

# EAST BAY MUNICIPAL UTILITY DISTRICT

## REQUEST FOR PROPOSAL (RFP) No. CON-005 For RECOAT MOKELUMNE AQUEDUCT NO. 1 – PHASE 12

For complete information regarding this project, see RFP posted at <http://www.ebmud.com/business-opportunities> or contact the EBMUD representative listed below. Thank you for your interest!

Contact Person: **Michiko Mares**  
Phone Number: **(510) 287-1657**  
E-mail Address: [michiko.mares@ebmud.com](mailto:michiko.mares@ebmud.com)

Please note that prospective Proposers are responsible for reviewing <http://ebmud.com/business>, during the RFP process, for any published addenda regarding this RFP.

**RESPONSE DUE**  
by  
**4:00 p.m.**  
on  
**January 19, 2017**  
at  
**EBMUD, Purchasing Division**  
**375 Eleventh St., First Floor**  
**Oakland, CA 94607**



375 Eleventh Street, Oakland, CA 94607  
Website: [ebmud.com](http://ebmud.com)

# EAST BAY MUNICIPAL UTILITY DISTRICT

RFP No. CON-005

for

## RECOAT MOKELUMNE AQUEDUCT NO. 1 – PHASE 12

### TABLE OF CONTENTS

<b>I.</b>	<b>STATEMENT OF WORK.....</b>	<b>2</b>
	A. SCOPE OF PROJECT.....	2
	B. SCOPE OF CONSULTANT SERVICES.....	2
	C. PROPOSER QUALIFICATIONS.....	2
	D. SPECIFIC REQUIREMENTS.....	3
	E. SITE MAPS.....	5
	F. STAFFING PLAN.....	6
<b>II.</b>	<b>CALENDAR OF EVENTS.....</b>	<b>6</b>
<b>III.</b>	<b>DISTRICT PROCEDURES, TERMS, AND CONDITIONS.....</b>	<b>7</b>
	A. RFP ACCEPTANCE AND AWARD.....	7
	B. EVALUATION CRITERIA/SELECTION COMMITTEE.....	7
	C. NOTICE OF INTENT TO AWARD.....	11
	D. PROTESTS.....	12
<b>IV.</b>	<b>RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION.....</b>	<b>13</b>
	A. DISTRICT CONTACTS.....	13
	B. SUBMITTAL OF RFP RESPONSE.....	13
	C. RESPONSE FORMAT.....	15
	E. Professional Liability Insurance.....	2

### ATTACHMENTS

- EXHIBIT A - RFP RESPONSE PACKET
- EXHIBIT B - INSURANCE REQUIREMENTS
- EXHIBIT C - CONSULTING AGREEMENT

**I. STATEMENT OF WORK**

**A. SCOPE OF PROJECT**

It is the intent of these specifications, terms, and conditions to describe the construction inspection services required for the Recoat Mokelumne Aqueduct No. 1 – Phase 12 project.

East Bay Municipal Utility District (District) intends to award a contract to the Proposer who best meets the District's requirements.

The purpose of the Recoat Mokelumne Aqueduct No. 1 – Phase 12 project is to blast and recoat 21,300 LF of 65-inch diameter pipeline, including appurtenances, grinding of welds, and disposal of paint debris and spent abrasive located in Contra Costa and San Joaquin Counties.

This project will be advertised as a separate construction contract and anticipated award is March 2017. Construction is expected to be performed during a 20-month period; however work is expected to take place during the dry-weather painting season only, which is generally defined as April through October. Demobilization is required during the wet winter months of November through March. It is likely the work will be performed over three dry-weather seasons unless the Engineer determines work may proceed during the wet-weather season.

**B. SCOPE OF CONSULTANT SERVICES**

The District is requesting proposals from a qualified NACE Level 3 Coatings Inspector consultant to support the District on the Recoat Mokelumne Aqueduct No. 1 – Phase 12 project. The consultant shall provide construction inspection services augmenting the EBMUD construction management team. The required services are described in more detail in Paragraph D - Specific Requirements. Consultants may include additional task items and details that will best serve the Project. The consultant selected under this RFP will be excluded from bidding on the construction contract.

**C. PROPOSER QUALIFICATIONS**

1. Provide the following information to demonstrate the qualifications and experience of the Consultant and key personnel that would be assigned to the project.

RECOAT MOKELUMNE AQUEDUCT NO. 1 – PHASE 12  
REQUEST FOR CONSTRUCTION INSPECTION SERVICES

---

- a. A brief description of three (3) projects performed within the last 3 to 5 years that best demonstrates the Construction Inspectors' skills and experience in inspecting Inorganic Zinc-Rich Coatings.
- b. A brief description of four (4) projects that best demonstrate the Consultant Inspector's ability to blend with District staff to successfully carry out this project. Include any projects that the Consultant Inspector has worked on together with an Agency in the last 3-5 years. Identify the project name, briefly describe what was done, start and completion dates, and value of Construction contract.
- c. A description of any special expertise that the Consultant may apply to the project that has not been included in the above listing of projects.

**D. SPECIFIC REQUIREMENTS**

1. The District Construction Manager (CM) will have overall responsibility for successful project implementation within the project budget and will ensure EBMUD standards and procedures are complied with. The District Design Engineer (DE) will have responsibility to ensure that the design intent of the project is accomplished. The CONSULTANT inspector shall be responsible to ensure that the construction complies with the Contract Documents and District procedures. The District uses EADOC project management software and the CONSULTANT will be required to use this software as well.

The CONSULTANT shall provide construction inspection personnel to provide the services described below:

- a. Construction Inspector(s) (CI) to monitor the contractor's work as it proceeds to ensure that it complies with the requirement of the contract documents, and the proper documentation of the work is provided. CIs will perform field inspection, witness tests, maintain files, prepare daily reports, document and coordinate testing procedures, and provide the Construction Contractor with notice (oral or written as appropriate) of observed nonconforming work and requirements to correct same. The CIs will also be responsible for coordinating directly with District staff concerning the work.

RECOAT MOKELUMNE AQUEDUCT NO. 1 – PHASE 12  
REQUEST FOR CONSTRUCTION INSPECTION SERVICES

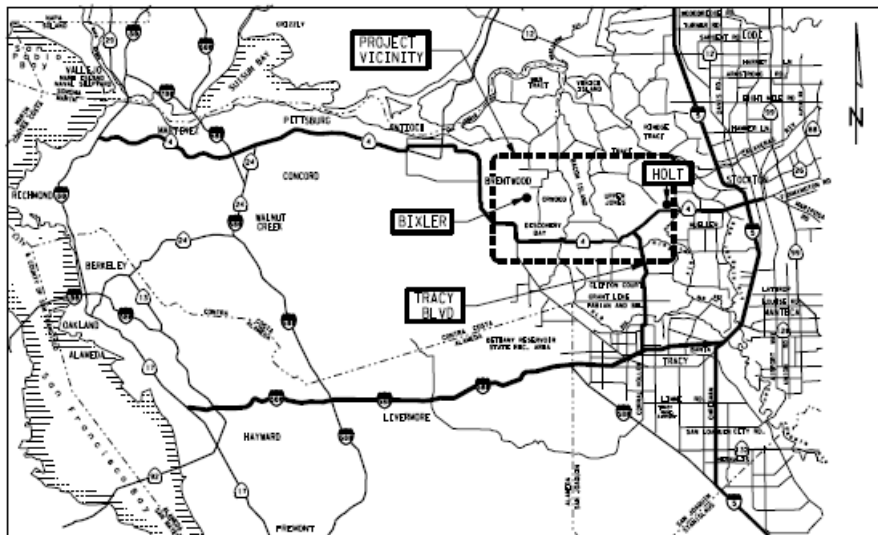
---

- b. Other Services: Consultants are encouraged to identify possible additional services as needed to effectively manage the construction contract.
2. The project will have the following challenges:
- a. Blending of EBMUD/Consultant Staff: The construction management of this project will include both EBMUD and Consultant staff working closely together to administer the contract. Consultant will need to understand the public agency process and procedures, and make sure roles and responsibilities are clear.

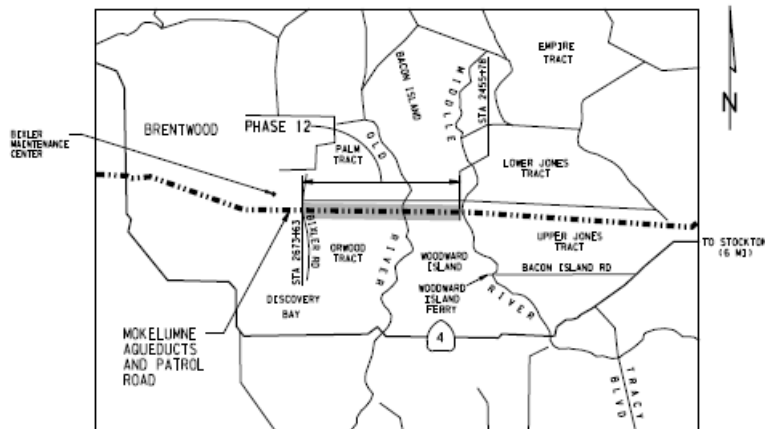
Work Restrictions: Work is expected to take place during the dry-weather painting season beginning April 2017, which is generally defined as April through October. Demobilization is required during the wet winter months of November through March. It is likely the work will be performed over three dry-weather seasons, ending in September 2019. The allowable contract duration is 600-calendar days.

RECOAT MOKELUMNE AQUEDUCT NO. 1 – PHASE 12  
REQUEST FOR CONSTRUCTION INSPECTION SERVICES

E. SITE MAPS



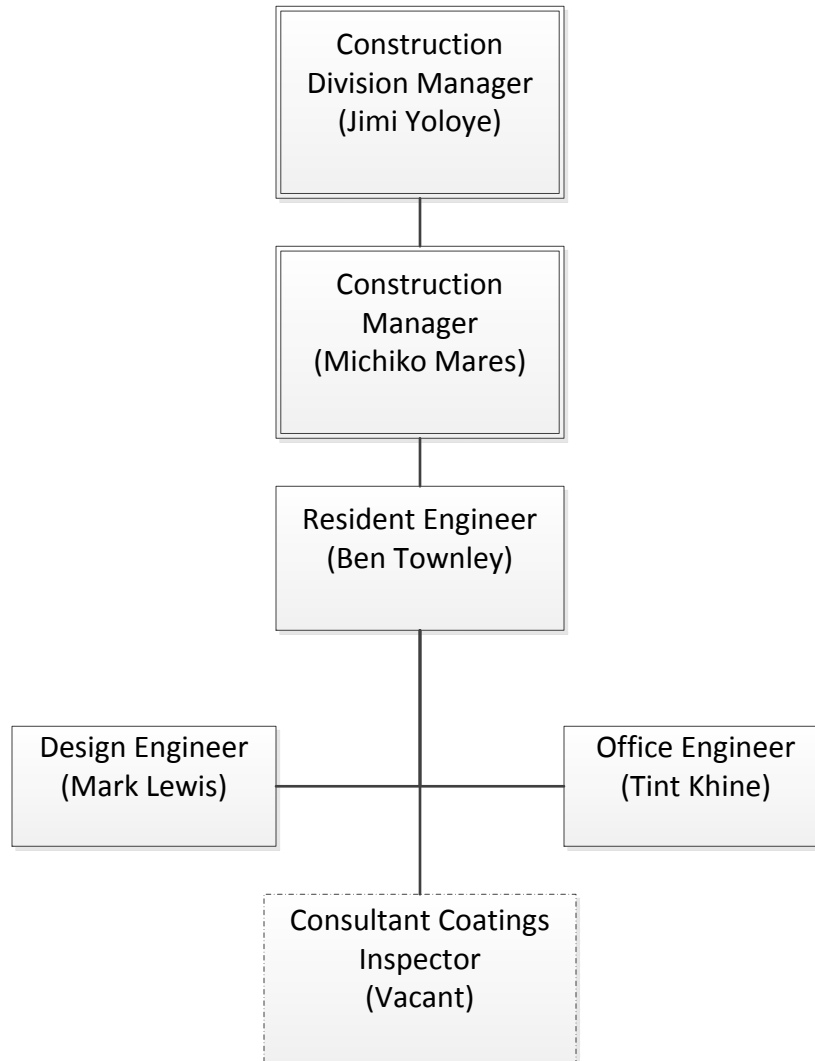
PROJECT VICINITY MAP



PROJECT SITE, CONTRA COSTA AND SAN JOAQUIN COUNTIES

Figure 1. Recoat Mokelumne Aqueduct No. 1 – Phase 12 Project Vicinity Map

F. STAFFING PLAN



II. CALENDAR OF EVENTS

EVENT	DATE/LOCATION
RFP Issued	January 4, 2017
Response Due	January 19, 2017 by 4:00 p.m.
Interview Firms	Week of January 23, 2017
Notify Firms of Ranking	February 3, 2017
Complete Negotiations	February 24, 2017
Board Award	March 28, 2017
Execute Contract and NTP	March 31, 2017

**Note:** All dates are subject to change.

Proposers are responsible for reviewing <http://ebmud.com/business> for any published addenda. Hard copies of addenda will not be mailed out.

### **III. DISTRICT PROCEDURES, TERMS, AND CONDITIONS**

#### **A. RFP ACCEPTANCE AND AWARD**

1. RFP responses will be evaluated by a committee and will be scored/ranked in accordance with the RFP section entitled “Evaluation Criteria/Selection Committee.”
2. The committee will recommend award to the Proposer who, in its opinion, has submitted the RFP response that best serves the overall interests of the District. Award may not necessarily be made to the Proposer with the lowest overall cost.
3. The District reserves the right to award to a single or to multiple General or Professional Service Providers, dependent upon what is in the best interest of the District.
4. The District has the right to decline to award this contract or any part of it for any reason.
5. Any specifications, terms, or conditions issued by the District, or those included in the Proposer’s submission, in relation to this RFP, may be incorporated into any PO or contract that may be awarded as a result of this RFP.
6. Award of contract. The right is reserved to reject any or all proposals, to accept one part of a proposal and reject the other, unless the bidder stipulates to the contrary, and to waive technical defects, as the interest of the District may require. Award will be made or proposals rejected by the District as soon as possible after bids have been opened.

#### **B. EVALUATION CRITERIA/SELECTION COMMITTEE**

All proposals will be evaluated by a District Selection Committee (DSC). The DSC may be composed of District staff and other parties that may have expertise or experience in this type of procurement. The DSC will select a Proposer in accordance with the evaluation criteria set forth in this RFP. The

evaluation of the RFP responses shall be within the sole judgment and discretion of the DSC.

The DSC will evaluate each RFP response meeting the qualification requirements set forth in this RFP. Proposer should bear in mind that any RFP response that is unrealistic in terms of the technical or schedule commitments, or unrealistically high or low in cost, will be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the District's requirements as set forth in this RFP.

RFP responses will be evaluated and scored according to each Evaluation Criteria below, and scored according to a zero to five-point scale. The scores for all Evaluation Criteria will then be added to arrive at a weighted score for each RFP response. An RFP response with a high weighted total will be deemed of higher quality than one with a lesser-weighted total.

Each consultant must demonstrate its approach and experience in successfully performing other projects of similar scope and complexity. Key evaluation elements will include the Consultant's understanding of the project and its constraints, experience of the key team members and proposed approach and flexibility to staff the project in a cost effective manner. The ideal Consultant shall demonstrate at least five recent years of experience and strong organizational skills and leadership of Consultant Teams that provide:

1. A clear, concise, and creative project approach which demonstrates a thorough understanding of the project and contains well defined tasks for achieving the project's objectives, while providing the ability ( and flexibility) to adjust and sequence inspection staff to meet the contractor's construction schedule.
  - a. The Project Approach shall clearly demonstrate your team's proposal to meet the challenges this project poses. Address your understanding of the project, including your approach to enforcing the construction requirements, providing effective work documentation, and ensuring compliance with environmental constraints and limitations. Indicate the likely types of construction crews and work activities that may be working at different times during the project, and how this may impact inspection staffing. Address how your team proposes to adjust to variable construction approaches and methodologies that a construction contractor may employ, and identify any other factors that should be given consideration regarding the proper level of contractor control, and

RECOAT MOKELUMNE AQUEDUCT NO. 1 – PHASE 12  
REQUEST FOR CONSTRUCTION INSPECTION SERVICES

---

- inspection/documentation of the work. This shall include a complete discussion on your methodology and ability to provide inspection coverage (type and disciplines of inspectors), and documentation of construction activities in a manner that is: 1) adequate to insure conformance to meet intent of the bid documents, and 2) is a cost effective approach.
- b. Additionally, discuss any UPGRADE or changes (deletions or additions) that you may propose to the tentative scope of services, and reasons for proposed changes. Highlight those changes that may result in a reduction of cost or time.
2. A comprehensive and logical work plan with well-defined roles that provides all services identified in Statement of Work Paragraph D Specific Requirements and a resource-loaded project schedule with labor estimates by task and position.
    - a. Include a clear statement of project team responsibilities and reporting relationships, inclusive of key staff proposed (by name) for key work tasks and responsibilities. Provide an organizational chart illustrating how you would organize the team, indicating discipline, function, firm name, and reporting structure.
  3. Experience working with blended staffing and similar workload schedules
    - a. Include an estimate of the number, duration and type of inspectors that will be needed to provide adequate inspection coverage and contractor control. List assumptions on a separate sheet, and include a summary of labor hours proposed to accomplish the work for each member.
    - b. EBMUD understands that the number of inspectors required to inspect the work will be somewhat dependent on the Contractor's approach and scheduling of work. For purposes of this RFP, EBMUD requests that you provide an estimate of the maximum number of inspection hours your team would anticipate, based on your experience on similar projects, and on the flexibility your team will be able to provide to accommodate a contractor's scheduling and work crew methodology.
  4. Experience and background of Construction Inspectors demonstrating capabilities in similar projects.

RECOAT MOKELUMNE AQUEDUCT NO. 1 – PHASE 12  
REQUEST FOR CONSTRUCTION INSPECTION SERVICES

5. Relevant experience of the firms involved with similar projects;
6. Responses to the questions posed at the interview;
7. Compliance with the Contracting Objectives of EBMUD’s Contract Equity Programs; and
8. Proposer shall be eligible for SBE preference points if they are a certified small business entity, as described in the guidelines contained in Exhibit A-Contract Equity Program, and they check the appropriate box, requesting preference, in Exhibit A-Proposer Information and Acceptance.

The Evaluation Criteria are as follows:

	<b>Evaluation Criteria</b>
<b>A.</b>	<p><b>Understanding of the Project and Its Constraints:</b> RFP responses will be evaluated against the RFP specifications and the questions below:</p> <ol style="list-style-type: none"> <li>1. Has the Proposer demonstrated a thorough understanding of the purpose and scope of the project?</li> <li>2. How well has the Proposer identified pertinent issues and potential problems related to the project?</li> <li>3. Has the Proposer demonstrated that it understands the project objectives and provided well defined tasks for meeting those objectives?</li> <li>4. Has the Proposer demonstrated that it understands the District’s time schedule and can meet it?</li> </ol>
<b>B.</b>	<p><b>Relevant Experience of Staff:</b> RFP responses will be evaluated against the RFP specifications and the questions below:</p> <ol style="list-style-type: none"> <li>1. Do the individuals assigned to the project have experience on similar projects?</li> <li>2. Are résumés complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires?</li> <li>3. How extensive is the applicable education and experience of the personnel designated to work on the project?</li> <li>4. Has the team worked on similar projects where blended staff was used?</li> </ol>
<b>C.</b>	<p><b>Methodology:</b> RFP responses will be evaluated against the RFP specifications and the questions below:</p>

RECOAT MOKELUMNE AQUEDUCT NO. 1 – PHASE 12  
REQUEST FOR CONSTRUCTION INSPECTION SERVICES

	<ol style="list-style-type: none"> <li>1. Does the methodology depict a logical approach to fulfilling the requirements of the RFP?</li> <li>2. Does the methodology match and contribute to achieving the objectives set out in the RFP?</li> <li>3. Does the methodology interface with the District’s time schedule?</li> </ol>
<b>D.</b>	<p><b>Implementation Plan and Schedule:</b> An evaluation will be made of the likelihood that the Proposer’s implementation plan and schedule will meet the District’s schedule. Additional credit will be given for the identification and planning for mitigation of schedule risks which the Proposer believes may adversely affect any portion of the District’s schedule.</p>
<b>E.</b>	<p><b>References (See Exhibit A – RFP Response Packet):</b> If a short list process is used for a solicitation, references are only performed on the shortlisted Proposers and the score for reference checks is not included in the preliminary short list score.</p>
<b>F.</b>	<p><b>Interview:</b> The oral interview may consist of standard questions asked of each of the Proposers and specific questions regarding the specific RFP response.</p>
<b>G.</b>	<p><b>Contract Equity Program:</b> Proposer shall be eligible for SBE preference points if they are a certified small business entity, as described in the guidelines contained in Exhibit A-Contract Equity Program, <u>and</u> they check the appropriate box, requesting preference, in Exhibit A-Proposer Information and Acceptance.</p>

**C. NOTICE OF INTENT TO AWARD**

1. At the conclusion of the RFP response evaluation process, all Proposers will be notified in writing by e-mail or certified mail. The document providing this notification is the Notice of Intent to Award.

The Notice of Intent to Award will provide the following information:

- a. The name of the Proposer being recommended for contract award.
2. Negotiations for a Consulting Services Agreement with a “not to exceed” contract price (for time and expenses) will be scheduled shortly after the Notice of Intent to Award. If an Agreement cannot be achieved, the District will proceed to negotiate with the next highest ranked Proposer.

D. PROTESTS

Protests must be in writing and must be received no later than seven (7) business days after either of the following: posting of the RFP results on the District's website ([www.ebmud.com](http://www.ebmud.com)), or notification of selection/non-selection, whichever is sooner. The District will reject the protest as untimely if it is received after this specified time frame. Protests will be accepted from Proposers or potential Proposers only.

If the protest is mailed and not received by the District, the protesting party bears the burden of proof to submit evidence (e.g., certified mail receipt) that the protest was sent in a timely manner so that it would be received by the District within the RFP protest period.

Bid protests must contain a detailed and complete written statement describing the reason(s) for protest. The protest must include the name and/or number of the bid, the name of the firm protesting, and include a name, telephone number, email address and physical address of the protestor. If a firm is representing the protestor, they shall include their contact information in addition to that of the protesting firm.

Protests must be mailed or hand delivered to the Manager of Purchasing, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607 or P.O. Box 24055, Oakland, California 94623. Facsimile and electronic mail protests must be followed by a mailed or hand delivered identical copy of the protest and must arrive within the seven day time limit. Any bid protest filed with any other District office shall be forwarded immediately to the Manager of Purchasing.

The bid protester can appeal the determination to the requesting organization's Department Director. The appeal must be submitted to the Department Director no later than five working days from the date of receipt of the requesting organization's determination on the protest.

Such an appeal must be made in writing and must include all grounds for the appeal and copies of the original protest and the District's response. The bid protester must also send the Purchasing Division a copy of all materials sent to the Department Director.

The Department Director will make a determination of the appeal and respond to the protester by certified mail in a timely manner. If the appeal is denied, the letter will include the date, time, and location of the Board of Directors

meeting at which staff will make a recommendation for award and inform the protester it may request to address the Board of Directors at that meeting.

The District may transmit copies of the protest and any attached documentation to all other parties who may be affected by the outcome of the protest. The decision of the District as to the validity of any protest is final. This District's final decision will be transmitted to all affected parties in a timely manner.

#### **IV. RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION**

##### **A. DISTRICT CONTACTS**

All contact during the competitive process is to be through the contact listed on the first page of this RFP. The following persons are only to be contacted for the purposes specified below:

**FOR INFORMATION REGARDING TECHNICAL SPECIFICATIONS:**

Attn: Michiko Mares, Senior Civil Engineer

EBMUD – Construction Division

E-Mail: [Michiko.mares@ebmud.com](mailto:Michiko.mares@ebmud.com)

PHONE: (510) 287-1657

**FOR INFORMATION ON THE CONTRACT EQUITY PROGRAM:**

Attn: Contract Equity Office

PHONE: (510) 287-0114

**AFTER AWARD:**

Attn: Michiko Mares

EBMUD – Construction Division

E-Mail: [Michiko.mares@ebmud.com](mailto:Michiko.mares@ebmud.com)

PHONE: (510) 287-1657

##### **B. SUBMITTAL OF RFP RESPONSE**

1. Late and/or unsealed responses will not be accepted.
2. RFP responses submitted via electronic transmissions will not be accepted. Electronic transmissions include faxed RFP responses or those sent by electronic mail ("e-mail").

RECOAT MOKELUMNE AQUEDUCT NO. 1 – PHASE 12  
REQUEST FOR CONSTRUCTION INSPECTION SERVICES

---

3. RFP responses will be received only at the address shown below, must be SEALED, and must be received at the District Purchasing Division by 4:00 p.m. on the due date specified in the Calendar of Events. Any RFP response received after that time or date, or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened. All RFP responses must be received and time stamped at the stated address by the time designated. The Purchasing Division's timestamp shall be considered the official timepiece for the purpose of establishing the actual receipt of RFP responses.

4. RFP responses are to be addressed/delivered as follows:

Mailed:

Andrew Akelman, Manager of Purchasing  
East Bay Municipal Utility District  
Recoat Mokelumne Aqueduct No. 1 – Phase 12  
RFP No. CON-005  
EBMUD–Purchasing Division  
P.O. Box 24055  
Oakland, CA 94623

Hand Delivered or delivered by courier or package delivery service:

Andrew Akelman, Manager of Purchasing-EBMUD  
East Bay Municipal Utility District  
Recoat Mokelumne Aqueduct No. 1 – Phase 12  
RFP No. CON-005  
EBMUD–Purchasing Division  
375 Eleventh Street, First Floor  
Oakland, CA 94607

**Proposer's name, return address, and the RFP number and title must also appear on the mailing package.**

5. Proposers are to submit one (1) original hardcopy RFP response and four (4) copies (Exhibit A – RFP Response Packet, including Contract Equity Program forms and all additional documentation stated in the “Required Documentation and Submittals” section of Exhibit A), only the original hardcopy is required to have original ink signatures.
6. All costs required for the preparation and submission of an RFP response shall be borne by the Proposer.

7. California Government Code Section 4552: In submitting an RFP response to a public purchasing body, the Proposer offers and agrees that if the RFP response is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Proposer for sale to the purchasing body pursuant to the RFP response. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Proposer.
8. Proposer expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms “claim” and “knowingly” are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.), the District will be entitled to civil remedies set forth in the California False Claim Act.
9. The RFP response shall remain open to acceptance and is irrevocable for a period of sixty days (60) unless otherwise specified in the RFP documents.
10. It is understood that the District reserves the right to reject any or all RFP responses.

C. RESPONSE FORMAT

1. **Proposers shall not modify any part of Exhibits A, B, C, or qualify their RFP responses. Proposers shall not submit to the District a re-typed or otherwise re-created version of these documents or any other District-provided document.**
2. RFP responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFP response or part thereof so marked. RFP responses submitted in response to this RFP may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.
3. The letter of transmittal should highlight the team’s special qualities that District reviewers need to note as they read the proposal in detail. Provide a short statement of recent, relevant experience the team has had performing work similar in nature and scope to this project. It must clearly identify the names of the NACE Level 3 Construction Inspectors,

and other key personnel that will perform the work. The letter must also state the team's approach to meet EBMUD's Contract Equity Program goals and insurance requirements. The letter should be signed by an individual having authority to execute an agreement with EBMUD.

4. The proposal must include the sections noted below. Company brochures and similar marketing literature should not be included within the RFP, but may be submitted separately. It is strongly recommended that proposals be limited to the following length limitations:
  - a. Transmittal Letter
  - b. Table of Contents
  - c. Project Approach
  - d. Blended Staffing Plan and Assumptions
  - e. Project Team Organization and Responsibilities
  - f. Experience and Qualifications of Team and Staff
  - g. List of Project References
  - h. Contract Equity Program
  - i. Resumes (max. 2 pages per person)



# EXHIBIT A

## RFP RESPONSE PACKET

**RFP No. – CON 005 Recoat Mokelumne Aqueduct No. 1 – Phase 12**

To: The EAST BAY MUNICIPAL UTILITY District (“District”)

From: \_\_\_\_\_  
(Official Name of Proposer)

### RFP RESPONSE PACKET GUIDELINES

- **AS DESCRIBED IN SECTION IV- RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION, PROPOSERS ARE TO SUBMIT ONE (1) ORIGINAL HARDCOPY RFP RESPONSE WITH ORIGINAL INK SIGNATURES, FOUR (4) COPIES CONTAINING THE FOLLOWING, IN THEIR ENTIRETY:**
  - EXHIBIT A – RFP RESPONSE PACKET, INCLUDING CONTRACT EQUITY PROGRAM FORMS AND ALL ADDITIONAL REQUIRED DOCUMENTATION AS DESCRIBED IN EXHIBIT A- REQUIRED DOCUMENTATION AND SUBMITTALS
  - EXHIBIT B- INSURANCE FORMS
  
- **PROPOSERS THAT DO NOT COMPLY WITH THE REQUIREMENTS, AND/OR SUBMIT AN INCOMPLETE RFP RESPONSE MAY BE SUBJECT TO DISQUALIFICATION AND THEIR RFP RESPONSE REJECTED IN TOTAL.**
  
- **IF PROPOSERS ARE MAKING ANY CLARIFICATIONS AND/OR AMENDMENTS, OR TAKING EXCEPTION TO ANY PART OF THIS RFP, THESE MUST BE SUBMITTED IN THE EXCEPTIONS, CLARIFICATIONS, AND AMENDMENTS SECTION OF THIS EXHIBIT A – RFP RESPONSE PACKET. THE DISTRICT, AT ITS SOLE DISCRETION, MAY ACCEPT AMENDMENTS/EXCEPTIONS, OR MAY DEEM THEM TO BE UNACCEPTABLE, THEREBY RENDERING THE RFP RESPONSE DISQUALIFIED.**



### PROPOSER INFORMATION AND ACCEPTANCE

1. The undersigned declares that all RFP documents, including, without limitation, the RFP, Addenda, and Exhibits, have been read and that the terms, conditions, certifications, and requirements are agreed to.
2. The undersigned is authorized to offer, and agrees to furnish, the articles and services specified in accordance with the RFP documents of RFP No. CON 005
3. The undersigned acknowledges acceptance of all addenda related to this RFP. List Addenda for this RFP on the line below:

Addendum #	Date

4. The undersigned hereby certifies to the District that all representations, certifications, and statements made by the Proposer, as set forth in this RFP Response Packet and attachments, are true and correct and are made under penalty of perjury pursuant to the laws of California.
5. The undersigned acknowledges that the Proposer is, and will be, in good standing in the State of California, with all the necessary licenses, permits, certifications, approvals, and authorizations necessary to perform all obligations in connection with this RFP and associated RFP documents.
6. It is the responsibility of each Proposer to be familiar with all of the specifications, terms, and conditions and, if applicable, the site condition. By the submission of an RFP response, the Proposer certifies that if awarded a contract it will make no claim against the District based upon ignorance of conditions or misunderstanding of the specifications.
7. Patent indemnity: General or Professional Service Providers who do business with the District shall hold the District, its Directors, officers, agents, and employees harmless from liability of any nature or kind, including cost and expenses, for infringement or use of any patent, copyright or other proprietary right, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with the contract or purchase order.
8. Insurance certificates are not required at the time of submission. However, by signing Exhibit A – RFP Response Packet, the Proposer agrees to meet the minimum insurance requirements stated in the RFP. This documentation must be provided to the District prior to execution of an agreement by the District, and shall include an insurance certificate which meets the minimum insurance requirements, as stated in the RFP.

9. The undersigned Proposer hereby submits this RFP response and binds itself to the District. The RFP, subsequent Addenda, Proposers Response Packet, and any attachments, shall be used to form the basis of a Contract, which once executed shall take precedence.

10. The undersigned acknowledges **ONE** of the following (please check only one box)\*:

- Proposer is not an SBE and is ineligible for any Proposal preference; **OR**
- Proposer is an SBE or DVBE as described in the Contract Equity Program (CEP) and Equal Employment Opportunity (EEO) Guidelines, and has completed the Contract Equity Program and Equal Employment Opportunity forms at the hyperlink contained in the Contract Equity Program and Equal Opportunity section of this Exhibit A.

\*If no box is checked it will be assumed that the Proposer is ineligible for Proposal preference and none will be given. For additional information on SBE Proposal preference please refer to the Contract Equity Program and Equal Employment Opportunity Guidelines at the above referenced hyperlink.

Official Name of Proposer (exactly as it appears on Proposer's corporate seal and invoice): \_\_\_\_\_

Street Address Line 1: \_\_\_\_\_

Street Address Line 2: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Webpage: \_\_\_\_\_

Type of Entity / Organizational Structure (check one):

- Corporation  Joint Venture
- Limited Liability Partnership  Partnership
- Limited Liability Corporation  Non-Profit / Church
- Other: \_\_\_\_\_

Jurisdiction of Organization Structure: \_\_\_\_\_

Date of Organization Structure: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

Primary Contact Information:

Name / Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Street Address Line 1: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

Name and Title of Signer (printed): \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_



## REQUIRED DOCUMENTATION AND SUBMITTALS

All of the specific documentation listed below is required to be submitted with the Exhibit A – RFP Response Packet. Proposers shall submit all documentation, in the order listed below, and clearly label each section of the RFP response with the appropriate title (i.e. Table of Contents, Letter of Transmittal, Key Personnel, etc.).

1. **Letter of Transmittal:** RFP response shall include a description of the Proposer’s capabilities and approach in providing its services to the District, and provide a brief synopsis of the highlights of the RFP response and overall benefits to the District. This synopsis should not exceed three (3) pages in length and should be easily understood.
2. **Key Personnel:** RFP response shall include a complete list of all key personnel associated with the RFP. This list must include all key personnel who will provide services/training to District staff and all key personnel who will provide maintenance and support services. For each person on the list, the following information shall be included:
  - (a) The person’s relationship with the Proposer, including job title and years of employment with the Proposer;
  - (b) The role that the person will play in connection with the RFP;
  - (c) The person’s telephone number, fax number, and e-mail address;
  - (d) The person’s educational background; and
  - (e) The person’s relevant experience, certifications, and/or merits
3. **Description of the Proposed Services:** RFP response shall include a description of the terms and conditions of services to be provided during the contract term including response times. The description shall contain a basis of estimate for services including its scheduled start and completion dates, the number of Proposer’s and District personnel involved, and the number of hours scheduled for each person. Finally, the description must: (1) specify how the services in the RFP response will meet or exceed the requirements of the District; (2) explain any special resources or approaches that make the services of the Proposer particularly advantageous to the District; and (3) identify any limitations or restrictions of the Proposer in providing the services that the District should be aware of in evaluating its RFP response to this RFP.
4. **References:**
  - (a) Proposers must use the templates in the “References” section of this Exhibit A – RFP Response Packet to provide references.
  - (b) References should have similar scope, volume, and requirements to those outlined in these specifications, terms, and conditions.

- Proposers must verify the contact information for all references provided is current and valid.
  - Proposers are strongly encouraged to notify all references that the District may be contacting them to obtain a reference.
- (c) The District may contact some or all of the references provided in order to determine Proposer's performance record on work similar to that described in this RFP. The District reserves the right to contact references other than those provided in the RFP response and to use the information gained from them in the evaluation process.

5. **Exceptions, Clarifications, Amendments:**

- (a) The RFP response shall include a separate section calling out all clarifications, exceptions, and amendments, if any, to the RFP and associated RFP documents, which shall be submitted with the proposer's RFP response using the template in the "Exceptions, Clarifications, Amendments" section of this Exhibit A – RFP Response Packet.
- (b) **THE DISTRICT IS UNDER NO OBLIGATION TO ACCEPT ANY EXCEPTIONS, AND SUCH EXCEPTIONS MAY BE A BASIS FOR RFP RESPONSE DISQUALIFICATION.**

6. **Contract Equity Program:**

- (a) Every proposer must fill out, sign, and submit the appropriate sections of the Contract Equity Program and Equal Employment Opportunity documents located at the hyperlink contained in the last page of this Exhibit A. **Special attention should be given to completing Form P-25, "Employment Data and Certification"; and Form P-46, "Designation of Subcontractors."** Any proposer needing assistance in completing these forms should contact the District's Contract Equity Office at (510) 287-0114 prior to submitting an RFP response.



**REFERENCES**

**RFP No. CON 005 – MOKELUMNE AQUEDUCT NO. 1 – PHASE 12**

**Proposer Name:** \_\_\_\_\_

**Proposer must provide a minimum of 5 references.**

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	





## CONTRACT EQUITY PROGRAM & EQUAL EMPLOYMENT OPPORTUNITY

The District's Board of Directors adopted the Contract Equity Program (CEP) to enhance equal opportunities for business owners of all races, ethnicities, and genders who are interested in doing business with the District. The program has contracting objectives, serving as the minimum level of expected contract participation for the three availability groups: white-men owned businesses, white-women owned businesses, and ethnic minority owned businesses. The contracting objectives apply to all contracts that are determined to have subcontracting opportunities and to all General or Professional Service Providers regardless of their race, gender, or ethnicity.

All Contractors and their subcontractors performing work for the District must be Equal Employment Opportunity (EEO) employers, and shall be bound by all laws prohibiting discrimination in employment. There shall be no discrimination against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), genetic information, or sexual orientation.

**Contractor and its subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin in the performance of this contract. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

All Contractors shall include the nondiscrimination provisions above in all subcontracts.

Please include the required completed forms with your proposal. Non-compliance with the Guidelines may deem a proposal non-responsive, and therefore, ineligible for contract award. Your firm is responsible for:

- 1) Reading and understanding the CEP guidelines.
- 2) Filling out and submitting with your bid the appropriate forms.

The CEP guidelines and forms can be found at the following direct link:

[Contract Equity Program Guidelines and Forms](#)

The CEP guidelines and forms can also be downloaded from the District website at the following link:

<http://www.ebmud.com/business-center/contract-equity-program/>

If you have questions regarding the Contract Equity Program please call (510) 287-0114.



# EXHIBIT B

## INSURANCE REQUIREMENTS

Insurance certificates are not required at the time of submission; however, by signing Exhibit A – RFP Response Packet, the Proposer agrees to meet the minimum insurance requirements stated in the RFP. This documentation must be provided to the District, prior to award.

The following are the minimum insurance limits, required by the District, to be held by the GENERAL OR PROFESSIONAL SERVICE PROVIDER performing on this RFP:

### INDEMNIFICATION AND INSURANCE

A. Indemnification

GENERAL OR PROFESSIONAL SERVICE PROVIDER expressly agrees to defend, indemnify, and hold harmless the District and its Directors, officers, agents, and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or resulting from GENERAL OR PROFESSIONAL SERVICE PROVIDER's, its associates', employees', subcontractors', or other agents' negligent acts, errors or omissions, or willful misconduct, in the operation and/or performance under this Agreement.

B. Insurance Requirements

GENERAL OR PROFESSIONAL SERVICE PROVIDER shall take out and maintain during the life of the Agreement all the insurance required in this section, and if requested shall submit certificates for review and approval by the District. The Notice to Proceed shall not be issued, and GENERAL OR PROFESSIONAL SERVICE PROVIDER shall not commence work until such insurance has been approved by the District. The certificates shall be on forms provided by the District.

Acceptance of the certificates shall not relieve GENERAL OR PROFESSIONAL SERVICE PROVIDER of any of the insurance requirements, nor decrease the liability of GENERAL OR PROFESSIONAL SERVICE PROVIDER. The District reserves the right to require GENERAL OR PROFESSIONAL SERVICE PROVIDER to provide insurance policies for review by the District.

C. Workers Compensation Insurance

GENERAL OR PROFESSIONAL SERVICE PROVIDER shall take out and maintain during the life of the Agreement Workers Compensation Insurance for all of its employees on the project. In lieu of evidence of Workers Compensation Insurance, the District will accept a Self-Insured Certificate from the State of California. GENERAL OR PROFESSIONAL SERVICE PROVIDER shall require any subcontractor to provide it with evidence of Workers Compensation Insurance.

D. Commercial General Liability Insurance

GENERAL OR PROFESSIONAL SERVICE PROVIDER shall take out and maintain during the life of the Agreement Automobile and General Liability Insurance that provides protection from claims which may arise from operations or performance under this Agreement. If GENERAL OR PROFESSIONAL SERVICE PROVIDER elects to self-insure (self-fund) any liability exposure during the contract period above \$50,000, GENERAL OR PROFESSIONAL SERVICE PROVIDER is required to notify the District immediately. Any request to self-insure must first be approved by the District before the changed terms are accepted. GENERAL OR PROFESSIONAL SERVICE PROVIDER shall require any subcontractor or Professional Service Provider to provide evidence of liability insurance coverages.

The amounts of insurance shall be not less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage -- Automobile.  
\$2,000,000/Occurrence, Bodily Injury, Property Damage -- General Liability.  
\$4,000,000 each claim and in the aggregate --Professional Liability

The following coverages or endorsements must be included in the policy(ies):

1. The District, its Directors, officers, and employees are Additional Insureds in the policy(ies) as to the work being performed under the contract.
2. The coverage is *Primary and non-contributory* to any other applicable insurance carried by the District.
3. The policy(ies) covers *contractual liability*.
4. The policy(ies) is written on an *occurrence* basis.
5. The policy(ies) covers the District's Property in Consultant's care, custody, and control.
6. The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
7. The policy(ies) covers *products and completed operations*.
8. The policy(ies) covers the use of *owned, non-owned*, and hired automobiles.
9. The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

E. Professional Liability Insurance

GENERAL OR PROFESSIONAL SERVICE PROVIDER shall take out and maintain during the life of the Agreement, professional liability insurance (Errors and Omissions) with a minimum of \$4,000,000 of liability coverage. A deductible may be acceptable upon approval of the

DISTRICT. The policy shall provide 30-days advance written notice to DISTRICT for cancellation or reduction in coverage.



# CERTIFICATE OF PROFESSIONAL LIABILITY INSURANCE

**THIS IS TO CERTIFY TO:** East Bay Municipal Utility District (EBMUD)  
 Department: Engineering & Construction  
 Street Address: 375 Eleventh Street  
 Mailing Address: PO Box 24055  
 City, State, Zip: Oakland, CA 94623

**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Contract Number: \_\_\_\_\_  
 Insured: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:**

\_\_\_\_\_

**TYPE OF INSURANCE:** Professional Liability/Errors and Omissions (If coverage on an occurrence basis, the coverage must be maintained for an additional year following termination of the contraction; If Claims Made Basis, need a three year tail)

**MINIMUM LIMITS OF LIABILITY:** \$4,000,000 each claim and in the aggregate.

**INSURANCE COMPANY:** \_\_\_\_\_

**POLICY NUMBER:** \_\_\_\_\_

**POLICY TERM:** From: \_\_\_\_\_ To: \_\_\_\_\_

**The policy will not be canceled nor the above coverage reduced without 30 days written notice to East Bay Municipal Utility District at the address above.**

**IT IS HEREBY CERTIFIED the above policy provides insurance as required by the agreement between East Bay Municipal Utility District and the Insured.**

Signed: \_\_\_\_\_  
 Authorized Signature of Broker, Agent, or Underwriter

Date: \_\_\_\_\_ Firm: \_\_\_\_\_

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

Phone: \_\_\_\_\_

"This certificate or verification of insurance is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of the policies."



# CERTIFICATE OF COMMERCIAL GENERAL AND AUTO LIABILITY INSURANCE

**THIS IS TO CERTIFY TO:**

East Bay Municipal Utility District (EBMUD)  
 Department: Engineering & Construction  
 Street Address: 375 Eleventh Street  
 Mailing Address: PO Box 24055  
 City, State, Zip: Oakland, CA 94623

**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Contract Number: \_\_\_\_\_  
 Insured: \_\_\_\_\_  
 Address: \_\_\_\_\_

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:**

**TYPE OF INSURANCE:** Commercial General and Automobile Liability Coverage/Endorsements as required by agreement.

**LIMITS OF LIABILITY:**

**(MINIMUM)** \$2,000,000/Occurrence, Bodily Injury, Property Damage-General Liability  
 \$2,000,000/Occurrence, Bodily Injury, Property Damage-Auto Liability

**SELF INSURED RETENTION (\$):** (Auto) \_\_\_\_\_ (GL) \_\_\_\_\_ (if applicable)  
 Aggregate Limits (AUTO) \_\_\_\_\_ (GL) \_\_\_\_\_ (if applicable)

**INSURANCE COMPANY(IES):** (Auto) \_\_\_\_\_ (GL) \_\_\_\_\_

**POLICY NUMBER(S):** (Auto) \_\_\_\_\_ (GL) \_\_\_\_\_

**POLICY TERM:** From: (Auto) \_\_\_\_\_ (GL) \_\_\_\_\_ To: (Auto) \_\_\_\_\_ (GL) \_\_\_\_\_

**THE FOLLOWING COVERAGES OR ENDORSEMENTS ARE INCLUDED IN THE POLICY(IES):**

1.  The District, its Directors, Officers and Employees are *Additional Insureds* in the policy(ies) as to work being performed under this agreement. ENDORSEMENT NO. \_\_\_\_\_
2.  The coverage is *Primary and non-contributory* to any other applicable insurance carried by the District.
3.  The policy(ies) covers *contractual liability*.
4.  The policy(ies) is written on an *occurrence* basis.
5.  The policy(ies) covers District's Property in Consultant's care, custody and control.
6.  The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
7.  The policy(ies) covers *explosion, collapse, and underground* hazards.
8.  The policy(ies) covers *products and completed operations*.
9.  The policy(ies) covers the use of *owned, non-owned* and hired automobiles.
10.  The policy(ies) and/or a separate pollution liability policy(ies) shall cover pollution liability for claims related to the release or the threatened release of pollutants into the environment arising out of or resulting from Consultant's performance under this agreement.
11.  The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

**IT IS HEREBY CERTIFIED that the above policies provide liability insurance as required by the agreement between the East Bay Municipal Utility District and the insured.**

Signed \_\_\_\_\_ Firm \_\_\_\_\_  
 Address \_\_\_\_\_ Date \_\_\_\_\_  
 \_\_\_\_\_ Phone \_\_\_\_\_



# CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

**THIS IS TO CERTIFY TO:** East Bay Municipal Utility District (EBMUD)  
Department:  
Street Address: 375 11<sup>th</sup> Street, MS 702  
Mailing Address: P.O. Box 24055  
City, State, Zip: Oakland, CA 94623-1055

**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Purchase Order  
Number: \_\_\_\_\_  
(Completed by EBMUD)  
Insured: \_\_\_\_\_  
Address: \_\_\_\_\_

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:**

\_\_\_\_\_

**TYPE OF INSURANCE:** Workers' Compensation Insurance as required by California State Law.

The Workers' Compensation Carrier agrees to waive rights of recovery against District regardless of the applicability of any insurance proceeds, and to require all indemnifying parties to do likewise. All Workers' Compensation coverage maintained or procured by permit Holder shall be endorsed to delete the subrogation condition as to District, or must specifically allow the named insured to waive subrogation prior to a loss.

**INSURANCE COMPANY:** \_\_\_\_\_

**POLICY NUMBER:** \_\_\_\_\_

**POLICY TERM:** From: \_\_\_\_\_ To: \_\_\_\_\_

**The policy will not be canceled nor the above coverage reduced without 30 days written notice to East Bay Municipal Utility District at the address above.**

**IT IS HEREBY CERTIFIED the above policy provides insurance as required by the agreement between East Bay Municipal Utility District at the Insured.**

Signed: \_\_\_\_\_

Date: \_\_\_\_\_ Firm: \_\_\_\_\_

E-mail: \_\_\_\_\_ Address: \_\_\_\_\_

Phone: \_\_\_\_\_

"This certificate or verification of insurance is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or conditions of any contract or other document with respect to which this certificate or verification or insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of the policies."

# **EXHIBIT C**

## **CONSULTING AGREEMENT**



CONSULTANT of modified completion dates by letter. CONSULTANT agrees to diligently perform the services to be provided under this Agreement. In the performance of this Agreement, time is of the essence.

- 1.3 It is understood and agreed that CONSULTANT has the professional skills necessary to perform the work agreed to be performed under this Agreement, that DISTRICT relies upon the professional skills of CONSULTANT to do and perform CONSULTANT's work in a skillful and professional manner, and CONSULTANT thus agrees to so perform the work. CONSULTANT represents that it has all the necessary licenses to perform the work and shall maintain them during the term of this Agreement. CONSULTANT agrees that the work performed under this Agreement shall follow practices usual and customary to the engineering and construction management profession and that CONSULTANT is the engineer in responsible charge of the work for all activities performed under this Agreement. Acceptance by DISTRICT of the work performed under this Agreement does not operate as a release of CONSULTANT from such professional responsibility for the work performed.
- 1.4 CONSULTANT agrees to maintain in confidence and not disclose to any person or entity, without DISTRICT's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of DISTRICT. CONSULTANT further agrees to maintain in confidence and not to disclose to any person or entity, any data, information, technology, or material developed or obtained by CONSULTANT during the term of this Agreement. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause.
- 1.5 The originals of all computations, drawings, designs, graphics, studies, reports, manuals, photographs, videotapes, data, computer files, and other documents prepared or caused to be prepared by CONSULTANT or its subconsultants in connection with these services shall be delivered to and shall become the exclusive property of DISTRICT. DISTRICT is licensed to utilize these documents for DISTRICT applications on other projects or extensions of this project, at its own risk. CONSULTANT and its subconsultants may retain and use copies of such documents, with written approval of DISTRICT.
- 1.6 CONSULTANT is an independent contractor and not an employee of DISTRICT. CONSULTANT expressly warrants that it will not represent that it is an employee or servant of DISTRICT.
- 1.7 CONSULTANT is retained to render professional services only and all payments made are compensation solely for such services as it may render and recommendations it may make in carrying out the work.
- 1.8 It is further understood and agreed by the parties hereto that CONSULTANT in the performance of its obligations hereunder is subject to the control or direction of DISTRICT as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by the CONSULTANT for accomplishing the results.

- 1.9 If, in the performance of this agreement, any third persons are employed by CONSULTANT, such person shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONSULTANT, and DISTRICT shall have no right or authority over such persons or the terms of such employment.
- 1.10 It is further understood and agreed that as an independent contractor and not an employee of DISTRICT, neither the CONSULTANT nor CONSULTANT's assigned personnel shall have any entitlement as a DISTRICT employee, right to act on behalf of DISTRICT in any capacity whatsoever as agent, nor to bind DISTRICT to any obligation whatsoever. CONSULTANT shall not be covered by DISTRICT's worker's compensation insurance; nor shall CONSULTANT be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life or other insurance programs, or entitled to other fringe benefits payable by DISTRICT to employees of DISTRICT.

## **ARTICLE 2 - COMPENSATION**

- 2.1 For the Scope of Services described in Exhibit A, DISTRICT agrees to pay CONSULTANT actual costs incurred, subject to a Maximum Cost Ceiling of **\$(dollars)**, plus a Professional Fee (prorata dollar profit). The Professional Fee shall be subject to a Professional Fee Ceiling of **\$(dollars)**. Total compensation under the Agreement shall not exceed a Maximum Agreement Ceiling of **\$(dollars)**. Compensation for services shall be in accordance with the method and amounts described in Exhibit B, attached hereto and incorporated herein. CONSULTANT acknowledges that construction work on public works projects requires DIR registration and is subject to prevailing wage rates and includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. CONSULTANT certifies that the proposed cost and pricing data used herein reflect the payment of prevailing wage rates where applicable and are complete, current, and accurate.
- 2.2 In case of changes affecting project scope resulting from new findings, unanticipated conditions, or other conflicts or discrepancies, CONSULTANT shall promptly notify DISTRICT of the identified changes and advise DISTRICT of the recommended solution. Work shall not be performed on such changes without prior written authorization of DISTRICT.

## **ARTICLE 3 - NOTICE TO PROCEED**

- 3.1 This Agreement shall become effective upon execution of the second signature. CONSULTANT shall commence work upon receipt of DISTRICT's Notice to Proceed, which shall be in the form of a letter signed by DISTRICT's Project Manager.

DISTRICT's Notice to Proceed will authorize the Contracted Services described in Exhibit A with ceiling prices described in ARTICLE 2 – COMPENSATION. No work shall commence until the Notice to Proceed is issued.

#### **ARTICLE 4 - TERMINATION**

- 4.1 This Agreement may be terminated by DISTRICT immediately for cause or upon 10 days written notice, without cause, during the performance of the work.
- 4.2 If this Agreement is terminated CONSULTANT shall be entitled to compensation for services satisfactorily performed to the effective date of termination; provided however, that DISTRICT may condition payment of such compensation upon CONSULTANT's delivery to DISTRICT of any and all documents, photographs, computer software, videotapes, and other materials provided to CONSULTANT or prepared by CONSULTANT for DISTRICT in connection with this Agreement. Payment by DISTRICT for the services satisfactorily performed to the effective date of termination, shall be the sole and exclusive remedy to which CONSULTANT is entitled in the event of termination of the Agreement and CONSULTANT shall be entitled to no other compensation or damages and expressly waives same. Termination under this Article 4 shall not relieve CONSULTANT of any warranty obligations or the obligations under Articles 1.4 and 7.1.
- 4.3 If this Agreement is terminated, payment of the Professional Fee shall be in proportion to the percentage of work that DISTRICT judges satisfactorily performed up to the effective date of termination. The Professional Fee shall be prorated based upon a ratio of the actual Direct Labor and Indirect Costs expended to date divided by the Cost Ceiling.

#### **ARTICLE 5 - PROJECT MANAGERS**

- 5.1 DISTRICT designates Michiko Mares as its Project Manager, who shall be responsible for administering and interpreting the terms and conditions of this Agreement, for matters relating to CONSULTANT's performance under this Agreement, and for liaison and coordination between DISTRICT and CONSULTANT. CONSULTANT may be requested to assist in such coordinating activities as necessary as part of the services. In the event DISTRICT wishes to make a change in the DISTRICT's representative, DISTRICT will notify CONSULTANT of the change in writing.
- 5.2 CONSULTANT designates [REDACTED] as its Contract Manager, who shall have immediate responsibility for the performance of the work and for all matters relating to performance under this Agreement. CONSULTANT designates [REDACTED] as its onsite NACE Level 3 Coatings Inspector. Any change in CONSULTANT designated personnel shall be subject to approval by the District Project Manager.

## **ARTICLE 6 - CONTRACT EQUITY PROGRAM COMPLIANCE**

- 6.1 CONSULTANT expressly agrees that this Agreement is subject to DISTRICT's Contract Equity Program ("CEP"). CONSULTANT is familiar with the DISTRICT's CEP and Equal Opportunity Guidelines, and has read and understood all of the program requirements. CONSULTANT understands and agrees to comply with the CEP and all requirements therein, including each of the Good Faith Efforts. CONSULTANT further understands and agrees that non-compliance with the CEP requirements may result in termination of this Agreement.
- 6.2 Designated CEP compliance for the duration of this Agreement is listed in Exhibit C, which is attached hereto and incorporated herein. CONSULTANT shall maintain records of the total amount actually paid to each subconsultant. Any change of CONSULTANT'S listed subconsultants shall be subject to approval by the DISTRICT'S Project Manager.

## **ARTICLE 7 - INDEMNIFICATION AND INSURANCE**

### 7.1 Indemnification

- CONSULTANT expressly agrees to defend, indemnify, and hold harmless DISTRICT and its Directors, officers, agents and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or pertaining or relating to CONSULTANT's, its associates', employees', subconsultants', or other agents' negligence, recklessness, or willful misconduct, in the operation and/or performance under this Agreement.
- 7.2 CONSULTANT shall perform part of the work at sites where the DISTRICT's facilities are to be constructed, and which may contain unknown working conditions and contaminated materials. CONSULTANT shall be solely responsible for the health and safety of CONSULTANT's employees. CONSULTANT shall designate in writing to DISTRICT the field employee who is responsible for the health and safety of its employees. The responsible employee shall have experience and knowledge of all Federal, State and local health and safety regulation requirements. All CONSULTANT personnel on construction sites shall have received all OSHA required health and safety training.
- 7.3 In the event that any hazardous materials are encountered during the services provided by CONSULTANT or the work undertaken by construction contractors, DISTRICT shall sign any and all manifests relating to the generation, treatment, disposal or storage of all wastes associated with the work. Additionally, nothing contained in this Agreement shall be construed or interpreted as requiring CONSULTANT to assume the status of a generator, storer, treater, transporter, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 USCA, Section 6901, et seq. (RCRA), or within any state statute of similar effect governing the generation, storage, treatment, transportation, or disposal of wastes.

7.4 It is agreed and understood by CONSULTANT and DISTRICT that the design services have been completed by TERRA/GeoPentech and therefore, CONSULTANT did not undertake any design activity or have design responsibility of the facilities to be constructed prior to execution of this Agreement.

7.5 Insurance Requirements

CONSULTANT shall take out and maintain during the life of the Agreement all the insurance required in this ARTICLE, and shall submit certificates for review and approval by DISTRICT. The Notice to Proceed shall not be issued, and CONSULTANT shall not commence work until such insurance has been approved by DISTRICT. The certificates shall be on forms provided by DISTRICT.

Acceptance of the certificates shall not relieve CONSULTANT of any of the insurance requirements, nor decrease the liability of CONSULTANT. DISTRICT reserves the right to require CONSULTANT to provide insurance policies for review by DISTRICT.

7.6 Workers Compensation Insurance

CONSULTANT shall take out and maintain during the life of the Agreement, Workers Compensation Insurance, for all of its employees on the project. In lieu of evidence of Workers Compensation Insurance, DISTRICT will accept a Self-Insured Certificate from the State of California. CONSULTANT shall require any subconsultant to provide it with evidence of Workers Compensation Insurance.

7.7 Commercial General Liability Insurance

CONSULTANT shall take out and maintain during the life of the Agreement Automobile and General Liability Insurance that provides protection from claims which may arise from operations or performance under this Agreement. If CONSULTANT elects to self-insure (self-fund) any liability exposure during the contract period above \$50,000, CONSULTANT is required to notify the DISTRICT immediately. Any request to self-insure must first be approved by the DISTRICT before the changed terms are accepted. CONSULTANT shall require any subconsultant to provide evidence of liability insurance coverages.

The amounts of insurance coverages shall not be less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage – Automobile.  
\$2,000,000/Occurrence, Bodily Injury, Property Damage - General Liability.  
\$4,000,000 each claim and in the aggregate – Professional Liability

The following coverages or endorsements must be included in the policy(ies):

1. DISTRICT and its Directors, officers, and employees are additional insureds in the policy(ies) as to the work being performed under this Agreement;



Any notice which CONSULTANT may desire or is required at any time to give or serve upon DISTRICT may be delivered personally at EBMUD, 375 - 11th Street, Oakland, CA 94607-4240, or be sent by United States mail, postage prepaid, addressed to:

Director of Engineering & Construction  
P.O. Box 24055  
Oakland, CA 94623-1055

or at such other address as shall have been last furnished in writing by DISTRICT to CONSULTANT.

Such personal delivery or mailing in such manner shall constitute a good, sufficient and lawful notice and service thereof in all such cases.

### **ARTICLE 9 - MISCELLANEOUS**

- 9.1 This Agreement represents the entire understanding of DISTRICT and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by amendment in writing signed by each party.
- 9.2 This Agreement is to be binding on the successors and assigns of the parties hereto. The services called for herein are deemed unique and CONSULTANT shall not assign, transfer or otherwise substitute its interest in this Agreement or any of its obligations hereunder without the prior written consent of DISTRICT.
- 9.3 Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the parties.
- 9.4 Multiple copies of this Agreement may be executed by the parties and the parties agree that the Agreement on file at the DISTRICT is the version of the Agreement that shall take precedence should any differences exist among counterparts of the Agreement.
- 9.5 This Agreement and all matters relating to it shall be governed by the laws of the State of California.
- 9.6 The District's waiver of the performance of any covenant, condition, obligation, representation, warranty or promise in this agreement shall not invalidate this Agreement or be deemed a waiver of any other covenant, condition, obligation, representation, warranty or promise. The District's waiver of the time for performing any act or condition hereunder does not constitute a waiver of the act or condition itself.

9.7 There shall be no discrimination in the performance of this contract, against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), veteran or military status, family or medical leave status, genetic information, or sexual orientation. CONSULTANT shall not establish or permit any such practice(s) of discrimination with reference to the contract or any part. CONSULTANTS determined to be in violation of this section shall be deemed to be in material breach of this Agreement.

**Consultant shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin in the performance of this contract. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

CONSULTANT shall include the nondiscrimination provisions above in all subcontracts.

9.8 CONSULTANT affirms that it does not have any financial interest or conflict of interest that would prevent CONSULTANT from providing unbiased, impartial service to the DISTRICT under this Agreement.

#### **ARTICLE 10 - TERM**

Unless terminated pursuant to Article 4 herein, this Agreement shall expire when all tasks have been completed and final payment has been made by DISTRICT.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

**EAST BAY MUNICIPAL UTILITY DISTRICT**

By: \_\_\_\_\_  
Xavier J. Irias  
Director of Engineering and Construction

Date \_\_\_\_\_

Approved As To Form

By: \_\_\_\_\_  
for the Office of the General Counsel

\_\_\_\_\_

By: \_\_\_\_\_  
**(Name),**  
**(Title)**

Date \_\_\_\_\_

Rev. 3/24/14

DRAFT

## **EXHIBIT A**

### **East Bay Municipal Utility District**

#### **Recoat Mokelumne Aqueduct No. 1 – Phase 12**

### **SCOPE OF SERVICES**

#### **I. CONSULTANT SERVICES**

##### **General Scope of Services**

East Bay Municipal Utility District (EBMUD or District) will be constructing the Recoat Mokelumne Aqueduct No. 1 – Phase 12 Project. As part of this work EBMUD will provide a project management team as shown in Figure 1 consisting of the Division Manager, Construction Manager (CM), Resident Office Engineer (OE), and Design Engineer(s) (DE) for the project. The District team members will remain in the home office. (CONSULTANT) shall augment the District team and will provide Inspection Services consisting of Construction Inspector(s) (CI),

The District CM will have overall responsibility for successful project implementation within the project budget and will ensure EBMUD standards and procedures are complied with. The DE will have responsibility to ensure that the design intent of the project is accomplished. The CONSULTANT staff shall be responsible to ensure that the construction complies with the Contract Documents and District procedures. The District uses EADOC project management software and the CONSULTANT will be required to use this software as well.

The CONSULTANT shall provide construction inspection personnel to provide the services described below:

##### **Contracted Services**

#### **Task 2.2 Construction Inspector(s)**

General: The Construction Inspectors will be responsible to ensure that the constructed work complies with the plans and specifications and that adequate project documentation is provided. Construction Inspectors shall provide the necessary monitoring and tests of work performed by the Construction Contractor to determine general conformance with contract drawings and specifications and applicable standards; and to provide the Construction Contractor with notice (oral or written as appropriate) of observed nonconforming work and requirements to correct same. Construction Inspectors also provide the documentation for the progress and nature of the constructed work. Construction Inspectors shall perform field and local plant inspection, witness tests, maintain files, prepare

daily reports, document and coordinate testing procedures, and assist the District with notification of adjacent property owners affected by ongoing work, as requested by the District.

Qualifications and Training: All CONSULTANT Construction Inspectors (CIs) shall be experienced in the work they are assigned to and shall have all necessary training and equipment including NACE Level 3 certification. All required safety training shall be current. CONSULTANT CIs will be required to use EADOC, and the District will provide the necessary training.

Safety: It is the Construction Contractor's responsibility to monitor safety on the job and to rectify unsafe or hazardous conditions. However, if during the course of inspection of the work, an unsafe condition is observed, the CI shall orally report his observation to the Construction Contractor and note it in the Daily Report. If corrective action by the Construction Contractor has not occurred, written notification shall be issued and the CM/RE shall be notified. All Cal/OSHA visits shall be noted including any citations issued and required actions.

If, in the judgment of the CI, an imminent danger exists, the CI should immediately order the workers away from the area, immediately notify the Construction Contractor, and monitor the situation until the danger is under control or has been corrected.

Specific duties are further defined below.

Project Inspection Reports: The CI's shall prepare at the end of each day inspection reports summarizing the progress of the work, activities worked on, number of workers and equipment used, special instructions given or received, extra work done, weather, and similar information required to accurately document the progress of the work. Inspection reports shall be in accordance with the Construction Division Project Procedures Manual, and will be prepared on EADOC. Inspection reports shall be available electronically to the District at the end of each day. The CI's shall prepare monthly as-built schedule information to document which work activities took place on each day of the month. The CM/RE shall ensure accuracy and proper documentation procedures are followed by the Construction Inspection Staff.

Change Order Documentation: In the case of Force Account, Change Order, or District directed work, the CI's shall closely monitor the work in order to verify that daily extra work reports are accurate, and shall include such information as the Construction Contractor's manpower, equipment, materials, and time. In the case of Directed Change Order work or Disputed Work, the CI shall note on the Daily Inspection Report the Construction Contractor's man-power, equipment, materials and time support working on the Directed or Disputed work until the costs are agreed to or the scope of work is complete. The work report shall be

completed and submitted to the CM/RE no later than one day after the work is performed. The Construction Inspector's signature indicates that the information on the forms is correct. Photo documentation should be provided.

Photographic Documentation: The CI shall be responsible for taking construction progress photographs and video tapes of the work as required to maintain a permanent visual record of the status of the work. Photographs and videos shall be taken by the CI as appropriate, at regular intervals. Additional photo documentation shall be performed when special situations arise that may be beneficial for claims management (i.e., construction techniques, interference, and/or job site conditions) or as otherwise deemed appropriate by the CM/RE or as requested by District.

Community Notification: The CI's shall ensure, when work affects the public, that affected individuals are notified in advance of the possible impacts, along with the need and benefit of the work. To the extent feasible, the CI's shall address and respond effectively to their concerns. In general, when meeting the public, the CI's should defer comments to the CM/RE.

Record Drawings: The CI's shall maintain one set of full size "blue-line" Contract Drawings marked with the changes encountered during the course of construction. The CONSULTANT field staff shall periodically review record drawings maintained and submitted by Construction Contractor to verify that changes are properly recorded in accordance with District standards.

Final Project Acceptance: CONSULTANT shall prepare a "punch list" of deficiencies to be corrected by the Construction Contractor prior to final acceptance of work. CONSULTANT shall maintain and update the punch list until deficient work is corrected.

#### **TASK 4 DIRECT (NON-LABOR) COST EXPENDITURES**

This Scope of Services includes budgeted cost expenditures for non-labor cost items associated with the CONSULTANT's work, as well as the purchase, rental, and/or leasing of equipment, supplies, materials, and services needed to support field construction management activities. CONSULTANT shall work with District Construction Manager and assist with the purchase and delivery of subject equipment, supplies, and materials to the field office.

Examples of non-labor cost expenditures include such items as:

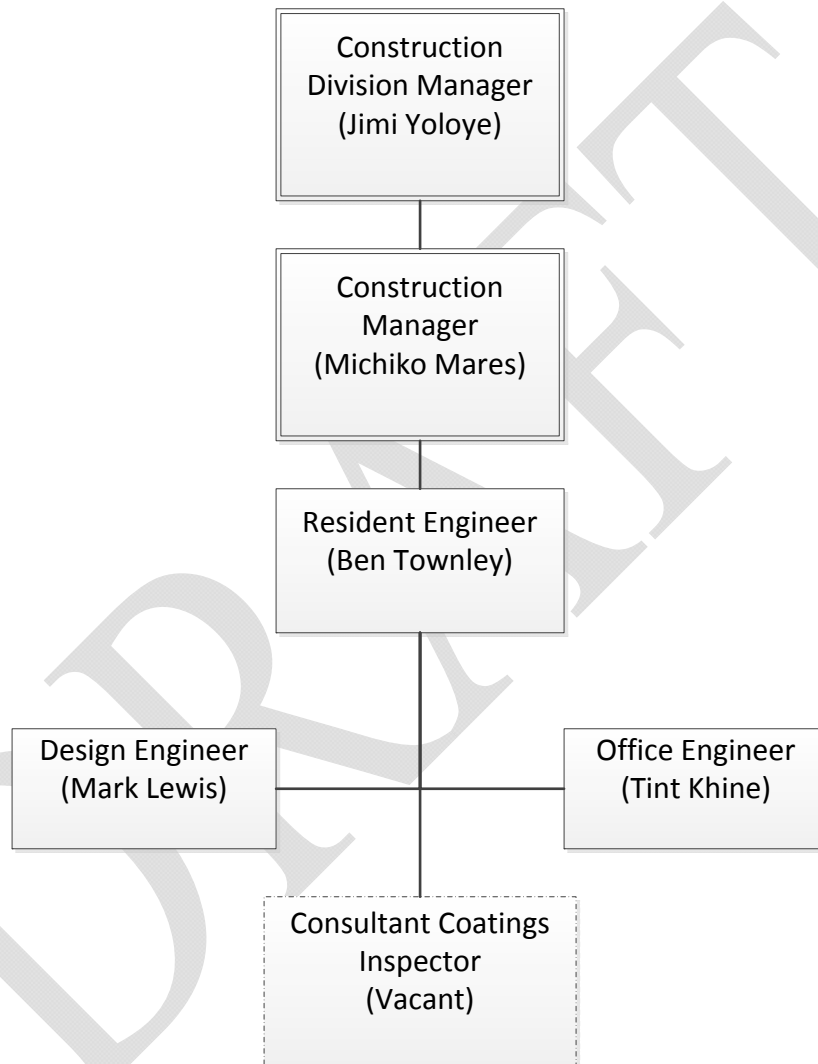
Photographic Equipment: CONSULTANT shall provide digital 35mm cameras having date and time stamp capabilities, and a digital video camera/recorder.

Specialized Testing: CONSULTANT may be requested to provide specialty equipment for NACE Level 3 inspection for use by field inspection personnel.

## **II. PROJECT SCHEDULE**

It is anticipated that the construction contract for the Recoat Mokelumne Aqueduct No. 1 – Phase 12 project will be awarded on March 28, 2017, with a construction Notice-to-Proceed to be issued by the end of April 2017. The total construction period allowed by the construction documents is 600 calendar days, ending in the early Fall of 2019. Notice to Proceed for CONSULTANT's scope of work is anticipated to occur shortly after the award of the construction contract, with a duration for the CONSULTANT work of approximately 500 days. Figure 1 provides CONSULTANTs expected staff loading.

**RECOAT MOKELUMNE AQUEDUCT NO. 1 – PHASE 12  
PROJECT  
CM STAFFING PLAN  
Figure1.**



**EXHIBIT B**

**East Bay Municipal Utility District  
Recoat Mokelumne Aqueduct No. 1 – Phase 12  
Construction Support Services**

## COMPENSATION

Compensation for services provided in Exhibit A, SCOPE OF SERVICES, shall be in accordance with the methods and specific amounts described in this Exhibit.

1. DISTRICT shall pay CONSULTANT only the actual costs incurred, subject to the agreed cost ceiling. CONSULTANT certifies that the cost and pricing information used herein are complete, current and accurate. CONSULTANT acknowledges that it will expend public funds and hereby agrees to use every appropriate method to contain its fees and minimize costs under this Agreement.
2. Compensation for CONSULTANT services authorized shall be on a cost reimbursement basis and include Direct Labor, Indirect Costs, Subconsultant Services, Other Direct Costs, and a Professional Fee. Costs to be paid comprise the following:

### 2.1 Direct Labor

Direct labor costs shall be the total number of hours worked on the job by each employee times the actual hourly rate for such employee's labor. Hours worked shall be rounded-up to the nearest quarter-hour (0.25) increment. Labor costs for principals shall be based upon the actual hourly rate of pay for those individuals. Labor rates shall be based on a normal 8-hour day, 40-hour week. DISTRICT will pay all personnel at their regular rate including any work performed on overtime or on holidays or weekends. The Construction Inspector labor rates shall be based on prevailing wages per Section 2.9.

### 2.2 Indirect Costs

DISTRICT shall pay CONSULTANT an overhead expense equal to **(insert overhead rate)** percent of labor costs incurred by CONSULTANT. CONSULTANT acknowledges and agrees that this overhead compensation is in lieu of itemized payments for indirect and overhead expenses which includes, but is not limited to:

- Clerical, word processing and/or accounting work.
- Vehicle usage and mileage.
- Parking (DISTRICT does NOT provide parking to CONSULTANT in the DISTRICT Administration Building, located at 375 11th Street, Oakland, California. CONSULTANT shall be responsible for parking elsewhere).
- Postage, or for certified or registered mail. Extraordinary postage, overnight delivery, or messenger delivery charges must be approved in advance.
- Routine copying costs for in-house copying.
- Local telephone charges, including cellular phone, modem and telecopier/FAX charges.

- Office space lease.
- Office supplies.
- Computer equipment.
- Computer usage charges.
- Books, publications and periodicals.
- Insurance.
- Miscellaneous hand tools or equipment rental.
- Safety training, seminars or continuing education.
- Utilities.
- Meals, transportation or other charges.
- Inadequately described or miscellaneous expenses.

The above items are illustrative, rather than exhaustive.

The District will provide a construction trailer for use by the CONSULTANT field staff during the construction period which will contain two offices, a meeting area with a table and chairs, desks, and chairs, telephones, a copier, a printer, telephone service, and high speed internet service.

### 2.3 Subconsultant Services

Subconsultant services shall be billed at cost (plus a ***insert rate*** percent markup).

### 2.4. Other Direct Costs

Other Direct Costs shall be approved by DISTRICT in advance in writing, and shall be billed at cost, without markup. These costs include, but are not limited to the following:

2.4.1. DISTRICT will pay for necessary and reasonable travel expenses provided the travel is approved in advance by DISTRICT Project Manager, and providing that:

- Each expense is separately identified (air fare, hotel, rental car) with an amount and date incurred. Confirming documents may be requested.
- Charged mileage for vehicle mileage shall not exceed the current allowable Internal Revenue Service rate.
- Air travel is coach or economy rate for refundable tickets. Business and first class rates will not be reimbursed.
- Lodging accommodations are moderately priced.
- Meal charges are reasonable. (Reimbursement for meals will only be made in conjunction with out-of-town travel.)

- Taxis or shuttles are used rather than rental cars whenever cost effective.
- Rental cars are intermediate or compact class only.

2.5 Professional Fee

As a portion of the total compensation to be paid to CONSULTANT, DISTRICT shall pay the Professional Fee, subject to the agreed Professional Fee Ceiling of **\$(dollars)** as specified in Exhibit B-1, as profit for services rendered by CONSULTANT covered by this Agreement. CONSULTANT shall earn the Professional Fee based on a **(insert rate)** percent markup of CONSULTANT's Direct Labor and Indirect Costs billed and approved.

2.6 Budget Amounts

	<u>Contracted Services</u>	<u>Optional Services</u>	<u>Maximum Services*</u>
Cost Ceiling	<b>\$(dollars)</b>	<b>\$(dollars)</b>	<b>\$(dollars)</b>
Professional Fee Ceiling	<b>(dollars)</b>	<b>(dollars)</b>	<b>(dollars)</b>
Agreement Ceiling	<b>(dollars)</b>	<b>(dollars)</b>	<b>(dollars)</b>

The Cost Ceiling shown above is based upon the cost estimate and labor hours attached hereto as Exhibit B-1 and Exhibit B-2. Costs described above, comprising Direct Labor, Indirect Costs, Subconsultant Services, Other Direct Costs, and Professional Fee, shall be payable up to the Agreement Ceiling as specified herein.

2.7 Billing and Payment

CONSULTANT shall invoice DISTRICT monthly for the actual costs incurred and a prorated Professional Fee for work performed during the previous month. Actual costs shall include Direct Labor, Indirect Costs, Subconsultant Services, and Other Direct Costs as specified herein. Actual costs shall be invoiced by task as described in Exhibit A. Invoices shall set forth a description of the actual costs incurred and the services performed, the date the services were performed and the amount of time spent rounded to the nearest quarterly hour increment (.25) on each date services were performed and by whom. Supporting documentation for the invoice shall be organized to clearly identify the task charged and shall be supported by such copies of invoices, payroll records, and other documents as may be required by DISTRICT to authenticate invoiced costs. Copies of all invoices from any subconsultant(s) and outside service(s) shall be attached.

Where CONSULTANT is required by law to pay prevailing wage rates, supporting documentation for such work shall be in accordance with guidelines set forth below and shall include certified payroll reports. DISTRICT shall pay CONSULTANT within thirty (30) days, upon receipt of a proper CONSULTANT invoice, provided that all invoices are accompanied by sufficient cost documentation, and DISTRICT Form P-47 (Subcontractor Payment Report - CEP Participation), to allow the determination of the reasonableness and accuracy of said invoice.

A ceiling price is in effect for the entire Scope of Services. If the authorized Agreement Ceiling, including the authorized Professional Fee Ceiling, is reached, CONSULTANT shall complete the agreed-upon work for the authorized Agreement Ceiling. Labor hours may be reallocated within the tasks without renegotiation of the Agreement with written approval from the DISTRICT Project Manager in such a manner so as not to exceed the Agreement ceiling price. In no event shall the Cost Ceiling of the Agreement or the Professional Fee Ceiling be increased unless there is a written amendment of this Agreement.

## 2.8 Budget Status Reports

For the duration of this Agreement, the CONSULTANT shall provide DISTRICT with monthly budget status reports that include, in tabular or graphical format, for each report period: (1) the original cumulative projected cash flows for the duration of the project (prepared at the start of the project), (2) the actual cash flows for the work completed to date, (3) the current projected cash flows to complete the project, and (4) the earned value (the amount of work actually completed to date compared to the budget expended). Current projected cash flows shall be based on all CONSULTANT and subcontractor time sheets up to a date within 3 weeks of the date of the budget status report.

## 2.9. Prevailing Wages and Other Requirements for Construction Inspection and Construction Related Work

2.9.1 All Contractors and Subcontractors of any tier bidding on, or offering to performing work on a public works project shall first be registered with the State Department of Industrial Relations (DIR) pursuant to Section 1725.5 of the Labor Code. No bid will be accepted nor any contract entered into without proof of the Contractor and Subcontractors' current registration with the DIR (LC § 1771.1).

2.9.2 All public works projects awarded after January 1, 2015, are subject to compliance monitoring and enforcement by the DIR (LC § 1771.4) and all Contractors are required post job site notices, "as prescribed by regulation" (LC § 1771.4).

- 2.9.3 Pursuant to Section 1773 of the Labor Code, the District has obtained from the Director of Industrial Relations of the State of California, the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification, or type of worker needed to execute the contract. A copy of the prevailing wage rates is on file with the District and available for inspection by any interested party at [www.dir.ca.gov](http://www.dir.ca.gov).
- 2.9.4 The Contractor shall post a copy of the general prevailing rate of per diem wages at the jobsite pursuant to Section 1773.2 of the Labor Code.
- 2.9.5 Pursuant to Section 1774 of the Labor Code, the Contractor and any of its Subcontractors shall not pay less than the specified prevailing rate of wages to all workers employed in the execution of the contract.
- 2.9.6 The Contractor shall, as a penalty to the State or the District, forfeit not more than the maximum set forth in Section 1775 of the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for the work or craft in which the worker is employed under the contract by the Contractor or by any Subcontractor under him. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which such worker was paid less than the stipulated prevailing wage rate shall be paid to such worker by the Contractor.
- 2.9.7 General prevailing wage determinations have expiration dates with either a single asterisk or a double asterisk. Pursuant to California Code of Regulations, Title 8, Section 16204, the single asterisk means that the general prevailing wage determination shall be in effect for the specified contract duration. The double asterisk means that the predetermined wage modification shall be paid after the expiration date. No adjustment in the Contract Sum will be made for the Contractor's payment of these predetermined wage modifications.
- 2.9.8 The Contractor and each Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Work. The payroll records shall be certified and shall be available for inspection in accordance with the provisions of Section 1776 of the Labor Code. Certified payroll records shall be on the forms provided by the DIR or contain the same information required on the Department's form

- 2.9.9 For public works projects awarded on or after April 1, 2015, or that are still ongoing after April 1, 2016, no matter when awarded, each Contractor and Subcontractor shall furnish the certified payroll related records as more specifically described above and in Labor Code section 1776 directly to the Labor Commissioner (see LC § 1771.4). These records shall be provided to the Labor Commissioner at least monthly or more frequently if required by the terms of the Contract. For exception on projects covered by collective bargaining agreements like a PLA, please see Labor Code section 1771.4.
- 2.9.10 In the event of noncompliance with the requirements of Section 1776 of the Labor Code, the Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with said Section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to the State or the District, forfeit the amount set forth in Section 1776 of the Labor Code for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
- 2.9.11 Pursuant to the provisions of Sections 1810, et seq. of the Labor Code the time of service of any worker employed upon the work shall be limited and restricted to eight hours during any one calendar day, and forty hours during any one calendar week, unless work performed by employees of the Contractor in excess of eight hours per day, and forty hours during any one calendar week, shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one half times the basic rate of pay.
- 2.9.12 The Contractor shall, as a penalty to the State or the District, forfeit the amount set forth in Section 1813 of the Labor Code for each worker employed by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week in violation of the provisions of Labor Code, Sections 1810, et seq.
- 2.9.13 The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the Work; the record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Standards Enforcement of the State of California.

2.9.14 In the performance of a public works contract, the Contractor and any Subcontractor shall comply with the provisions concerning the employment of apprentices in Section 1777.5 of the Labor Code and any amendments thereof. In the event the Contractor or any Subcontractor willfully fails to comply with this requirement the Contractor or Subcontractor shall be subject to the penalties for noncompliance in Labor Code section 1777.7.

2.9.15 The Contractor and every Subcontractor shall post at the workplace and comply with all required wage related workplace postings. Copies of the required postings may be downloaded or ordered electronically from the Department of Industrial Relations website at <http://www.dir.ca.gov/wpnodb.html>.

DRAFT

(Note: this table is prepared by the consultant. The following is provided to show format.)

**EXHIBIT B-1**

**East Bay Municipal Utility District  
Recoat Mokelumne Aqueduct No. 1 – Phase 12  
Construction Support Services**

**COST DISTRIBUTION**

	Consultant				Subconsultants								
	Direct Labor		Indirect Costs	Total	Sub. #1			Sub. #2		Profes- sional Total Fee**	Total Cost		
Contract Manager	Construction Inspector	Lead Insp.			2nd Insp.	Total	Admin Cost	Office Eng	Assist. Total				
Salary Rate (\$/hr.) Services	(****)	(****)	(****)	(****)	ODCs*	(****)	(****)	Cost	(****)	(****)	Cost	Fee**	Cost

I. Contracted Services

Task 1  
Task 2  
Subtotal I.

(\*\*\*) (\*\*\*) (\*\*\*) (\*\*\*) (\*\*\*) (\*\*\*)

Task 5:  
Subtotal II.

(\*\*\*) (\*\*\*) (\*\*\*) (\*\*\*) (\*\*\*) (\*\*\*)

TOTAL Agreement (Total of Subtotals I. & II.)

\* ODCs = Other Direct Costs.

\*\* Professional Fee on consultant Direct Labor & Indirect Costs only. Should not include prime consultant markup on subconsultants.

\*\*\* Amount includes prime consultant markup on subconsultant.

\*\*\*\* *Insert salary rate.*

*(Note: this table is prepared by the consultant. The following is provided to show format.)*

**EXHIBIT B-2**

**East Bay Municipal Utility District  
Recoat Mokelumne Aqueduct No. 1 – Phase 12  
Construction Support Services**

**LABOR DISTRIBUTION**

	<u>Consultant</u>			<u>Subconsultants</u>					
	<u>Contract Manager</u>	<u>Construction Inspector</u>	<u>Subtotal</u>	<u>Insp.</u>	<u>Sub. #1</u>		<u>Sub. #2</u>		<u>Total</u>
					<u>Lead Insp.</u>	<u>2nd Subtotal</u>	<u>Admin.</u>	<u>Office Eng</u>	
<u>Services(*)</u>									
I. Contracted Services									
Task 1									
Task 2									
Subtotal									
TOTAL									

*(\* Include both consultant and subconsultant hours. Also, include the percent time commitment for key personnel if a critical issue for success of the project.)*

**EXHIBIT C**

**East Bay Municipal Utility District  
Recoat Mokelumne Aqueduct No. 1 – Phase 12  
Construction Support Services**

**CEP COMPLIANCE**

<u>FIRMS UTILIZED</u>	<u>MINIMUM AMOUNT*</u>	<u>MINIMUM PERCENT**</u>
<i>(Name of Subconsultant's firm)</i>	<i>\$(dollars)</i>	<i>(1 to 99)</i>
<i>(Name of Subconsultant's firm)</i>	<i>\$(dollars)</i>	<i>(1 to 99)</i>
TOTAL	<i>\$(dollars)</i>	<i>(1 to 99)</i>

\* Does not include consultant's markup. *(Include this footnote only if your contract includes markup on subconsultants.)*

\*\* Based on a Maximum Services Agreement Ceiling amount of *\$(dollars)*.