



# Request for Proposal

## Avaya or ShoreTel Voice Over IP (VoIP) Telephone System

February 25, 2014

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**All proposals must be submitted to:**

**Vallecitos Water District  
201 Vallecitos de Oro  
San Marcos, CA 92069  
Attention: Karla Fisher**

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## Introduction

Vallecitos Water District (VWD) wishes to replace the District's current phone system with a Voice over IP (VoIP) phone system. After researching VoIP phone systems, the District has determined an Avaya or ShoreTel system would be the best solution. VWD is seeking proposals from Avaya and ShoreTel vendors to provide a Voice over IP (VoIP) phone system for the District administration building in San Marcos, CA and Meadowlark Reclamation Facility (MRF) in Carlsbad, CA.

## Timeline and Required Response Dates

**February 25, 2014: Request for Proposal (RFP) released.**

**March 20, 2014: Proposal Submittal Deadline.** Proposals must be received by **5:00 pm, March 20, 2014**. Upon receipt, the proposals will be reviewed by VWD staff for responsiveness to this RFP including, but not limited to, the following required elements:

- The firm's experience and capability, and the experience and qualifications of the proposed team members, to perform the work required for the project;
- The firm's proposed approach to the project, including the management approach and logistics necessary to accomplish the work;
- The firm's detailed scope of work for the project, which includes a detailed explanation of the project from the author's point of view; and,
- The firm's proposed fees, the level of involvement of each team member, and the corresponding hours for performing the work.

VWD's evaluation of the proposals it receives will result in a ranking of the candidate firms. Interviews will be held with the top three (3) rated firms, which will be scheduled to allow ample time for possible presentation preparation. The firm selected will be invited to negotiate a professional services agreement and scope of work. In the event that a successful contract cannot be negotiated within a reasonable amount of time, the second ranked firm will be contacted to negotiate an agreement.

## Proposal Requirements

Five (5) bound original and one electronic copy of the proposal in response to this RFP shall be submitted to Karla Fisher, Information Technology Supervisor, at the Vallecitos Water District, 201 Vallecitos de Oro, San Marcos, CA 92069, and received by the District by the due date set forth above.

The fee quoted in the proposal shall be deemed the firm's proposed contract amount and shall be used as the basis for contract negotiation. The primary evaluation criteria used to select the winning proposal will be based on understanding of the project, project approach, scope of work, staff qualifications and experience, record of performance, proposed fee and man hours, and references.

The following insurance coverage will be required, as a minimum, by the District:

- Vendor's Professional Liability - \$1,000,000 annual aggregate
- General Liability - \$1,000,000 annual aggregate.
- Workers' Compensation per applicable state and federal laws.
- Employers' Liability - \$1,000,000 limit.
- Comprehensive Automobile Liability Insurance - \$1,000,000 annual aggregate.

The selected Vendor shall name the District, its directors, officers and employees as additional named insured on its policies of general liability and automobile insurance.

The proposal must be signed by the firm's proposed team Project Manager. The proposal may be rejected if signed by a team member proposed to have less than 20 percent hourly involvement in the project. Proposals shall be developed with at least the following sections tabbed for easy reference:

- Project Team
- Relevant Experience and Contacts
- Project Approach
- Detailed Scope of Work
- Fee and Schedule
- Other Items

The following format shall be used for an in-depth proposal development. These categories are intended as a minimum only. Additional categories that are deemed necessary for a complete proposal may be added.

**Project Team:** The project team members shall each be identified by name, project responsibility, title, experience, and qualifications including the team Project Manager, project engineer, and any other individual, organization, or sub-consultant proposed to have more than five percent hourly involvement, excluding typographical/reproduction activities. In particular, provide a detailed discussion of the relevant experience and qualifications of the Project Manager and other key members of the project team, including the level of responsibility and commitment of key personnel for the duration of the project. The proposal shall list the same information for any sub-consultants that will be used for the project, including, without limitation, their scope of work, and their approximate percentage of overall participation in the project work.

**Relevant Experience and Contacts:** The proposal is to include a listing of previous project experience, a scope of work summary, and reference contacts for at least three (3) recent projects that the firm completed using similar expertise as that required for the current project. Similar projects and expertise with governmental agencies and related facilities will be weighed heavily, although private projects requiring similar skills and expertise will also be considered.

**Project Approach:** The proposal shall contain a description of the approach to project management logistics necessary to accomplish the work described in the detailed scope of work, including place of work for major project phases, staffing, conceptual organization of major phases, sub-consultants, and meetings. The proposal shall also discuss the firm's vision for the project and include discussion on areas of interest, ideas to enhance the project and cognizance of potential concerns.

**Detailed Scope of Work:** The proposal shall contain a detailed explanation of the project as viewed by the firm. The explanation should demonstrate the firm's knowledge of the project and shall be responsive to RFP requirements. The proposal shall contain enough detail to demonstrate that sufficient thought has been given to accomplish the work in an efficient and timely manner. The detailed scope of work should complement elements of the fee and schedule with additional information.

**Fee and Schedule:** The proposal shall contain a spreadsheet showing elements of work corresponding to the detailed Scope of Services. The names and titles of all personnel and subconsultants to be utilized by the Vendor should be included. Hourly involvement

and billing rate for each team member should be listed for each element of work. Expenses and other costs should be shown at the bottom of the table and totaled with the hourly costs. A current rate schedule for each team member and for each sub-consultant's team member valid for the duration of the project shall be provided.

Expenses and costs eligible for reimbursement shall be limited to costs and expenses for making copies, blueprints, reproduction, etc., of products which are specifically requested by, and to be submitted to, the District under the negotiated professional services agreement. Reimbursable expenses and costs do not include preparation or reproduction of Vendor or subconsultants working documents, mileage, mailing costs, telephone or facsimile transmission costs, or other costs not directly associated with project deliverables. District will reimburse reasonable and fully documented direct costs only; no Vendor markup of expenses/costs is allowed.

**Time of Completion:** The Vendor shall complete all services within three (3) weeks from the date that a Notice to Proceed is issued for this project. **There should be minimal phone service downtime and all downtime will take place on a weekend or after business hours.** Vendor shall include a proposed time schedule including milestones for each deliverable identified by the Vendor in the proposal. Allow a two (2) week review period for District review of milestone submittals.

**Professional Services Agreement:** The successful firm shall be required to execute a standard District Professional Services Agreement, which includes a confidentiality clause (copy attached). The proposal shall specifically list any exceptions the firm takes to the attached Professional Services Agreement. Any exceptions listed may preclude further contract negotiations with the successful firm.

**Other:** All proposals must address and meet the requirements listed in the sections: Background, Mandatory Vendor Requirements, Special Customer Service Requirements and Reporting Requirements. An explanation or suggested alternative approach is required for any proposal requirements which cannot be met. Proposals may also include optional features compatible with the requested requirements.

The proposal shall be limited to 50 single-sided pages inclusive of all text, graphics, tables, resumes, charts, and other information submitted by the Vendor for review by the District, but exclusive of the cover, back and dividers. All exhibits and information shall be limited in size to 8 ½" x 11".

**Point of Contact:** All inquiries regarding this RFP should be directed to Karla Fisher, Information Technology Supervisor, at (760) 744-0460.

## Background

Our current Toshiba Strata IC670 phone system is over 10 years old. Vallecitos' main office has approximately 200 extensions, mostly digital and some analog. Some extensions are used for voice mail and fax lines. We have 100 DID lines that are not all in use but we will probably make use of them on the new phone system. Our overhead paging system has nine separate zones feeding all areas/buildings of the District and is only accessed from the receptionist. Our back gate has a single push button auto-dialer that calls the receptionist for entry. The receptionist can open the back gate by pushing a button on the operator's console and also make calls to the back gate if needed. In the Auto Shop and Warehouse we have an overhead loud ringer for the employees that work in these areas. The receptionist's console handles all outside calls and calls from the back gate during regular business hours. Afterhours calls are forwarded by the console to voice mail or to Knight Security if an emergency call. Our fuel island has an auto-dialer for emergencies and will call Knight Security. Our Meadowlark Reclamation Facility (MRF) is located in Carlsbad and has a Toshiba Strata CIX100 with 20 extensions and no paging system. The two systems are connected over a NanoBridge M5 UBNT IP Radio network that is a privately owned and maintained by the District. The District has Direct TV which is used for on hold music for both outside and inside calls.

## Mandatory Vendor Requirements

Provide a local presence and personnel in the San Diego County area with the necessary training, expertise and access to spare parts to support and troubleshoot any issues with the VoIP phone system. Currently maintain a support infrastructure capable of providing both on-site and telephone support 24 hours per day, 7 days per week. Provide a maximum four-hour response for on-site support of any critical issues with the system reported by the Vallecitos Water District. Have a proven history of successful on-time and on-budget implementations of the proposed solution with the functionality required by the District, for entities similar in size and configuration to Vallecitos Water District. Provide a Project Manager, technical and functional staff with 3 to 5 years of experience performing similar work.

## Mandatory Solution Requirements

**The proposed solution provided by the Vendor must meet these requirements:**

- Must be a VoIP-based phone system.
- Requires Cisco Gigabyte POE Switches compatible with current network.
- Phones must have a pass-through gigabyte network connection to computer.
- Maintain 3-digit extension dialing to both facilities.
- Maintain current extension numbering plan for all facilities. Implement current DID for all extensions and new as required by the District.
- Customizable outgoing caller-id for each handset.
- Maintain current extension dialing to every facility and desk.
- Full access to all voice mail functions at every facility and remotely.
- Voicemail system includes, but is not limited to, integration with Microsoft Exchange, Outlook and Instant Messaging.
- A user-friendly desktop call-manager application to be installed on District PCs.
- Ability to record phone conversations into voicemail or some other centralized storage location, and allow administrators to retrieve them. The audio files must be in a standard format such as MP3, WAV, etc.
- View extensions in use from call-manager desktop application.
- ‘Follow me’ capability in which an incoming call is rolled to another extension or number.
- Six-way conference calling.
- Ability to receive faxes on DID lines and route faxes to the appropriate email address.
- Ability to send faxes directly from the desktop workstations through the phone system.
- On-site, personal training for all Vallecitos Information Technology department staff that will be configuring, managing, maintaining and troubleshooting the entire system.
- On-site end-user training for District employees.
- Detailed documentation and other software, in electronic format on physical media (CD, DVD, or equivalent storage).
- As-built drawings, including one-line diagrams showing all Districts facilities and the connections being utilized between them. Include all IP subnets utilized and relevant individual IP addresses for infrastructure equipment. District as-builts are available on request.
- Vendor-provided configuration sheets, detailing how the entire system (hardware, software, network, V-LAN and security configuration, including any passwords) is configured at the close of the project.



- A master dial-plan, preferably in Microsoft Excel format, showing all relevant information about PRI lines, POTS lines, rollovers, hunt groups, all IDs and all extensions programmed into each system at each facility. This document must give a clear indication of the current physical location of each phone extension (office number or reasonable location description), and which extensions/DIDs are available for future use.
- Backup copies of all programming code and/or configuration files necessary for the full recovery of the system.
- End-user and administrator training documents and presentation materials.
- All configuration, client and administrator software necessary for operation and disaster recovery of the system.
- Capable of integrating with District applications, mobile devices and server/PC operating systems (i.e.: Microsoft and Apple; all mobile OS, Microsoft Office, SQL database).
- The proposed solution by the Vendor can also have additional features and capabilities not mentioned above. The Vendor should include a list of any such additional features and capabilities they feel are important to the evaluation process. The Vendor-provided list should contain descriptions of the functions and benefits of those features and capabilities.

## Special Customer Service Requirements

- **User Friendly:** User desktop interface and phone operations must be easy to learn and navigate.
- Ability to change from a Greeting Menu to a live operator.
- Offer Spanish menu option and Spanish speaking option in Greeting Menu.
- Ability to make changes to greetings on the fly to include alerts for emergencies.
- Minimum of five custom on-hold messages.
- Ability to autodial to a specified number for credit card payments.
- Ability to change how calls are routed to reps by selecting round robin, longest idle, next in-line and select reps that will be in the call list.
- Monitors calls on hold time for more than a configured time and transfers to a configured destination so customer calls are answered promptly.
- Option to have customer leave a message and receive an auto call back.
- Ability to schedule busy or available times for a group of phones.
- Ability to record or monitor calls for training purposes.

- Dial '0' active to assist customers that are lost in the menu.
- Ability to record a message and autodial a list of customers for late bills or emergency information to all or selected customers. Must also generate a report showing the status or success of the call: who answered, message left, no answer or the number is no longer in service.

## **Reporting Requirements**

- Ability to create custom reports.
- Isolate reports by department.
- Standard reports of total incoming and outgoing calls per day per department and individual.
- Report that identifies the phone numbers of incoming and outgoing calls by extension.
- Queue reports to include wait time and time on line with customer by call type: call back, in-house, incoming and outgoing.
- For Customer Service: total login time per day, week and monthly.

## Scoring System

### Scoring System Evaluation Criteria

<b>Criteria</b>	<b>Description</b>	<b>Maximum Score</b>
Functional & Technical	A clearly demonstrated understanding of the work to be performed and completeness and reasonableness of the proposing firm's plan for accomplishing the requested services	30 points
Experience	This criterion considers (1) the Vendors past performance on any District contracts, (2) the results of reference checks, and (3) the Vendor's experience in providing the services solicited by this RFP as set forth in the Vendor's response	30 points
Initial Cost	Phone types presented as well as the reasonableness of initial equipment pricing	20 points
Ongoing Costs	The cost of on-going maintenance and service	20 points
	TOTAL POSSIBLE POINTS	100 POINTS

## **Scope of Services (SOS)**

The selected Vendor will install, configure, test and support all hardware, software, and desktop applications associated with the VoIP phone system. The system must be fully compatible with the District's network hardware, operating systems and software systems. The Vendor must provide training to all employees and all levels of users. Integration compatibility or performance issues which may arise during the implementation phase of this project will be the sole responsibility of the Vendor. No additional charges to the District will be incurred to satisfactorily resolve such issues. The Vendor is responsible for the removal of all hardware and wiring of Toshiba Strata systems at both locations after the newly integrated VoIP phone system is installed. All features of the current Toshiba system in regards to back gate, paging system, integration of both sites, auto-dialers for the back gate and at the fuel island will be maintained in the new phone system.

## **Payment**

Payment for this work shall be on a time-and-materials basis with a prior-approved, not-to-exceed limit. Additional funds will only be authorized for work outside of the approved scope and specifically requested by the District. Invoices must be submitted 10 working days prior to any scheduled Board meeting and will be paid within 30 days after the Board meeting. Board meetings are held on the first and third Wednesdays of each month.

**APPENDIX A - Professional Services Agreement**

# PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (Agreement) is entered into by and between Vallecitos Water District (District), a County Water District organized and operating pursuant to California Water Code sections 30000 et seq., and [REDACTED] (Consultant), a [REDACTED] (California Corporation, LLC, etc.), as follows,

## R-E-C-I-T-A-L-S

1. The District is seeking proposals from interested, highly qualified experts who are certified firms to provide audiovisual consulting for the upgrade of the District's Board Room and Training Room audiovisual systems.

2. Consultant is a professional firm and has represented to District that it is qualified and has the knowledge, skill, expertise, and other resources necessary to complete the project and is fully acquainted with the scope of services required for the Project having taken such actions as necessary and advisable to make itself familiar with the Project, and that the Services described in Schedule A, Scope of Services, attached to this Agreement adequately address the requirements to properly complete Project.

3. The District has relied on Consultant's representations in selecting Consultant to perform the Services, and Consultant desires to provide District with such Services, in accordance with the terms and conditions of this Agreement.

## C-O-V-E-N-A-N-T-S

### 1. CONSULTANT'S SERVICES AND SCHEDULE

1.1 Services. Consultant shall provide all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately provide District with professional audiovisual services as required to conduct the Project, as more fully described in the Scope of Services attached hereto as Schedule A and incorporated

herein by this reference (Services). Consultant shall provide District with such Services in accordance with the terms and conditions of this Agreement. All Services shall be performed by Consultant to the reasonable satisfaction of District.

1.2 Consultant's Schedule. The time limits and standards established in Consultant's Schedule, set forth in Schedule B and any updates thereto as approved by District, shall be adhered to by the parties in the performance of this Agreement.

1.3 Personnel. Consultant shall assign adequate and competent personnel as necessary and appropriate for the skillful, competent and timely performance of the Services. Consultant shall ensure that all staff are fully equipped and in possession of all licenses, certificates, permits, qualifications, or approvals of whatever nature required by any governmental agency having jurisdiction for the lawful performance of the portion of the Services to which they are assigned. Consultant warrants that neither it nor any of its employees performing any of the Services are disqualified by the District or debarred by any governmental agency from providing the Services. A person demonstrating a lack of acceptable job skills, insubordination, actions disrupting the work or good order of others, or faulty workmanship shall be deemed to present good cause for District to direct, by notice to Consultant, that such person be removed from performing any aspect of the Services. Within ten (10) days of its receipt of such notice, Consultant shall replace, or ensure the replacement of, such individual with a qualified person acceptable to District.

1.4 Subconsultants. Consultant shall not hire any subconsultant to perform any aspect of the Services without the prior express written consent of District. Consultant remains responsible for the professional and technical accuracy of all Services furnished and for the performance of all Services in accordance with this Agreement, whether the Services are performed by Consultant or by its subconsultants.

1.5 Nondiscrimination. In performing under this Agreement the Consultant will not discriminate against any worker, employee, applicant for employment, or any member of the public, because of race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition, or

otherwise commit an unfair labor practice. Consultant's actions of non-discrimination shall include, without limitation, all activities related to initial employment, upgrading or promotion, demotion, transfer, recruitment or recruitment advertizing, layoff, or termination.

1.6 Correction of Defective Services. In the event Consultant fails to conduct the Services in accordance with the terms and conditions of this Agreement, Consultant shall promptly perform such corrective action as necessary to remedy such failure at its own expense including performing again all aspects of the Services required to be redone as a direct or indirect result of that failure. Any District review, approval, acceptance or payment for any of the Services does not relieve the Consultant of its obligation to perform the Services in accordance with the terms and conditions of this Agreement.

1.7 Additional Services. "Additional Services" shall mean those additional professional services which are not described as a part of the Services under the Scope of Services set forth in Schedule A of this Agreement, which are determined by the District, in its sole discretion, to be necessary for the proper completion of the Project, and requested by District in writing. Once District has authorized Additional Services, such Additional Services shall be treated in the same manner as if they were Services, except that District shall pay compensation to Consultant for such Additional Services in accordance with Paragraph 2.2 and Consultant shall submit invoices therefore in accordance with Paragraph 2.4. Additional Services shall not be performed by Consultant and no compensation shall be payable by District to Consultant for Additional Services, except to the extent such Additional Services are first authorized or directed by District in writing.

1.8 Records, Audit. Consultant shall maintain accurate and complete accounting records of expenditures, costs and time incurred by the Consultant in connection with the Services. Such records will be maintained in accordance with recognized commercial accounting practices. In addition, Consultant shall maintain complete and accurate records of its performance under this Agreement. District may audit such records at Consultant's offices upon reasonable notice during normal business hours. Consultant shall retain all of such records for a period of not less than four (4) calendar years after the termination of the Agreement. In the event District shall by



written notice require Consultant to transfer all of such records to it, Consultant shall provide District with originals of any documents (where originals are available) or copies of such records (where originals are not available). Apart from Deliverables, the District shall pay the cost of any prints or copies of such documents that are requested. All subcontracts entered into by Consultant with Subconsultants, and all sub-subconsultants of every tier, shall contain sufficient provisions giving effect to this Paragraph 1.8.

1.9 Compliance with Laws. In performing the Services, Consultant shall, and shall require its subconsultants, if any, to at all times comply with all applicable laws, rules, regulations, codes, ordinances, and orders of every kind whatsoever issued, adopted, or enacted by any federal, state, or local governmental body having jurisdiction over the Project or the Services.

1.10 Notice of Defects. Consultant shall promptly notify District in the event it discovers or otherwise becomes aware of any defects, deficiencies, errors, or omissions in the Project design documents it reviews or evaluates and/or in any construction work it inspects.

1.11 Performance Standard. Consultant shall perform the Services with efficiency and diligence and shall execute the Services in a skillful, competent and thorough manner, in accordance with the standards of Consultant's profession, generally described as that degree of skill and care ordinarily exercised by practicing and licensed professionals performing services of a scope, purpose, magnitude, and location comparable with the Services to be provided under this Agreement.

1.12 District's Representative. For purposes of the Agreement, the District's Representative shall be the District's General Manager, Dennis O. Lamb, located at 201 Vallecitos de Oro, San Marcos, CA 92069-1453. All Supplemental Service Agreements or other amendments to this Agreement shall be approved and signed by the District's Representative. The District's Representative shall have sole authority to interpret the Agreement on behalf of the District. By written notice to Consultant, District may designate a new or additional District Representative or delegate authority to one or more assistants.

## 2. FEES AND PAYMENTS.

2.1 Compensation for Services. For the full and satisfactory performance of the Services, District shall compensate Consultant on a time and materials basis not to exceed the sum of [REDACTED] Dollars (\$ [REDACTED]) (the Total Compensation) at the hourly rates set forth in Schedule C attached hereto and incorporated herein by this reference. The Total Compensation shall be allocated among the phases of the Services as set forth in the “Fee Proposal” attached hereto as Schedule C. Except as provided in Paragraph 2.2, unless otherwise agreed to by the parties in writing, the District shall not be obligated to pay Consultant any compensation for any particular phase of the Services in excess of the amounts stated for such phase in the “Fee Proposal” attached hereto as Schedule C.

2.2 Compensation for Additional Services. Services in addition to those described in the Scope of Services, which may be requested by District, or otherwise required, shall be provided at the hourly labor rates set forth in Schedule C, attached hereto, or upon a lump sum basis if the parties agree to do so in writing.

2.3 Reimbursement of Expenses. District shall reimburse Consultant for reasonable expenses in an aggregate sum not to exceed the amount of [REDACTED] Dollars (\$ [REDACTED]). This amount is included in and a part of the Total Compensation as provided in Paragraph 2.1.

2.4 Invoices. Consultant shall deliver invoices to District for Services and any authorized Additional Services provided for the prior calendar month.

(a) INTENTIONALLY DELETED.

(b) For Services and any authorized Additional Services performed by Consultant, and for any Reimbursable Expenses, the invoices shall identify the amount to be paid and contain a detailed itemization of the Services and/or Additional Services performed and any Reimbursable Expenses incurred for each phase of Services identified in Schedule C. Such detailed itemization shall include a breakdown of the Services or Additional Services performed by each of Consultant's employees, Subconsultants, the time expended in such performance, and the applicable hourly/unit rate for such employee or Subconsultant and a breakdown of the type, purpose, date, and amount of Reimbursable Expenses incurred. Invoices shall be fully supported by written documentation. All invoices shall include Consultant's signed certification stating, to the best of Consultant's knowledge, information, and belief, that the information in the invoice is accurate and complete.

(c) For fixed fee or not to exceed Services, all invoices shall include an accounting matrix showing compensation due under Paragraphs 2.1 and 2.2 for the current invoice, cumulative charges for all invoices, and the total compensation not yet invoiced.

(d) If District reasonably determines that Consultant's invoice lacks sufficient information, it shall be returned to Consultant accompanied by a written statement setting forth the basis for the District's determination.

2.5 Payment. The District shall remit payment for all amounts due to Consultant within thirty (30) days after receipt of invoices; provided, however, in the event District disputes any portion of Consultant's invoice, it shall timely pay any undisputed amounts invoiced and notify Consultant within thirty (30) days of its receipt of the invoice of the specifics of any disputed amounts. The parties shall resolve the subject of any disputed amounts in accordance with Paragraph 13, Disputes. Any such dispute shall not relieve Consultant of its obligation to continue diligently performing the Services. District shall be entitled to dispute amounts and withhold payment from all or any portion of an invoice and/or final invoice for this purpose, even if such dispute or objection was not made with respect to one or more earlier monthly invoices. In no event shall payment by the District for Services or any Additional Services constitute District's approval of such Services or Additional Services.

3. TERM. The term of this Agreement shall run from the date this Agreement is fully executed until Consultant has completed its Services and District has accepted such Services, subject to District's right to sooner terminate or suspend this Agreement as provided in this Agreement.

3.1. Termination for Convenience. District may at any time, in the exercise of its sole discretion, terminate this Agreement in whole or in part, with or without cause, by providing notice to Consultant of its intention to terminate the Agreement for convenience at least ten (10) days before the effective date of termination. So long as the Consultant is not in default under this Agreement at the time of such termination, District shall make an equitable adjustment to the compensation due Consultant taking into account the following:

(a) All compensation and reasonable expenses due to Consultant for Services and any Additional Services performed up to the effective date of termination;

(b) Consultant's actual and reasonable costs of termination;

(c) The amount of any advance payments made by District to Consultant;

(d) Any amounts owing by Consultant to District under the terms of this Agreement, including any amounts that may be withheld by District pursuant to Paragraphs 2.5; and,

(e) No amount shall be payable by District for the Consultant's anticipated profit on the value of Services or any authorized Additional Services not performed by Consultant, or for any loss, cost, damage, or

consequential damages which Consultant or any other party may sustain by reason of or in connection with District's termination of this Agreement.

Consultant hereby expressly waives any and all claims for damages and/or compensation arising under this Paragraph 3.1, except as set forth herein, in the event of such termination.

3.2 Termination for Cause. An Event of Default by Consultant shall be deemed to have occurred when there is (a) a failure, neglect, or refusal on the part of Consultant to duly observe or perform any obligation or duty required under this Agreement, which failure, neglect, or refusal continues for a period of ten (10) days (or such longer period as District in its sole discretion may determine if such failure is not capable of being cured within such ten (10) day period) after the date on which written notice of the same has been delivered to Consultant by District, and/or (b) any representation or warranty of Consultant set forth in this Agreement or otherwise delivered pursuant to the Agreement will have been false in any material respect when so made or furnished to District. If an Event of Default occurs, then District may exercise any right, power or remedy available to it under this Agreement, law or in equity and has, in particular, without limiting the generality of the foregoing, the right to terminate this Agreement upon written notice to Consultant, in which event District has no further obligations hereunder or liability to Consultant except as to payment for Services actually received and accepted by District through the effective date of termination, subject to set off of any claims of District against Consultant for failure to perform the Services in accordance with this Agreement. District's decision to terminate this Agreement is not subject to claim or dispute under Paragraph 13.

3.3 Suspension of Agreement by District. District may at any time, in its sole discretion, with or without cause, suspend the performance of the Consultant hereunder with respect to all or any part of the Services, upon notice to Consultant at least 10 days before the effective date of suspension. During the ten (10) day notice period, Consultant shall wind down its Services and diligently act to minimize any additional costs chargeable to District. So long as the Consultant is not in default under this Agreement at the time of suspension, District will pay the Consultant, in accordance with the terms of this Agreement, all compensation and reasonable expenses due for the performance of

Services and any authorized Additional Services prior to the effective date of suspension, together with Consultant's actual and reasonable costs of demobilization.

(a) During the period Consultant's performance is suspended, Consultant is not entitled to incur fees, expenses, or bill District in regard to the suspended Services, except for its participation in substantive meetings concerning the suspended Services requested by District in writing (but not for meetings to discuss Consultant's invoices or claims). Consultant's participation in such meetings shall constitute Additional Services and District will compensate Consultant for such time at the applicable Unit and Hourly Rates set forth in Schedule C. Participation in meetings at the request of District shall not be considered a resumption of the suspended Services.

(b) If Consultant is required to resume the suspended Services under this Agreement, District shall notify Consultant of the requirement in writing, giving Consultant a reasonable period not to exceed ten (10) days to remobilize itself. Consultant may invoice District for its reasonable costs of remobilization at the applicable Unit and Hourly Rates set forth in Schedule C. The number of days during which the suspension period lasted, including any remobilization time, will be added, as appropriate, to Consultant's time for performance for Services affected by the suspension, as set forth in Schedule B, and Consultant will re-commence such Services at the point they were suspended and may resume billing District in accordance with the terms of this Agreement.

(c) Consultant hereby expressly waives any and all claims for damages and compensation arising under this Paragraph 3.3, except as set forth herein.

3.4 Continuing Responsibility. Termination or suspension of this Agreement, in whole or in part, as provided in Paragraphs 3.1, 3.2, 3.3 or in any other manner provided under this Agreement, does not relieve Consultant from liability for its performance of any obligation or Services under this Agreement that was performed or was to have been performed by Consultant on or before the effective date of such

termination or suspension. In no event will District be liable to the Consultant in any amount for Services or any authorized Additional Services not performed by Consultant, for the Consultant's anticipated profit on the value of the Services or any authorized Additional Services not performed by the Consultant, or for any loss, cost or damage, including consequential damages which Consultant, its Subconsultant, or any other party may sustain by reason of or in connection with District's termination or suspension of this Agreement.

4. **INDEPENDENT CONSULTANT.** District has retained Consultant to provide, and Consultant shall perform, the Services as an independent consultant maintaining exclusive direction and control over its employees; and, no personnel utilized by Consultant to perform the Services are employees of District.

5. **PREVAILING WAGE.** Under Labor Code Section 1720, the Services comprise a "Public Work". Consultant shall pay all wages, salaries, and any other compensation due its employees and other authorized personnel in connection with their performance of the Services under this Agreement, together with any taxes associated with such payments to its employees. Such payments shall be in accordance with the prevailing wage, as applicable, under Labor Code Sections 1720 et seq. and 1770 et seq. Consultant shall be responsible for obtaining a copy of the current prevailing rates of per diem wages applicable to the Services to be performed from the Division of Labor Statistics and Research of the Department of Industrial Relations or the District. Copies of the prevailing rate of per diem wages are on file at District's administrative office, which shall be made available to any interested party on request.

6. **OWNERSHIP OF DOCUMENTS.**

6.1 Ownership and Use of Documents. All Deliverables and other documents generated by Consultant in the performance of the Services, including all workpapers, work-in-progress, designs, drawings, documents, data, computations, specifications, studies and reports prepared by Consultant as a part of the Services or authorized Additional Services (Consultant Work Product) shall belong to and be subject to the sole ownership and use of District.

6.2 Submission to Agencies Having Jurisdiction. Nothing in this Agreement shall preclude District or Consultant from submitting copies of any aspect of the Consultant Work Product to any federal, state, or local agency having jurisdiction over the Project as may be required or requested by such agency to Permit the Project or otherwise, and any such submittal shall not be construed as a violation of this Agreement or the rights of District or Consultant.

6.3 Survival of Provisions. The provisions of this Paragraph 6 shall survive any termination of this Agreement.

7. **CONSULTANT LIABILITY.** Should Consultant fail to perform any of its obligations under this Agreement, or otherwise fail to complete the Services within the time prescribed by this Agreement, the Consultant shall be liable to District for the actual damages incurred.

8. **INSURANCE.** Consultant shall procure and maintain, at its sole cost and expense, and at all times during the performance of the Services, policies of insurance providing coverage in the amounts and types set forth below, insuring against claims which may arise out of or in connection with this Agreement and/or Consultant's performance of the Services. Consultant shall not commence conducting the Services until it has provided District with Certificates of Insurance or other satisfactory evidence that such policies have been procured and are in effect. The policies of insurance shall be obtained from an insurer admitted in the State of California having a rating of at least A:VIII or better as listed in Best's Insurance Guide. Proof of renewal shall be provided to District two weeks before any such policy of insurance expires during the term of the Agreement. Consultant's insurance policies or self insured retention shall be primary to any insurance or other coverage available to District, which shall be deemed excess to Consultant's policies of insurance and non-contributing. All self insured retention and deductible amounts under Consultant's policies of insurance are payable by Consultant and shall be in amounts approved by District. Each insurance policy required hereunder shall provide that coverage shall not be suspended, voided, reduced, or cancelled except on thirty (30) days written notice by certified mail, return receipt requested, to District (except for cancellation due to nonpayment of premium which shall be on ten (10) days



written notice). The Commercial General Liability and Automobile policies of insurance shall name District as an additional insured. The policies of insurance shall not preclude Consultant from waiving the right of subrogation prior to a loss, and Consultant hereby waives all rights of subrogation against District. To the extent Consultant cannot procure occurrence policies of insurance, it shall procure insurance covering claims made as a result of the performance of this Agreement and providing for reporting periods of not less than four (4) years following the completion of performance of this Agreement.

8.1 Commercial General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and an aggregate of Two Million Dollars (\$2,000,000.00) for products and operation hazard, contractual insurance, broad form liability, property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.

8.2 Professional Liability Insurance with coverage limits of not less than Two Million Dollars (\$2,000,000.00) covering acts, errors, and omissions and contractual liability. Such policy of insurance shall be maintained for a period of three years following the completion of the Services.

8.3 Automobile Liability Insurance providing coverage for vehicles used in connection with the performance of this Agreement, whether owned, hired, leased, or borrowed with limits not less than One Million Dollars (\$1,000,000.00) per claimant and One Million Dollars (\$1,000,000.00) per accident, for bodily injury and property damage.

8.4 Worker's Compensation Insurance as required by the laws of the State of California. In addition, Consultant agrees to maintain Employer's Liability Insurance covering bodily injury and property damage insurance, for injury to employees or damage to employee property, in a minimum amount of One Million Dollars (\$1,000,000.00) each for bodily injury and property damage.

9. INDEMNIFICATION. Consultant agrees to indemnify and hold the District, its governing body, officers, employees, representatives, agents, successors and assigns (collectively the District Indemnities), harmless from and against any and all losses, liabilities, claims, causes of action or proceedings in any court or administrative forum, judgments, penalties, costs and expenses of whatever nature or kind, in law or equity (Indemnity Claims), incurred or suffered by the District Indemnities, or any of them, including Indemnity Claims arising by reason of any personal injury (including, without limitation, disease or death) of any person or property loss, loss of use, or damage, to the extent the same arise out of or in connection with the negligent act(s) or omission(s), recklessness, or willful misconduct of Consultant, its officers, employees, subconsultants, representatives, agents, successors or assigns on, in, or about the Project site or otherwise in the performance of this Agreement. District shall promptly notify Consultant of its receipt of any claim made against the District by a third party relevant to this Paragraph 9 and/or this Agreement.

10. NOTICE. All notices to be given under this Agreement shall be in writing and shall be deemed effective upon receipt when personally served or two days after mailing by certified, return receipt requested, to the following addresses:

To: District  
Vallecitos Water District  
Attention: Dennis O. Lamb, General Manager  
201 Vallecitos de Oro  
San Marcos, California 92069-1453

To: Consultant

Company Name

Attention: Name, Title

Address

City, State Zip

11. CONFIDENTIAL INFORMATION. During the course of the performance of this Agreement, Consultant may receive written or verbal information from District, its representatives or agents, not in the public domain. Such information may include District's know how, trade secrets, and other proprietary and confidential information and Consultant agrees to treat such information as confidential information belonging to District. Consultant agrees that neither it, nor its officers, employees, representatives, agents, successors, or assigns, will disclose such information to any third party or use the same in any manner without the prior written consent of District. Moreover, Consultant agrees to safeguard such proprietary and confidential information from unauthorized disclosure and/or use using the same degree of care it uses to protect its own proprietary and confidential information, but not less than a reasonable standard of care. In the event that disclosure of such information is sought pursuant to any law or regulation, Consultant shall promptly notify District of such fact to allow District to assert whatever exclusions or exemptions may be available to it under applicable law or regulation.

12. REMEDIES NOT EXCLUSIVE. No right or remedy in the Agreement conferred on District is exclusive of any other right or remedy provided or permitted under this

Agreement, law, or in equity, but each is cumulative of every other right or remedy given in the Agreement or now or hereafter existing at law or in equity, and may be enforced concurrently or from time to time.

13. **DISPUTES.** All Claims arising under, related to or in connection with the terms of this Agreement or its interpretation, whether involving law or fact or both, including matters concerning compensation and all claims for alleged breach of contract, shall first be presented to the District's Designated Representative. All claims and disputes which can not be resolved by discussion with the District's Designated Representative shall be resolved in substantial conformity with the administrative procedures set forth in California Public Contract Code Sections 20104 through 20104.4. For purposes of this Agreement, whenever the foregoing sections refer to Consultant it shall mean Consultant, reference to "public works claims" shall mean any claims of the Consultant under this Agreement, and reference to Contract shall mean this Agreement, reference to "local agency" shall mean District, and reference to work or Work shall mean the Services or authorized Additional Services. The existence of any dispute shall not relieve Consultant of its obligation to continue diligently performing the Services and Consultant shall not withhold performance of the Services.

14. **FORCE MAJEURE.** Neither of the parties will be liable to the other for any delay or failure in performance hereunder due to Force Majeure. Force Majeure shall mean an extraordinary and unforeseeable act of God, strike, lockout or other industrial disturbance, act of the public enemy, war, blockage, riots, lightning, fire, flood, or explosion, preventing the District, the Consultant, or both from performing some or all of their respective obligations under the Agreement and which is beyond the control of the party whose performance is affected. To the extent either party is rendered unable to perform its obligations under this Agreement by reason of Force Majeure, the party unable to perform shall give prompt notice to the other party setting forth the circumstances of the Force Majeure and its effect upon such party's ability to perform under the Agreement. Upon providing such notice, the obligations of the party unable to perform, to the extent they are affected by the Force Majeure, shall be suspended during, but not longer than, the continuance of the Force Majeure, provided said party shall use all reasonable diligence to remove the Force Majeure as quickly as possible.

15. **CONSEQUENTIAL DAMAGES.** In no event shall either party or its consultants, subconsultants, or representatives be liable in contract, tort, strict liability, warranty, or otherwise, for any special, indirect, incidental, or consequential damages, such as, but not limited to, loss of product, loss of anticipated profits or revenue, loss of use of equipment or system, non-operation or increase expense of operation of other equipment or systems, or cost of capital.

16. **INTENTIONALLY DELETED.**

17. **MISCELLANEOUS PROVISIONS.**

17.1 **Venue.** Venue shall lie only in the federal or state courts in the County of San Diego, State of California.

17.2 **Modification.** This Agreement may not be altered in whole or in part except by a modification, in writing, executed by all the parties to this Agreement.

17.3 **Entire Agreement.** This Agreement, together with all the Schedules attached to this Agreement, contains all representations and the entire understanding between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda, or agreements are in conflict with this Agreement, are intended to be replaced in total by this Agreement and its Schedules.

17.4 **Assignment.** Consultant shall not be entitled to assign all or any portion of its rights or obligations contained in this Agreement without obtaining the prior consent of the District. Nothing in this Agreement shall obligate the District to give such consent. Any purported assignment without the District's prior written consent shall be void.

17.5 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties and their respective purchasers, successors, heirs, and assigns.

17.6 Unenforceable Provisions. The terms, conditions, and covenants of this Agreement shall be construed whenever possible as consistent with all applicable laws and regulations. To the extent that any provision of this Agreement, as so interpreted, is held to violate any applicable law or regulation, the remaining provisions shall nevertheless be carried into full force and effect and remain enforceable.

17.7 Representation of Capacity to Contract. Each party to this Agreement represents and warrants that he has the authority to execute this Agreement on behalf of the entity represented by that individual.

17.8 No Waiver. The failure of either party to enforce any term, covenant, or condition of this Agreement on the date it is to be performed shall not be construed as a waiver of that party's right to enforce this, or any other, term, covenant, or condition of this Agreement at any later date or as a waiver of any term, covenant, or condition of this Agreement.

17.9 Counterparts. This Agreement and any amendments may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement. An executed version of this Agreement and any amendments which has been transmitted by facsimile shall be deemed to be an original.

This Agreement is entered into in San Diego County, California.

Vallecitos Water District

Company Name

By: \_\_\_\_\_

By: \_\_\_\_\_

Dennis O. Lamb, General Manager

Name, Title

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_