, nor any waiver by either party of any default, breach or condition precedent, may be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

**23. Choice of Law and Venue.** The parties agree that this Agreement is to be governed, construed and enforced in accordance with the laws of the State of California. The parties also agree that the venue of any litigation arising out of or connected with this Agreement will lie exclusively in the state trial court or Federal District Court located in Santa Clara County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

**24. No Assignment.** The expertise and experience of Contractor are material considerations for this Agreement. District has a strong interest in the qualifications and capability of the persons and entities that will fulfill the obligations imposed on Contractor under this Agreement. In recognition of this interest, Contractor must not assign any right or obligation pursuant to this Agreement without the written consent of the District. Any attempted or purported assignment without District's written consent is void and of no effect.

**25. Survival of Terms.** The provisions of Section 5, 7, 8, 9, 10, 11, 15, and 17 through 27, survives termination of this Agreement.

**26. Binding Effect.** This Agreement is binding on the heirs, executors, administrators, successors and assigns of the parties.

**27. Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement is valid unless approved in the form of a written amendment signed by an authorized representative of Contractor and District.

**28. Authority.** The person signing this Agreement for Contractor hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Contractor and to bind Contractor to the performance of its obligations hereunder.

**Remainder of page left blank intentionally**

EXECUTED AS OF THE DATE FIRST STATED ABOVE.

**Santa Clara Valley Water District**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

**Contractor:**

Name of Firm: \_\_\_\_\_

Federal I.D. No.: \_\_\_\_\_

State I.D. No.: \_\_\_\_\_

Type of Business Entity (check one):

\_\_\_\_ Individual/Sole Proprietor

\_\_\_\_ Partnership

\_\_\_\_ Corporation (i.e. either corporate president must sign or two corporate officers)

\_\_\_\_ Limited Liability Company

\_\_\_\_ Other (please specify: \_\_\_\_\_)

Name of Firm's Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

***(If the firm is a corporation and its president did not sign above, then another corporate officer must sign below)***

Name of Firm's Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Remainder of page left blank intentionally



**EXHIBIT A  
SCOPE OF SERVICES**

**1. Representatives.**

a. The District Representative for this Agreement is:

Gary Masad  
Telecommunications Administrator  
408-630-2782  
[gmasad@valleywater.org](mailto:gmasad@valleywater.org)

All Contractor questions pertaining to this Agreement must be referred to the District Representative or the District Representative's designee.

b. The Contractor Representative for this Agreement is:

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All District questions pertaining to this Agreement must be referred to the Contractor Representative. All correspondence to Contractor must be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the District must be addressed to the District Representative.

**2. Scope of Services: Avaya Maintenance Contract and Preferred Support Advantage and Upgrade Advantage**

**Contractor Tasks**

**Avaya Maintenance account locations –**

<b>Location</b>	<b>Sold To#</b>
Rinconada	2933039
Coyote	2933052
Winfield	2933050
Zanker	5392954
Penitencia	5048381
Santa Teresa	2933041
Headquarters	2933033
Vasona	5133833

- Avaya Preferred Support Advantage and Upgrade Advantage with 8 by 5, expires June 2016
- Aura Unified Messaging is currently being installed in June 2016, but is already on Avaya Maintenance since 10-15-16.
- Avaya Modular Messaging will be retired as soon as Aura Messaging is active, estimated date June 2016. **Please remove Modular Messaging from the contract and replace with Aura Messaging.**
- There should not be any key systems on this contract, i.e. Merlin Legend.

Avaya Preferred Support Advantage and Upgrade Advantage with 8 by 5 onsite support with terminal coverage.

This is a request for bids to renew and replace the District's current Avaya Maintenance Contract Accounts. The District's current maintenance contract is Avaya Preferred Support Advantage and Upgrade Advantage with 8 by 5. The District currently have two contracts one for our Communication Manager and Modular Messaging for all phone system locations and one for our new Aura Messaging.

The replacement should include the same coverage as Avaya Preferred Support Advantage and Upgrade Advantage with 8 by 5 onsite support with terminal coverage.

This contract should be due yearly for a term of three years. All, Sold To locations, CM, Aura, Unified, Messaging, to co-terminus and be billed as on invoice starting in July 2016 and renewing in all future years without a lapse in service.

**District Responsibilities** – Santa Clara Valley Water District will provide any reports or LOA access to qualified Avaya Partners

**Attachments** –

- Attachment D - Local Business Enterprise Declaration Form
- Attachment E- QEMS Awareness Language Form

**Evaluation**

Proposals that meet the experience requirement will be evaluated based on the weighted rating criteria described below. Multiple District staff will review proposals. Each reviewer will provide a score of 1 – 10 for each criteria. Reviewers' scores will be averaged for each criteria.

<b>Evaluation Criteria</b>	<b>Maximum Possible Points</b>
<b>Price (based on the total amount specified in the proposal form)</b>	<b>0-60</b>
<b>Qualifications</b>	<b>0-30</b>
<b>Small Business Enterprise</b>	<b>0-5</b>
<b>Local Business Enterprise</b>	<b>0-5</b>
<b>Total</b>	<b>100</b>

**3. Time of Performance.** The agreement will be valid for a period of one year from the date this agreement is executed by both parties.

**4. Additional Services.** If the District requests Contractor to provide services in addition to those specified above, Contractor shall develop a scope of work detailing the specific tasks to be completed and the estimated costs to complete those tasks. Contractor shall not perform any additional services unless authorized to provide those additional services are specified in an amendment to this Agreement signed by both parties.

**EXHIBIT B  
FEE SCHEDULE**

- 1. Contractor's Compensation.** The parties agree that the total of all fees paid to the Contractor for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized reimbursable expenses, must not exceed the total sum of \$45,000 per job.
- 2. Billable Rates.** Contractor must be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated by this reference.
- 3. Contractor's Reimbursable Expenses.** Reimbursable expenses are limited to actual expenditures of Contractor for expenses that are necessary for the proper completion of the Services and are only be payable if specifically authorized in writing in advance by District. Reimbursable expenses will include travel, airfare, lodging, rental car expenses, or any other District-authorized miscellaneous expenses.
- 4. Payments to Contractor.**
  - a. Undisputed invoices must be paid by the District within 30 days after receipt of such invoices. Contractor must be responsible for the cost of supplying all documentation necessary to verify the invoiced amounts to the satisfaction of District.
  - b. All invoices submitted by Contractor must contain the following information:
    - i. Date of Invoice Issuance
    - ii. Sequential Invoice Number
    - iii. Non-Consultant Services Agreement Number
    - iv. Total Agreement Not-to-Exceed Amount
    - v. Amount of this Invoice (Itemize all reimbursable expenses, if any)
    - vi. Each invoice shall be broken down by each day worked
  - c. Billings that do not conform to the format outlined above must be returned to Contractor for correction. District must not be responsible for delays in payment to Contractor resulting from Contractor's failure to comply with the invoice format described below.
  - d. Requests for payment must be sent to the District Representative.
- 5. Contractor's Accounting Records.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, Contractor must maintain all accounting and financial records related to this Agreement, including, but not limited to, records of Contractor's costs for all Services and Additional Services performed under this Agreement and records of Contractor's Reimbursable Expenses, in accordance with generally accepted accounting practices, and must keep and make such records available for inspection and audit by representatives of the District upon reasonable written notice.

**ATTACHMENT 1 to EXHIBIT B**

**BILLABLE RATES**

Contractor shall bill the District as per the hourly rate schedule below:

	<b>Staff Classification*</b>	<b>Remote-Site Unit Price/Hour</b>	<b>ON-Site Unit Price/Hour</b>
<b>1</b>			

**Notes:**

1. *These rates shall remain unchanged throughout the entire duration of the agreement.*

## EXHIBIT C

### INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below.

Without limiting the Contractor's indemnification of, or liability to, the Santa Clara Valley Water District ("District"), the Contractor must provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

Contractor must provide its insurance broker(s)/agent(s) with a copy of these requirements and warrants that these requirements have been reviewed by Contractor's insurance agent(s) and/or broker(s), who have been instructed by Contractor to procure the insurance coverage required herein.

In addition to certificates, Contractor must furnish District with copies of original endorsements affecting coverage required by this Appendix. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. **All endorsements and certificates are to be received and approved by District before work commences.** In the event of a claim or dispute, District has the right to require Contractor's insurer to provide complete, certified copies of all required pertinent insurance policies, including endorsements affecting the coverage required by this Appendix.

Contractor must, at its sole cost and expense, procure and maintain during the entire period of this Agreement the following insurance coverage(s).

#### **Required Coverages**

**1. Commercial General/Business Liability Insurance** with coverage as indicated:  
**\$2,000,000** per occurrence / **\$2,000,000** aggregate limits for bodily injury and property damage  
General Liability insurance must include:

- a. Coverage at least as broad as found in standard ISO form CG 00 01.
- b. Premises and Operations
- c. Contractual Liability expressly including liability assumed under this contract.
- d. If Contractor will be working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, overpass, underpass, or crossway must be deleted, or a railroad protective policy in the above amounts provided.
- e. Owners and Contractors' Protective liability
- f. Severability of Interest
- g. Explosion, Collapse and Underground Hazards, (X,C, and U)
- h. Broad Form Property Damage liability

**2 Business Auto Liability Insurance** with coverage as indicated:

**\$2,000,000** combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned and hired vehicles.

#### **3. Workers' Compensation and Employer's Liability Insurance**

Statutory California Workers' Compensation coverage covering all work to be performed for the District.  
Employer Liability coverage for not less than \$1,000,000 per occurrence.

#### **General Requirements**

With respect to all coverages noted above, the following additional requirements apply:

1. **Additional Insured Endorsement(s)** Contractor must provide an additional insured endorsement for Commercial General/Business Liability and Business Automobile liability coverage naming the **Santa Clara Valley Water District, its Directors, officers, employees, and agents, individually and collectively**, as additional insured's, and must provide coverage for acts, omissions, etc. arising out of the named insured's' activities and work. Other public entities may also be added to the additional insured endorsement as applicable and the Contractor will be notified of such requirement(s) by the District. **NOTE: This section does not apply to the Workers' Compensation and Professional Liability policies.**

(NOTE: Additional insured language on the Certificate of Insurance is **NOT** acceptable without a separate endorsement such as Form CG 20 10, CG 2033, CG 2037. Note: Editions dated 07/04 are not acceptable)

2. **Primacy Clause:** Contractor will provide evidence (either through endorsement or language in the insurance contract) that Contractor's insurance is primary with respect to any other insurance which may be carried by the District, its officer, agents and employees, and the District's coverage must not be called upon to contribute or share in the loss. **NOTE: This section does not apply to the Workers' Compensation and Professional Liability policies.**

3. **Cancellation Clause** Contractor will provide endorsements for all policies stating that the District will be given 30 days notice of cancellation, (10 days for non-payment of premium). **NOTE: The standard wording in the ISO Certificate of Insurance is not acceptable.**

4. **Acceptability of Insurers:** All coverages must be issued by companies admitted to conduct business in the State of California, which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the District's Risk Management Administrator.

5. **Self-Insured Retentions or Deductibles:** 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 Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

6. **Subcontractors** Should any of the work under this Agreement be sublet, Contractor will name each of the subcontractors of any tier under its own policies, or will require each of its subcontractors of any tier to carry the aforementioned coverages.

7. **Amount of Liability not Limited to Amount of Insurance:** The insurance procured by Contractor for the benefit of the District must not be deemed to release or limit any liability of Contractor. Damages recoverable by the District for any liability of Contractor must, in any event, not be limited by the amount of the required insurance coverage.

8. **Coverage to be Occurrence Based:** All coverage must be occurrence-based coverage. Claims-made coverage is not allowed.

9. **Waiver of Subrogation:** Contractor agrees on to waive subrogation against the District to the extent any loss suffered by Contractor is covered by any Commercial General Liability policy, Automobile policy, Workers' Compensation policy, or Builders' Risk policy described in **Required Coverages** above. Contractor agrees to advise its broker/agent/insurer and agrees to provide evidence (either through endorsement or language in the insurance contract) that subrogation has been waived.

#### 10. **Unique Insurance Coverage**

**Technology Errors & Omissions** insurance, including cover for liabilities arising from negligent acts, errors, omissions, in rendering or failing to render computer or information technology services and technology

products. Technology services should at a minimum include (1) systems analysis (2) systems programming (3) data processing (4) systems integration (5) outsourcing including outsourcing development and design (6) systems design, consulting, development and modification (7) training services relating to computer software or hardware (8) management, repair and maintenance of licensed software products (9) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, and any other services provided by the vendor with limits of \$2,000,000 per occurrence/aggregate.

**11. Privacy/Network Security (Cyber)** liability coverage, naming the District and its Agents as an additional insured, and providing protection against liability for (1) privacy breaches [liability arising from the loss or disclosure of confidential information no matter how it occurs] (2) system breach (3) denial or loss of service (4) introduction, implantation, or spread of malicious software code (5) unauthorized access to or use of computer systems with limits no less than \$20 million. No exclusion/restriction for unencrypted portable devices/media may be on the policy.

**12. Non-compliance:** The District reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

**13. Please mail the certificates and endorsements to:**

**Purchasing Insurance Coordinator  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118**

**IMPORTANT: On the certificate of insurance, please note [INSERT PO/CONTRACT/AGREEMENT NUMBER & project title] and [INSERT NAME OF THE DISTRICT POINT OF CONTACT AND UNIT]. DO NOT SEND THE CERTIFICATE OF INSURANCE TO THE CONTRACT ADMINISTRATOR OR RISK MANAGER.**

**If your insurance broker has any questions** please advise him/her to call Mr. David Cahen, District Risk Manager (408) 630-2213.

EXHIBIT D



Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, California 95118  
PH: (408) 265-2600  
FAX: (408)979-5628

## LIVING WAGE POLICY

It is the policy of the Santa Clara Valley Water District (District) that persons doing work on, for or on behalf of the District should be paid at least a living wage and reasonable time off.

### 1. Payment of Minimum Compensation to Employees.

The following are the minimum living wages that must be paid to individuals providing services to the District under the contracts specified in Section 2(A) of this Living Wage Policy:

- i. If health insurance benefits are provided by the service provider, then a wage of no less than **\$18.32 per hour**. (*Proof of the provision of such benefits must be submitted to the District with the executed contract*)
- ii. If health insurance benefits are not provided by the service provider, then a wage of no less than **\$19.57 per hour**.

These initial rates will be reviewed each year during the month of July, to determine if any adjustment should be made based on that year's February Consumer Price Index for all Urban Consumers in the San Francisco-Oakland-San Jose area (U.S. Department of Labor, Bureau of Labor Statistics). Notwithstanding the Consumer Price Index, the living wage must not increase by more than 4%.

### 2. Application

#### A. Service or Labor Contract

The Living Wage Policy applies to awarded contracts that the District estimates the expenditure of more than \$50,000 during the term of the contract for the furnishing of the following services to the District (as opposed to the purchase of goods or other property or the leasing of property):

- i. Automotive repair and maintenance
- ii. Facility and building maintenance
- iii. Food services
- iv. Janitorial and Custodial
- v. Landscaping
- vi. Office and Clerical (copier maintenance, facsimile maintenance, courier, mailing, photographic, printing, collections)



- vii. Pest Control
- viii. Security
- ix. Maintenance of District owned equipment
- x. Any other service or labor determined by the District's Procurement Unclassified Officer to meet the intent of this Policy.

**B. Exemptions**

Notwithstanding the type of contracts specified in Section 2(A) of this Living Wage Policy, if any of the following are applicable, then the living wage requirements in this Living Wage Policy are not applicable:

- i. Contracts under which federal or state regulations preclude the applicability of the living wage requirements specified in this Living Wage Policy;
- ii. Contracts which involve programs where the District shares management authority with other jurisdictions, unless all participating agencies have a Living Wage Policy;
- iii. Contracts which are impacted by leases, bond covenants, grant restrictions, governmental regulations and the like are reviewed on a case by case basis and the Living Wage Policy included to the extent legally and contractual possible;
- iv. Contracts for professional services for specialized skills including but not limited to experts, consultants, auditors, engineers, attorneys, banking; or
- v. Contracts where imposition of the living wage requirements specified in this Living Wage Policy is found by the District's Procurement Unclassified Officer to be likely to cause a hardship to small businesses.
- vi. Contracts with non-profit organizations that provide educational and/or job-related training.

**3. Employee Retention Requirements**

**A. Application**

The Employee retention requirements under this Policy will apply to contracts subject to this Policy which are estimated to be over \$50,000 during the contract term and provides for the continuation of a service currently provided by another contractor, including the following contracts:

- i. Food Services
- ii. Janitorial and Custodial Services
- iii. Security Services
- iv. Any other service or labor determined by the District's Procurement Unclassified Officer to meet the intent of this Policy

**B. Retention Employee**

Any person employed by the predecessor contractor or any subcontractor to the predecessor contractor who:

- i. provides direct labor or service on the District contract;

- ii. is not an "exempt" employee under the Fair Labor Standards Act; and
- iii. has been employed for at least 12 months period prior to the date of the new contract by the predecessor service contractor or subcontractor.

**C. Employment**

Employment shall be offered to all qualified retention employees.

- i. The new service contractor may deem a retention employee not to be qualified only if: (a) the employee has been convicted of a crime that is related to the job or to his or her job performance; or (b) the contractor can demonstrate to the District that the employee presents a significant danger to customers, co-workers, or District staff.
- ii. The new service contractor may treat any of its current employees as retention employees for purposes of this Policy who, based on payroll records or other reliable evidence can be shown to the satisfaction of the District's Procurement Manager: (a) to have been employed for at least the 12 month period prior to the date of the new contract by the contractor or subcontractor; and (b) would otherwise need to be terminated if not retained by the new service contractor.
- iii. Qualified employees of the predecessor contractor may not be discharged without cause during the initial 90 day period of their employment with the new service contractor.

**4. Enforcement**

The service agreement shall provide that if a violation of any provision of this Living Wage Policy occurs and is not corrected after written notice, the District may, at its option, do any or all of the following:

- i. Suspend and/or terminate the service contract for cause.
- ii. Require the employer to pay any amounts underpaid in violation of the required payments and District's administrative costs and liquidated damages.

**5. Effective Date**

Any contract for which any request for service or labor covered by this Living Wage Policy is issued on or after May 1, 2010.

**CONTACT INFORMATION**

The District's main telephone number is 408-265-2607. Please use the extension numbers below to contact staff. The District's Deputy Administrative Officer for Procurement maintains the Living Wage Policy and can be contacted at ext. 3021.

For Goods, Services (general), and Public Works construction (less than \$25,000)	x 2888
For Consulting Services (professional and non-professional)	x 2992
For Public Works Construction (above \$25,000)	x 3088

**ATTACHMENT B**  
**Santa Clara Valley Water District**  
**Insurance Requirements for Services**

Please refer to the insurance requirements listed below.

Without limiting the Contractor's indemnification of, or liability to, the Santa Clara Valley Water District ("District"), the Contractor must provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

Contractor must provide its insurance broker(s)/agent(s) with a copy of these requirements and warrants that these requirements have been reviewed by Contractor's insurance agent(s) and/or broker(s), who have been instructed by Contractor to procure the insurance coverage required herein.

In addition to certificates, Contractor must furnish District with copies of original endorsements affecting coverage required by this Appendix. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. **All endorsements and certificates are to be received and approved by District before work commences.** In the event of a claim or dispute, District has the right to require Contractor's insurer to provide complete, certified copies of all required pertinent insurance policies, including endorsements affecting the coverage required by this Appendix.

Contractor must, at its sole cost and expense, procure and maintain during the entire period of this Agreement the following insurance coverage(s).

**Required Coverages**

**1. Commercial General/Business Liability Insurance** with coverage as indicated:  
**\$2,000,000** per occurrence / **\$2,000,000** aggregate limits for bodily injury and property damage  
General Liability insurance must include:

- a. Coverage at least as broad as found in standard ISO form CG 00 01.
- b. Premises and Operations
- c. Contractual Liability expressly including liability assumed under this contract.
- d. If Contractor will be working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, overpass, underpass, or crossway must be deleted, or a railroad protective policy in the above amounts provided.
- e. Owners and Contractors' Protective liability
- f. Severability of Interest
- g. Explosion, Collapse and Underground Hazards, (X,C, and U)
- h. Broad Form Property Damage liability

**2 Business Auto Liability Insurance** with coverage as indicated:

**\$2,000,000** combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned and hired vehicles.

**3. Workers' Compensation and Employer's Liability Insurance**

Statutory California Workers' Compensation coverage covering all work to be performed for the District.  
Employer Liability coverage for not less than \$1,000,000 per occurrence.

**General Requirements**

With respect to all coverages noted above, the following additional requirements apply:

1. **Additional Insured Endorsement(s)** Contractor must provide an additional insured endorsement for Commercial General/Business Liability and Business Automobile liability coverage naming the **Santa Clara Valley Water District, its Directors, officers, employees, and agents, individually and collectively**, as additional insured's, and must provide coverage for acts, omissions, etc. arising out of the named insured's' activities and work. Other public entities may also be added to the additional insured endorsement as applicable and the Contractor will be notified of such requirement(s) by the District. **NOTE: This section does not apply to the Workers' Compensation and Professional Liability policies.**

(NOTE: Additional insured language on the Certificate of Insurance is **NOT** acceptable without a separate endorsement such as Form CG 20 10, CG 2033, CG 2037. Note: Editions dated 07/04 are not acceptable)

2. **Primacy Clause:** Contractor will provide evidence (either through endorsement or language in the insurance contract) that Contractor's insurance is primary with respect to any other insurance which may be carried by the District, its officer, agents and employees, and the District's coverage must not be called upon to contribute or share in the loss. **NOTE: This section does not apply to the Workers' Compensation and Professional Liability policies.**

3. **Cancellation Clause** Contractor will provide endorsements for all policies stating that the District will be given 30 days notice of cancellation, (10 days for non-payment of premium). **NOTE: The standard wording in the ISO Certificate of Insurance is not acceptable.**

4. **Acceptability of Insurers:** All coverages must be issued by companies admitted to conduct business in the State of California, which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the District's Risk Management Administrator.

5. **Self-Insured Retentions or Deductibles:** 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 Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

6. **Subcontractors** Should any of the work under this Agreement be sublet, Contractor will name each of the subcontractors of any tier under its own policies, or will require each of its subcontractors of any tier to carry the aforementioned coverages.

7. **Amount of Liability not Limited to Amount of Insurance:** The insurance procured by Contractor for the benefit of the District must not be deemed to release or limit any liability of Contractor. Damages recoverable by the District for any liability of Contractor must, in any event, not be limited by the amount of the required insurance coverage.

8. **Coverage to be Occurrence Based:** All coverage must be occurrence-based coverage. Claims-made coverage is not allowed.

9. **Waiver of Subrogation:** Contractor agrees on to waive subrogation against the District to the extent any loss suffered by Contractor is covered by any Commercial General Liability policy, Automobile policy, Workers' Compensation policy, or Builders' Risk policy described in **Required Coverage** above. Contractor agrees to advise its broker/agent/insurer and agrees to provide evidence (either through endorsement or language in the insurance contract) that subrogation has been waived.

#### 10. **Unique Insurance Coverage**

**Technology Errors & Omissions** insurance, including cover for liabilities arising from negligent acts, errors, omissions, in rendering or failing to render computer or information technology services and technology

products. Technology services should at a minimum include (1) systems analysis (2) systems programming (3) data processing (4) systems integration (5) outsourcing including outsourcing development and design (6) systems design, consulting, development and modification (7) training services relating to computer software or hardware (8) management, repair and maintenance of licensed software products (9) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, and any other services provided by the vendor with limits of \$2,000,000 per occurrence/aggregate.

11 **Privacy/Network Security (Cyber)** liability coverage, naming the District and its Agents as an additional insured, and providing protection against liability for (1) privacy breaches [liability arising from the loss or disclosure of confidential information no matter how it occurs] (2) system breach (3) denial or loss of service (4) introduction, implantation, or spread of malicious software code (5) unauthorized access to or use of computer systems with limits no less than \$20 million. No exclusion/restriction for unencrypted portable devices/media may be on the policy.

12 **Non-compliance:** The District reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

13. **Please mail the certificates and endorsements to:**

**Purchasing Insurance Coordinator  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118**

**IMPORTANT: On the certificate of insurance, please note [INSERT PO/CONTRACT/AGREEMENT NUMBER & project title] and [INSERT NAME OF THE DISTRICT POINT OF CONTACT AND UNIT]. DO NOT SEND THE CERTIFICATE OF INSURANCE TO THE CONTRACT ADMINISTRATOR OR RISK MANAGER.**

**If your insurance broker has any questions** please advise him/her to call Mr. David Cahen, District Risk Manager (408) 630-2213.

## Attachment C

### **Santa Clara Valley Water District Standard Terms and Conditions for Services**

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, THE PURCHASE ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- 1. Offer and Acceptance:** The Purchase Order is an offer by the Santa Clara Valley Water District ("District") to enter into a contract; and any of the following acts constitute Contractor's acceptance of the Purchase Order and all terms and conditions stated therein: (a) Contractor's commencement of work or (b) Contractor's acceptance of any payment from District.
- 2. Prices:** All rates and/or prices itemized in the Purchase Order are firm and not subject to escalation unless so stated on the face of the Purchase Order. Contractor represents and warrants that all rates and/or prices itemized in the Purchase Order are at least as low as those currently being quoted by Contractor to commercial or government users for the same work of similar scope under similar circumstances.
- 3. Taxes:** This purchase is subject to all applicable California sales and use taxes.
- 4. Terms of Payment:** Full payment shall be made within thirty (30) days from the date of receipt of invoice or acceptance of work, whichever occurs last. If District is entitled to a cash discount, the period of computation shall commence on the date of receipt of invoice or acceptance of work by District, whichever occurs last. Partial payments may be made with District's concurrence at no less than monthly intervals. District shall endeavor to pay each invoice within thirty (30) days, but shall not be responsible to Contractor for additional charges, interest or penalties due to failure to pay within that period.
- 5. Time for Performance:** Time is of the essence in the performance of the Purchase Order. If service cannot be performed at the specified time, Contractor shall promptly notify District of the earliest possible date for performance of the service. Notwithstanding such notice, if Contractor, for any reason whatsoever, fails to perform the work within the time specified, District may terminate the Purchase Order or any part thereof without liability except for work previously performed and accepted.
- 6. Warranty:** Contractor warrants that the work performed under the Purchase Order complies with all specifications and that workmanship and materials are free from defects. If any portion of the work has not been completely described in the Purchase Order, it shall comply with nationally recognized codes and established industry standards. Contractor agrees that the aforementioned warranties shall be in addition to any warranties provided by law or offered by Contractor. In addition to any other right District may have, if any work is found not to be in compliance with specifications or if workmanship and/or materials are found to be defective within ninety (90) days after the conclusion of performance of the work, Contractor shall, at District's option, either refund to District the amount paid for the work or perform the work again in a proper manner to the extent necessary to provide District with the result originally contemplated.
- 7. Independent Contractor Status:** Contractor is acting as an independent contractor in performing the work required by the Purchase Order and is not an agent or employee of District. Nothing in the Purchase Order shall be interpreted or construed as creating or establishing the relationship of employer and employee between District and Contractor. Contractor is responsible for paying all required state and federal taxes.
- 8. Use of Subcontractors:** Contractor shall perform the work with its own employees under its immediate supervision and shall not subcontract any portion of the work unless approved by District in advance in writing.
- 9. Equal Opportunity Requirements:** The Santa Clara Valley Water District is an equal opportunity employer and requires its contractors to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of the Contract, the Contractor will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any subcontractor, employee, or applicant for employment, in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff rates of pay, or other forms of compensation, or against any other person, on the basis of age (40 and over), ancestry, color, religious creed (including religious dress and grooming practices), disability (mental and physical) including HIV and AIDS, marital status, medical condition (cancer and genetic characteristics), genetic information, military and veteran status, national origin (including language use restrictions), race, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity and gender expression, and sexual orientation. The Contractor's policy must conform with applicable state and federal guidelines including the Federal Equal Opportunity Clause, "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations," Title VII of the Civil Rights Act of 1964 as amended; the American's with Disabilities Act of 1990; the

Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Section 12900 et. Seq.); California Labor Code Sections 1101 and 1102.

- 10. Compliance with Laws:** (a) Contractor shall comply with all applicable governmental laws, ordinances, codes, rules, regulations, programs, plans, and orders in the performance of work under the Purchase Order. (b) Contractor shall obtain and maintain throughout the life of the Purchase Order all permits and licenses required in connection with the work to be performed and shall provide copies of such permits and licenses to District, upon request.
- 11. Extra or Additional Work and Changes:** Contractor shall perform no extra or additional work or alter or deviate from the work specified in the Purchase Order unless agreed in writing by District. Extra work to which District has not agreed in advance in writing will not be compensated by District.
- 12. Change Orders:** District shall have the right to revoke, amend, or modify the Purchase Order at any time by issuance of a written Change Order. No verbal revocations, amendments or modifications shall be held binding on District; and District is not required to compensate Contractor for services not authorized in advance by written Change Order. Contractor's receipt of District's written Change Order without response received by District within ten (10) days or Contractor's performance of work reflecting the change, whichever occurs first, shall constitute Contractor's acceptance of the change without any price or other adjustment.
- 13. Indemnification:** Contractor shall indemnify, defend and hold harmless District and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services described in the Purchase Order, caused in whole or in part by any negligent act or omission of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of District.
- 14. Assignment:** Contractor shall not delegate or subcontract any duties or assign any rights or claims under the Purchase Order without District's prior written consent.
- 15. Termination:** The Purchase Order may be terminated by mutual consent of both parties or by District at its discretion. District may cancel the Purchase Order at any time with written notice to Contractor, stating the extent and effective date of termination. Upon receipt of this written notice, Contractor shall stop performance under the Purchase Order as directed by District. If the Purchase Order is so terminated, Contractor shall be paid in accordance with the terms of the Purchase Order for work performed and accepted.
- 16. Breach of Contract:** Should Contractor breach any of the provisions of the Purchase Order, District reserves the right to cancel the Purchase Order upon written notice to Contractor and obtain such services from another source. If a greater price than that named in the Purchase Order is paid for such services, the excess price shall be charged to and collected from the Contractor.
- 17. Governing Law; Public Records:** The Purchase Order shall be governed by and construed in accordance with the laws of the State of California as interpreted by the California courts, and any litigation arising out of the Purchase Order shall be conducted in the courts of the State of California. California law requires that the contents of the Purchase Order be open to inspection and copying by the public.
- 18. Force Majeure:** Neither party to the Purchase Order shall be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. District may terminate the Purchase Order upon written notice after determining such delay or default will reasonably prevent successful performance of the Purchase Order.
- 19. Entire Agreement:** The Purchase Order, which includes any and all additional documents incorporated therein by reference, sets forth the entire agreement between Contractor and District with respect to performance of the work.
- 20. Exceptions to District's Terms and Conditions:** If Contractor objects to any term or condition set forth in the Purchase Order, this objection must be in writing and received by District's buyer identified on the Purchase Order prior to Contractor's commencement of the work. Notwithstanding such notice, waiver or modification of any term or condition shall occur only if agreed in writing by District.

May 13, 2014