



REQUEST FOR QUALIFICATIONS

EMERGENCY RESTORATION SERVICES

March 16, 2015

TABLE OF CONTENTS

ANNOUNCEMENT

I. INTRODUCTION TO RFQ SUBMITTAL PROCESS

1. Methodology of Contracting with Emergency Restoration Firms and Basis of Fees
2. Insurance Requirements
3. Description of Projects and Scope of Work

II. DISTRICT PROCESS FOR VENDOR SELECTION

III. CONTENTS OF PROPOSALS AND EVALUATION CRITERIA

1. Introductory/Cover Letter
2. Professional Qualifications, Experience and Project Approach
3. Billing Rate Schedule and Insurance Providers
4. Evaluation Criteria and Scoring Chart

IV. RFQ SCHEDULE

V. EXHIBITS

1. SFUSD Contract Template
2. Anticipated Types of Work to be Performed



**ANNOUNCEMENT
REQUEST FOR
QUALIFICATIONS NOTICE**

Emergency Restoration Services

The San Francisco Unified School District Risk Management Department invites Statements of Qualifications (SOQ) from qualified Emergency Restoration firms to develop a pool of contractors to provide emergency restoration services when deemed necessary by the District. Once selected for the pool, each consultant will be issued a Master Agreement for a period of three years with individual projects assigned on an emergency basis.

Projects will include emergency response to flood loss, fire damage, environmental damage including but not limited to sewage leaks, overflows, or spills, vector, insect or pest control or remediation, and environmental contamination (mold, asbestos etc.). Services may include, Water extraction; Fire, Smoke and Water damage restoration; Debris Removal; Mold remediation; Post-emergency or event stabilization, Reconstruction; and Pre-loss planning

Proven experience with schools is desirable. All participating firms must have an existing primary working business location within a **50-mile radius** of the city limits of San Francisco, CA under the name of the submitting firm for a **minimum of two years** from the date of submission

Request for Qualification information packages will be available online at:

<http://www.sfusd.edu/en/doing-business-with-sfusd/current-rfps-rfqs-and-rfis.html>

I. INTRODUCTION TO RFQ SUBMITTAL PROCESS

Introduction to District (background)

The San Francisco Unified School District Risk Management Department invites Statements of Qualifications (SOQ) from qualified Emergency Restoration firms to develop a pool of contractors to provide emergency restoration services when deemed necessary by the District.

Responses should be sent as a PDF or WORD attachment via email to:

Mr. Dave George
Executive Director, Risk Management
San Francisco Unified School District
georged1@sfusd.edu

Contact for questions regarding this RFQ:

Questions should be submitted by
email as outlined above

All participating firms must have an existing primary working business location within a **50-mile radius** of the city limits of San Francisco, CA under the name of the submitting firm for a **minimum of two years** from the date of submission.

All SOQs are due by 4:00pm, Wednesday, April 8, 2015

Late submittals will not be considered.

Methodology of Contracting for Emergency Restoration Services and Basis of Fees

The District will establish a pool of qualified firms to provide on-call emergency restoration services and will determine project assignments for the emergency restoration projects. Master Agreements will be awarded to selected firms that will be for a term of three (3) years. Selection to the pool does not commit the District to contracting, nor does it provide any selected contractor a guarantee that work will be assigned.

Fees shall be based on the firm's billing rate as submitted in the proposal, with proposed annual rate increases, if any.

Insurance Requirements

Each firm awarded a contract will be required to maintain, in full force and effect and at their own expense, the following insurance policies with companies certified with the California Insurance Commission. Please provide a Certificate of Insurance outlining all of your required coverage in your SOQ response. The following insurance policies and

minimum policy limits are required in order for your firm to qualify for participation in these projects:

- Worker's Compensation Insurance (\$ 1 million)
- General Liability Insurance (\$5 million/per occurrence)
- Commercial Automobile Insurance (\$1 million/per occurrence)
- Professional Liability Insurance (\$1 million per occurrence and \$2 million aggregate).
- Demonstration of bonding capacity for a payment and performance bond

If any policy is written on a Claims Made Form, the contractor must provide a project specific policy to continue the coverage for three (3) years beyond the date of the individual project completion.

Each firm must provide the District with original "wet signature" certificate(s) of insurance that includes the following:

- The San Francisco Unified School District, it's Board, and Officers shall be named as additional insured parties on General Liability and Automobile policies. Endorsements must be submitted with the certificate(s);
- Should any of the above described policies be canceled before the expiration date thereof, the issuing company will provide written notice to the certificate holder a minimum of 30 days prior to said cancellation.

Description of Projects and Scope of Work

Work will be assigned on an as-needed basis for emergency restoration services including (but not limited to):

- Water extraction
- Fire, Smoke and Water damage restoration
- Debris removal
- Sewage backup/overflow
- Mold remediation

Following restoration, work for reconstruction and repair will be assigned on an as-needed basis by a separate procurement.

II. DISTRICT PROCESS FOR CONSULTANT SELECTION

All SOQ's will be scored through a preliminary screening process that will include Part III below and the option of contacting verifiable references via telephone. Those firms who qualify through the preliminary screening process may be invited to participate in the final screening process, which will include an oral interview.

The District will accept written questions and comments from prospective firms up through April 1, 2015.

The District reserves the right to make a selection anytime during the selection process.

SUGGESTED Maximum LENGTH OF SOQ: 15 pages, single sided

III. CONTENTS OF PROPOSALS AND EVALUATION CRITERIA

Please provide the following information in the order given below. Responses to the RFQ will be carefully evaluated for completeness and ability to perform the work indicated based on the information provided in the following categories:

Introductory/Cover Letter

Please provide information regarding the size of your firm, and include any sub-consultants or subcontractors that you intend to include in your project team.

Professional Qualifications, Experience and Project Approach

- The full name and address of the firm or team. Confirm that the office is within 50 miles of the SFUSD facilities office at 555 Franklin St. in San Francisco and the number of years at this location.
- Name, email and phone number of a designated contact person.
- A brief description of the firm. Include a description of typical services to clients of the firm
- Describe the firm's professional qualifications and experience, including those of any sub-consultants, in order to clearly demonstrate your ability to successfully furnish the emergency restoration services described in this Request for Qualifications.
- Provide the names and brief resumes of the principal-in-charge, the assigned project manager and/or other key staff members who will comprise the core of your firm's project team.
- Provide a narrative discussing your approach to staffing, sub-contractor management and delivering timely and quality service in the case of two or more assignments running concurrently
- Discuss your firm's understanding of emergency restoration services required for the potential range of emergency projects and provide an outline or description that clearly demonstrates:
 - Successful completion of projects: List representative projects (minimum of 5 projects) undertaken and completed in the last five years demonstrating school experience. Include project title, description of services provided, project duration, district or insurance company/JPA contacts and telephone numbers of verifiable references.
 - Compliance with local, state and/or Federal safety regulations: Briefly discuss the firm's safety program covering field activities. Please provide the firm's Worker's Compensation Experience Modification Rate. Have you received any Cal OSHA citations in the last three years? If yes, please provide an explanation.
 - Quality Assurance and Control: Your approach to quality assurance and your process for quality control.

Firm's Billing Rate Schedule and name of insurance carrier

Billing rates for labor should be submitted at both non-prevailing and prevailing rates. In addition, rates for restoration equipment should be quoted including a not to exceed guarantee.

Evaluation Criteria Scoring Sheet

Evaluation Criteria	Points	Score
Introductory Cover Letter	0	
Professional Qualifications, Experience and Project Approach		
a. Describe the firm's professional qualifications and experience, including those of any sub-consultants, in order to clearly demonstrate your ability to successfully furnish the services outlined.	20	
b. Provide the names and brief resumes of the principal-in- charge, the assigned project manager and/or other key staff members who will comprise the core of your firm's project team.	20	
c. Provide a narrative discussing your approach to staffing, sub-consultant management and delivering timely and quality service on multiple assignments running concurrently and under duress (such as following an earthquake or other large-scale regional event)	35	
Firm's Billing Rate Schedule and insurance qualifications	15	
Letter confirming Bonding Capacity from a licensed insurance/surety broker	10	
TOTAL SCORE	100	

IV. RFQ SCHEDULE (Subject to adjustment)

- | | |
|--------------------------|-----------------------------------|
| ▪ Advertise RFQ | March 17, 2015 |
| ▪ SOQ due date | April 8, 4:00pm |
| ▪ Interview Notification | April 18, 2015 |
| ▪ Interviews | April 29, 2015 (Tentative) |
| ▪ SFUSD Board Approval | May, 2015 |

The District reserves the right, at its sole discretion, to modify RFQ requirements, and/or cancel interviews if selection can be made based upon written proposals received, cancel the selection process, amend the schedule, or select two or more "pools" of firms.

RFQ applicants will be notified of any changes to this schedule.

Firms responding to this RFQ shall not be reimbursed for any costs associated with the preparation of proposals in response to this RFQ.

Firms responding to this RFQ should be aware that they themselves and they're Subcontractors may be required to register and show proof of qualification to perform public work pursuant to section 1725.5 of the Labor Code, subject to limited legal exceptions under Labor Code section 1771.1. The Master Agreement between the District and the chosen firm or contractor and any modifications or amendments thereto will be subject to compliance monitoring and enforcement by either the District, or by the California Department of Industrial Relations, pursuant to Labor Code section 1771.4.

End of Request for Qualifications

**MASTER AGREEMENT FOR EMERGENCY SERVICES BETWEEN
THE SAN FRANCISCO UNIFIED SCHOOL DISTRICT AND
[NAME OF CONTRACTOR]**

THIS AGREEMENT for _____ services is made by and between the San Francisco Unified School District, a political subdivision of the State of California ("District") and _____ ("Contractor") (together sometimes referred to as the "Parties") as of _____, 20__ (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to District the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on _____, the date of completion specified in Exhibit A, and Contractor shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect the District's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that District, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from District of such desire, reassign such person or persons.
- 1.4 **Contractor Registration.** Contractor and any of its Subcontractors must be registered and qualified to perform public work pursuant to section 1725.5 of the Labor Code.

[NOTE TO STAFF: IF THE SERVICES ARE NOT WITHIN THE STATUTORY DEFINITION OF A PUBLIC WORKS PROJECT, THEN EXHIBIT C MAY BE DELETED. CHECK WITH THE DISTRICT'S ATTORNEY IF THERE IS A QUESTION ABOUT WHETHER THE SERVICES CONSTITUTE A PUBLIC WORKS PROJECT.]

- 1.5 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Contractor's obligations hereunder.

Section 2. COMPENSATION. District hereby agrees to pay Contractor a sum not to exceed _____, notwithstanding any contrary indications that may be contained in Contractor's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Contractor's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. District shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from District to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to District in the manner specified herein. Except as specifically authorized by District in writing, Contractor shall not bill District for duplicate services performed by more than one person.

Contractor and District acknowledge and agree that compensation paid by District to Contractor under this Agreement is based upon Contractor's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Contractor. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Contractor and its employees, agents, and subcontractors may be eligible. District therefore has no responsibility for such contributions beyond compensation required under this Agreement.

[NOTE TO STAFF: THE FOLLOWING PROVISIONS OF THIS SECTION MAY BE ALTERED AS NECESSARY TO FIT THE CIRCUMSTANCES OF A PARTICULAR AGREEMENT.]

- 2.1 **Invoices.** Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost of services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:
- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
 - The beginning and ending dates of the billing period;
 - A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
 - At District's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
 - The total number of hours of work performed under the Agreement by Contractor and each employee, agent, and subcontractor of Contractor performing services hereunder;
 - The Contractor's signature;

- Contractor shall give separate notice to the District when the total number of hours worked by Contractor and any individual employee, agent, or subcontractor of Contractor reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Contractor and District. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Contractor and District, if applicable.

[NOTE TO STAFF: THE 800-HOUR LIMIT HAS BEEN ADDED BECAUSE OF RECENT COURT DECISIONS THAT INDICATE THAT INDEPENDENT CONTRACTORS MAY BECOME ELIGIBLE FOR PERS AFTER 1000 HOURS OF WORK FOR A DISTRICT WITHIN A 12-MONTH PERIOD, ENTITLING THE CONTRACTOR TO AN EMPLOYER CONTRIBUTION FROM THE DISTRICT.]

- 2.2 Monthly Payment.** District shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. District shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.
- 2.3 Final Payment.** District shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to District of a final invoice, if all services required have been satisfactorily performed.
- 2.4 Total Payment.** District shall pay for the services to be rendered by Contractor pursuant to this Agreement. District shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. District shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.5 Hourly Fees.** Fees for work performed by Contractor on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed \$_____. Expenses not listed in Exhibit B are not chargeable to District. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.7 Payment of Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

- 2.8 Payment upon Termination.** In the event that the District or Contractor terminates this Agreement pursuant to Section 8, the District shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 Authorization to Perform Services.** The Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.
- 2.10 Liquidated Damages.** Failure of Contractor to respond to problems referred to it by District, or to complete the project within the time limits established in Subsection 1.1 of this Agreement shall result in liquidated damages payable at the rate of \$____ per day.

[NOTE TO STAFF: SECTION 3 MAY BE MODIFIED AS NECESSARY FOR THE TYPE OF WORK.]

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. District shall make available to Contractor only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein. Contractor shall make a written request to District to use facilities or equipment not otherwise listed herein.

[District list of facilities and equipment at Contractor's disposal]

3.1 In accordance with generally accepted construction practices and state law, Contractor shall be solely and completely responsible for conditions on the jobsite, including safety of all persons and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours.

Contractor shall take all necessary precautions and provide all necessary safeguards to prevent personal injury and property damage. Contractor shall provide protection for all persons including, but not limited to, its employees and employees of its subcontractors; members of the public; and employees, agents, and representatives of the District and regulatory agencies that may be on or about the work.

The services of the District in conducting review and inspection of Contractor's performance is not intended to include review of the adequacy of Contractor's work methods, equipment, bracing or scaffolding, or safety measures, in, on, or near any Contractor jobsite.

All work and materials shall be in strict accordance with all applicable state, city, county, and federal rules, regulations and codes, with specific attention to the United States Department of Labor Occupational Health and Safety Administration (OSHA) requirements. Contractor shall be solely responsible for compliance with all city, county, and state explosive transport, storage, and blasting requirements and for any damages caused by such operations.

Contractor is hereby informed that work on District property could be hazardous. Contractor shall carefully instruct all personnel working on District property that all conditions of the property are potentially

hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instructions as are necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to work underground.

In addition to complying with all other safety regulations, Contractor shall abide by any and all other District requirements contained in any specifications, special conditions or manuals, which shall be made available by District upon request.

Contractor shall provide and maintain all necessary safety equipment such as fences; barriers; signs; lights; walkways; traffic, safety, or security guards; and fire prevention and fire-fighting equipment and shall take such other action as is required to fulfill its obligations under this section. It is the intent of the District that Contractor provide a safe working environment under normal conditions. **CONTRACTOR IS ADVISED THAT DISTRICT'S OPERATIONS AND PROPERTY ARE INHERENTLY HAZARDOUS BECAUSE OF CONDITIONS SUCH AS CONFINED SPACES, POTENTIALLY EXPLOSIVE ATMOSPHERES, AND POSSIBLE EXPOSURE TO PATHOGENS.**

Contractor shall maintain all portions of the jobsite in a neat, clean, and sanitary condition at all times. If required by the District, toilets shall be furnished by Contractor for use of its employees and their use shall be strictly enforced. Contractor shall not use the District's existing sanitary facilities, unless previously authorized by the District.

Contractor shall keep adequate first aid facilities and supplies available and instruction in first aid for its employees shall be given.

District reserves the right to require that Contractor bring onto the project or engage the services of a licensed safety engineer at any time during the term of this Agreement. If Contractor does not have a licensed safety engineer on staff, then District may require that Contractor engage a subcontractor or subconsultant as the project's safety engineer. Contractor shall bear all costs in connection with meeting the requirements of this section.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Contractor, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Contractor shall provide proof satisfactory to District of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work. Contractor shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Contractor's proposal. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to District. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Contractor shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation. Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any

and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$_____ [dollar amount to be determined based on nature of the work—if no extenuating circumstances exist, \$1,000,000 is typically required] per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against the District and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Contractor, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$5,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. District, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor.

- c. For any claims related to this Agreement or the work hereunder, the Contractor's insurance covered shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the District.

Professional Liability Insurance.

4.3.1 General Requirements. Contractor, at its own cost and expense, and when applicable as determined by the Contract Administrator in his sole discretion, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate, covering licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.3.3 Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.

4.4 All Policies Requirements.

4.4.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of Coverage. Prior to beginning any work under this Agreement, Contractor shall furnish District with complete copies of all policies delivered to Contractor by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the District does not receive the required insurance documents prior to the Contractor beginning work, it shall not waive the Contractor's obligation to provide them. The District reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 Deductibles and Self-Insured Retentions. Contractor shall disclose to and obtain the written approval of District for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the District guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 Wasting Policies. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Waiver of Subrogation. Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Contractor agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Contractor, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 Remedies. In addition to any other remedies District may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option exercise any of the following remedies, which are alternatives to other remedies District may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

- Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES. Contractor shall indemnify, defend with counsel acceptable to District, and hold harmless District and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damages, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the willful misconduct of District.

The Contractor's obligation to defend and indemnify shall not be excused because of the Contractor's inability to evaluate Liability or because the Contractor evaluates Liability and determines that the Contractor is not liable to the claimant. The Contractor must respond within 30 days, to the tender of any claim for defense and indemnity by the District, unless this time has been extended by the District. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Contractor under and by virtue of this Agreement as shall reasonably be considered necessary by the District, may be retained by the District until disposition has been made of the claim or suit for damages, or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Contractor to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of District, Contractor shall indemnify, defend, and hold harmless District for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of District.

Section 6. STATUS OF CONTRACTOR.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of District. District shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise District shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other District, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under

this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by District, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of District and entitlement to any contribution to be paid by District for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Contractor Not an Agent.** Except as District may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Contractor and any subcontractors shall comply with all laws applicable to the performance of the work hereunder. This Contract will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations, pursuant to Labor Code section 1771.4. Pursuant to Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by law or regulation. Contractor shall comply with all security background check, tuberculosis or other infectious disease testing certification, and fingerprinting requirements or procedures imposed by law or District policy.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor and any subcontractors shall comply with all applicable rules and regulations to which District is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Contractor represents and warrants to District that Contractor and its employees, agents, and any subcontractors have or possess, shall keep current, and in effect at their sole cost and expense all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions or to do the work for which they are contracted hereto. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from the City and County of San Francisco.
- 7.5 **Nondiscrimination and Equal Opportunity.** Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this

Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

Contractor shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 Termination. District may cancel this Agreement at any time and without cause upon written notification to Contractor.

Contractor may cancel this Agreement upon _____ days' written notice to District and shall include in such notice the reasons for cancellation.

In the event of termination, Contractor shall be entitled to compensation for services performed to the effective date of termination; District, however, may condition payment of such compensation upon Contractor delivering to District any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or the District in connection with this Agreement.

8.2 Extension. District may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Contractor understands and agrees that if District grants such an extension District shall have no obligation to provide Contractor with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, District shall have no obligation to reimburse Contractor for any otherwise reimbursable expenses incurred during the extension period.

8.3 Amendments. The Parties may amend this Agreement only by a writing signed by the Parties.

8.4 Assignment and Subcontracting. District and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to District for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between District and Contractor shall survive the termination of this Agreement.

8.6 Options upon Breach by Contractor. If Contractor materially breaches any of the terms of this Agreement, District's remedies include, but shall not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;

8.6.3 Retain a different contractor to complete the work described in Exhibit A not finished by Contractor; or

8.6.4 Charge Contractor the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that District would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Contractor's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the District. Contractor hereby agrees to deliver those documents to the District upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the District and are not necessarily suitable for any future or other use. District and Contractor agree that, until final approval by District, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

9.2 Contractor's Books and Records. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the District under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Subsection 9.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the District. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of the District, for a period of 3 years after final payment under the Agreement.

Section 10 **MISCELLANEOUS PROVISIONS.**

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 **Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of District or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Contractor shall not employ any District official in the work performed pursuant to this Agreement. No officer or employee of District shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Contractor hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the District. If Contractor was an employee, agent, appointee, or official of the District in the previous 12 months, Contractor warrants that it did not participate in any manner in the forming of this Agreement. Contractor understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Contractor will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Contractor will be required to reimburse the District for any sums paid to the Contractor. Contractor understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code

Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

10.7 Solicitation. Contractor agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.8 Contract Administration. This Agreement shall be administered by _____ ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.9 Notices. Any written notice to Contractor shall be sent to:

Any written notice to District shall be sent to:

10.10 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, [and C] **[ENSURE THAT THE CORRECT EXHIBITS ARE LISTED]** represents the entire and integrated agreement between District and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	California Labor Code Section 1720 Information [DELETE IF NOT APPLICABLE]

10.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

10.12 Certification per Iran Contracting Act of 2010. In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Contractor's signature below Contractor certifies that Contractor, and any parent entities, subsidiaries, successors or subunits of Contractor are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

DISTRICT

CONTRACTOR

[NAME, TITLE]

Attest:

Secretary to the Board

Approved as to Fiscal Authority:

_____, Finance Director

Account Number

Approved as to Form:

_____, District Counsel

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B

COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

EXHIBIT C

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to 8 hours during any one calendar day, and 40 hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of 8 hours during any one calendar day and 40 hours during any one calendar week is permitted upon compensation for all hours worked in excess of 8 hours during any one calendar day and 40 hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Contractor and its subcontractors shall forfeit as a penalty to the District \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the District has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the District Public Works Office and shall be made available on request. The Contractor and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with California Labor Code Section 1775, the Contractor and any subcontractors engaged in performance of the services described in Exhibit A shall comply with California Labor Code Section 1775, which establishes a penalty for each worker engaged in the performance of the services described in Exhibit A that the Contractor or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of

prevailing wages is not excusable if the Contractor or subcontractor had knowledge of their obligations under the California Labor Code. The Contractor or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for any penalties therefore unless the Contractor had knowledge of that failure or unless the Contractor fails to comply with all of the following requirements:

1. The contract executed between the Contractor and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 2. The Contractor shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
 3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
 4. Prior to making final payment to the subcontractor, the Contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.
- C. In accordance with California Labor Code Section 1776, the Contractor and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, 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 performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
1. The information contained in the payroll record is true and correct.
 2. The employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified, sent to the Labor Commissioner, and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of

Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

- D. In accordance with California Labor Code Section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

- E. In case it becomes necessary for the Contractor or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor or subcontractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

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EXHIBIT 2

EMERGENCY RESTORATION SERVICES - ANTICIPATED TYPES OF WORK TO BE PERFORMED

Emergency Mitigation
Drying & Dehumidification
Mold Remediation
Contents Restoration
Temporary Power
Temporary HVAC
Fire & Smoke Damage mitigation
Water Damage & Removal
Catastrophic Event Response
Document Recovery
Duct Cleaning
Electronics & Machinery restoration
Pre-loss consulting and planning