

**CITY OF SANTA ROSA
PROFESSIONAL SERVICES AGREEMENT
WITH ERNST & YOUNG, LLP
AGREEMENT NUMBER _____**

This "Agreement" is made as of this 12th day of December, 2017, by and between the City of Santa Rosa, a municipal corporation ("City"), and Ernst & Young, LLP, a Delaware Limited Liability Partnership ("Contractor").

R E C I T A L S

- A. City desires to obtain post-fire comprehensive disaster recovery management services.
- B. City desires to retain a responsible and qualified firm to conduct the services described above in accordance with the Scope of Services as more particularly set forth in Exhibit A to this Agreement.
- C. Contractor represents to City that it is a responsible firm composed of highly trained professionals with the ability and skills necessary to successfully perform the services hereunder under the terms and conditions of this Agreement.
- D. The parties have negotiated upon the terms pursuant to which Contractor will provide such services and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, City and Contractor agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide to City the services described in Exhibit A ("Scope of Services"). Contractor shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto for the purpose of defining the manner and scope of services to be provided by Contractor and is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. In the event of any conflict between this Agreement and any terms or conditions of any document prepared or provided by Contractor and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefor, the terms of this Agreement shall control and prevail.

2. COMPENSATION

a. City shall pay Contractor for services rendered pursuant to this Agreement at the rates, times and in the manner set forth in Exhibit B. Contractor shall submit monthly statements to City which shall itemize the services performed as of the date of the statement and set forth a progress report, including work accomplished during the period, percent of each task completed, and planned effort for the next period. Invoices shall identify personnel who have worked on the services provided, the number of hours each worked during the period covered by the invoice, the hourly rate for each person, and the percent of the total project completed, consistent with the rates and amounts shown in Exhibit B.

b. The payments prescribed herein shall constitute all compensation to Contractor

for all costs of services, including, but not limited to, direct costs of labor of employees engaged by Contractor, travel expenses, telephone charges, copying and reproduction, computer time, and any and all other costs, expenses and charges of Contractor, its agents and employees. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in Contractor's invoice.

c. Notwithstanding any other provision in this Agreement to the contrary, the total maximum compensation to be paid for the satisfactory accomplishment and completion of all services to be performed hereunder shall in no event exceed the sum of five hundred thousand dollars and no cents (\$500,000.00). Contractor acknowledges and agrees that it exceeds the maximum compensation under this Agreement at its own risk. The City's Chief Financial Officer is authorized to pay all proper claims from Charge Number 020100-5320.

3. DOCUMENTATION; RETENTION OF MATERIALS; ACCESS TO RECORDS

a. Contractor shall maintain adequate documentation to substantiate all charges as required under Section 2 of this Agreement.

b. Contractor shall keep and maintain full and complete documentation and accounting records concerning all extra or special services performed by it that are compensable by other than an hourly or flat rate.

c. Contractor shall maintain the records and any and all other records pertinent to this Agreement for a period of four (4) years after completion of all services hereunder.

d. Contractor agrees to provide City, the State of California, the Federal Emergency Management Agency ("FEMA") Administrator, the Comptroller General of the United States, and any or all of their authorized representatives, access to any books, documents, papers, and records of Contractor which are pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

e. Contractor agrees to permit all or any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

f. Contractor agrees to provide the FEMA Administrator or his authorized representatives access to work sites pertaining to the services being performed under this Agreement.

4. INDEMNITY

a. Contractor shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless City, and its employees, officials and agents ("Indemnified Parties") from all claims, demands, costs or liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, interest, defense costs, and expert witness fees), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, its officers, employees, or agents, in said performance of professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or intentional misconduct of City.

b. The existence or acceptance by City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of City's rights under this Section 4, nor shall the

limits of such insurance limit the liability of Contractor hereunder. This Section 4 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 18(b), below. The provisions of this Section 4 shall survive any expiration or termination of this Agreement.

5. INSURANCE

a. Contractor shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements." Maintenance of the insurance coverage set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Contractor in exchange for City's agreement to make the payments prescribed hereunder. Failure by Contractor to (i) maintain or renew coverage, (ii) provide City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by City as a material breach of this Agreement by Contractor, whereupon City shall be entitled to all rights and remedies at law or in equity, including but not limited to immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Contractor to maintain required insurance coverage shall not excuse or alleviate Contractor from any of its other duties or obligations under this Agreement. In the event Contractor, with approval of City pursuant to Section 6 below, retains or utilizes any subcontractors in the provision of any services to City under this Agreement, Contractor shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverages set forth in the Insurance Requirements in Attachment One.

b. Contractor agrees that any available insurance proceeds broader than or in excess of the coverages set forth in the Insurance Requirements in Attachment One shall be available to the additional insureds identified therein.

c. Contractor agrees that the insurance coverages and limits provided under this Agreement are the greater of: (i) the coverages and limits specified in Attachment One, or (ii) the broader coverages and maximum limits of coverage of any insurance policy or proceeds available to the name insureds.

6. ASSIGNMENT

Contractor shall not assign any rights or duties under this Agreement to a third party without the express prior written consent of City, in City's sole and absolute discretion. Contractor agrees that the City shall have the right to approve any and all subcontractors to be used by Contractor in the performance of this Agreement before Contractor contracts with or otherwise engages any such subcontractors.

7. NOTICES

Except as otherwise provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party, shall be in writing and may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

City Representative:

Sean P. McGlynn, City Manager
City of Santa Rosa

Contractor Representative:

Robert Reeves
Ernst & Young, LLP

100 Santa Rosa Avenue, Room 10
Santa Rosa, CA 95404
707-543-3010
707-543-3030 Fax

2323 Vistory Avenue
Dallas, TX 75219
214-969-8875

8. INDEPENDENT CONTRACTOR

a. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement, and Contractor shall be issued a Form 1099 for its services hereunder. As an independent contractor, Contractor hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Contractor's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.

b. It is further understood and agreed by the parties hereto that Contractor, in the performance of Contractor's obligations hereunder, is subject to the control and direction of City as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the Contractor's sole discretion based on the Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the City does not require that Contractor use City facilities, equipment or support services or work in City locations in the performance of this Agreement.

c. If, in the performance of this Agreement, any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision, and control of Contractor. Except as may be specifically provided elsewhere in this Agreement, 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 Contractor. It is further understood and agreed that Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Contractor's assigned personnel and subcontractors.

d. The provisions of this Section 8 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between City and Contractor. Contractor may represent, perform services for, or be employed by such additional persons or companies as Contractor sees fit.

9. ADDITIONAL SERVICES

Changes to the Scope of Services shall be by written amendment to this Agreement and shall be paid in accordance with the rates set forth in Exhibit B, or paid as otherwise agreed upon by the parties in writing prior to the provision of any such additional services.

10. SUCCESSORS AND ASSIGNS

City and Contractor each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect of all promises and agreements contained herein.

11. TERM, SUSPENSION, TERMINATION FOR CONVENIENCE AND CAUSE

a. This Agreement shall become effective on the date that it is made, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

b. City shall have the right at any time to temporarily suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. If City gives such notice of suspension, Contractor shall immediately suspend its activities under this Agreement, as specified in such notice.

c. City shall have the right to terminate this Agreement for convenience at any time upon written notice of termination to Contractor. Upon such termination, Contractor shall submit to City an itemized statement of services performed as of the date of termination in accordance with Section 2 of this Agreement. These services may include both completed work and work in progress at the time of termination. City shall pay Contractor for any services for which compensation is owed; provided, however, City shall not in any manner be liable for lost profits that might have been made by Contractor had the Agreement not been terminated or had Contractor completed the services required by this Agreement. Contractor shall promptly deliver to City all documents related to the performance of this Agreement in its possession or control. All such documents shall be the property of City without additional compensation to Contractor.

d. City shall have the right to terminate this Agreement for cause upon written notice to Contractor following an Event of Default. The following shall be "Events of Default" hereunder and the term "Event of Default" shall mean, whenever it is used herein, any one or more of the following events:

(i) The failure by Contractor to perform any obligation under this Agreement, which by its nature Contractor has no capacity to cure;

(ii) The failure by Contractor to perform any other obligation under this Agreement, if the failure has continued for a period of ten (10) days after the City demands in writing that Contractor cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, Contractor may have a longer period as is necessary to cure the failure, but this is conditioned upon Contractor's promptly commencing to cure within the ten (10) day period and thereafter diligently completing the cure. Contractor shall indemnify and defend the City against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(iii) Any of the following: A general assignment by Contractor for the benefit of Contractor's creditors; any voluntary filing, petition, or application by Contractor under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise;

(iv) The appointment of a trustee or receiver to take possession of all or substantially all of Contractor's assets; or the attachment, execution or other judicial seizure of all or substantially all of Contractor's assets or of Contractor's interest in this Agreement, unless the appointment or attachment, execution, or seizure is discharged within thirty (30) days; or the involuntary filing against Contractor, or any general partner of Contractor if Contractor is a partnership, or

(a) a petition to have Contractor, or any partner of Contractor if Contractor is a partnership, declared bankrupt, or

(b) a petition for reorganization or arrangement of Contractor under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days.

(v) Any representation or warranty related to this Agreement made by any agent of Contractor is determined to have been false or misleading in any material respect at the time made.

12. REMEDIES UPON DEFAULT

This Section 12 shall apply in the event the amount payable under this Agreement exceeds the simplified acquisition threshold as determined pursuant to section 1908 of title 41 of the United States Code, or \$150,000, whichever amount is greater.

a. Remedies on Event of Default. Upon the occurrence of an Event of Default as defined in Section 11, City shall have the right upon written notice to Contractor, in addition to any other rights or remedies available to City at law or in equity, to:

(i) Terminate this Agreement and all rights of Contractor under this Agreement, (ii) Continue this Agreement without terminating the Agreement, or (iii) Temporarily suspend Contractor's performance hereunder, in whole or in part, and recover from Contractor the aggregate sum of;

(1) any amount necessary to compensate City for all the detriment caused by Contractor's failure to perform its obligations or that, in the ordinary course of things, would be likely to result from its failure; and

(2) all other amounts in addition to or in lieu of those previously set out as may be permitted from time to time by applicable California or Federal law.

(b) None of the previous remedial actions, alone or in combination, shall be construed as an election by City to terminate this Agreement unless City has in fact given Contractor written notice that this Agreement is terminated or unless a court of competent jurisdiction decrees termination of this Agreement. If City takes any of the previous remedial actions without terminating this Agreement City may nevertheless at any later time terminate this Agreement by written notice to Contractor.

(c) After the occurrence of an Event of Default, the City, in addition to or in lieu of exercising other remedies, may, but without any obligation to do so, cure the breach underlying the Event of Default for the account and at the expense of Contractor. However, City must by prior notice first allow Contractor a reasonable opportunity to cure, except in cases of emergency, where City may proceed without prior notice to Contractor. Contractor shall, upon demand, immediately reimburse City for all costs, including costs of settlements, defense, court costs, and attorneys' fees that City may incur in the course of any cure.

(d) No security or guaranty for the performance of Contractor's obligations that City may now or later hold shall in any way constitute a bar or defense to any action initiated by City for enforcement of any obligation of Contractor or for the recovery of damages caused by an Event of Default.

(e) Except where this is inconsistent with or contrary to any provisions of this Agreement, no right or remedy conferred upon or reserved to City is intended to be exclusive of any other right or remedy, or any right or remedy given or now or later existing at law or in equity or by statute. Except to the extent that City may have otherwise agreed in writing, no waiver by City of any violation or nonperformance by Contractor of any obligations, agreements, or covenants under this Agreement shall be deemed to be a waiver of any subsequent violation or nonperformance of the same or any other covenant, agreement, or obligation, nor shall any forbearance by City to exercise a remedy for any violation or nonperformance by Contractor be deemed a waiver by City of the rights or remedies with respect to that violation or nonperformance.

(f) Indemnification. The exercise of City of any one or more of the remedies set forth in this Section 12 shall not affect the rights of City or the obligations of Contractor under the indemnity provisions set forth in Section 4 hereof.

(g) No Remedy Exclusive. No remedy herein conferred upon or reserved to City is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle City to exercise any remedy reserved to it in this subsection it shall not be necessary to give any notice, other than such notice as may be required in this Section or by law.

(h) Notice of Default. Contractor agrees that, as soon as is practicable, and in any event within ten (10) days after such event, Contractor will furnish City notice of any event which is an Event of Default under this Agreement, or which with the giving of notice or the passage of time or both could constitute an Event of Default under this Agreement, which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which Contractor proposes to take with respect thereto. Each subcontract shall include the provisions of this subsection (h) to require each subcontractor of Contractor to provide City notice of any Event of Subcontractor Default in the same manner as required hereunder of Contractor for an Event of Default.

13. TIME OF PERFORMANCE

The services described herein shall be provided during the period, or in accordance with the schedule, set forth in Exhibit A. Contractor shall complete all the required services and tasks and complete and tender all deliverables to the reasonable satisfaction of City, not later than December 31, 2020.

14. STANDARD OF PERFORMANCE

Contractor shall perform all services performed under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Contractor's profession in California. All products of whatsoever nature that Contractor delivers to City shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Contractor's profession, and shall be provided in accordance with any schedule of

performance. Contractor shall assign only competent personnel to perform services under this Agreement. Contractor shall notify City in writing of any changes in Contractor's staff assigned to perform the services under this Agreement prior to any such performance. In the event that City, at any time, desires the removal of any person assigned by Contractor to perform services under this Agreement, because City, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Contractor shall remove such person immediately upon receiving notice from City of the desire of City for the removal of such person.

15. CONFLICTS OF INTEREST

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

16. CONFLICT OF INTEREST REQUIREMENTS

a. **Generally.** The City's Conflict of Interest Code requires that individuals who qualify as "consultants" under the Political Reform Act, California Government Code sections 87200 *et seq.*, comply with the conflict of interest provisions of the Political Reform Act and the City's Conflict of Interest Code, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests. The term "consultant" generally includes individuals who make governmental decisions or who serve in a staff capacity.

b. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the City's Conflict of Interest Code:

 X yes no (check one)

If "yes" is checked by the City, Contractor shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants;" and
- (2) Cause these individuals to file with the City Clerk the assuming office statements of economic interests required by the City's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, Contractor shall cause these individuals to file with the City Clerk annual statements of economic interests, and "leaving office" statements of economic interests, as required by the City's Conflict of Interest Code.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act. The City may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

17. CONFIDENTIALITY OF CITY INFORMATION

During performance of this Agreement, Contractor may gain access to and use City information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the City. Contractor agrees to protect all City Information and treat it as strictly confidential, and further agrees that Contractor shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of City. In addition, Contractor shall comply with all City policies governing the use of the City network and technology systems. A violation by Contractor of this Section 17 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

18. CONTRACTOR INFORMATION

a. City shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by Contractor pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. Contractor shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by City.

b. Contractor shall fully defend, indemnify and hold harmless City, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by Contractor pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. City shall make reasonable efforts to notify Contractor not later than ten (10) days after City is served with any such claim, action, lawsuit or other proceeding, provided that City's failure to provide such notice within such time period shall not relieve Contractor of its obligations hereunder, which shall survive any termination or expiration of this Agreement.

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

d. The parties understand and agree that any failure by Contractor to respond to the notice provided by City and/or to enter into an agreement with City, in accordance with the provisions of subsection c, above, shall constitute a complete waiver by Contractor of any rights regarding the information designated "trade secret" by Contractor, and such information shall be disclosed by City

pursuant to applicable procedures required by the Public Records Act.

18. FEDERAL PROVISIONS

Contractor shall comply with the provisions in Exhibit C to this Agreement. In the event of a conflict between any provision in Exhibit C and any other provision of this Agreement, the more stringent provision shall control and prevail.

19. GENERAL PROVISIONS

a. Entire Agreement. This Agreement contains the entire agreement between the parties. Any and all verbal or written agreements made prior to the date of this Agreement are superseded by this Agreement and shall have no further effect.

b. Modification. No modification or change to the terms of this Agreement will be binding on a party unless in writing and signed by an authorized representative of that party.

c. Compliance with Laws. Contractor shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.) ("ADA"), and any regulations and guidelines issued pursuant to the ADA; and (ii) Labor Code sections 1720, et seq., which require prevailing wages (in accordance with DIR determinations at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code sections 1720 et seq. Contractor shall pay to City when due all business taxes payable by Contractor under the provisions of Chapter 6-04 of the Santa Rosa City Code. City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Contractor.

d. Discrimination Prohibited. With respect to the provision of services under this Agreement, Contractor agrees not to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person.

e. Governing Law; Venue. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California and Federal law. Venue of any litigation arising out of or connected with this Agreement shall lie in the state trial court in Sonoma County in the State of California or the United States District Court, Northern District of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

f. Waiver of Rights. Neither City acceptance of, or payment for, any service or performed by Contractor, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

g. Incorporation of Attachments and Exhibits. The attachments and exhibits to this Agreement are incorporated and made part of this Agreement, subject to terms and provisions herein contained.

20. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS

Contractor hereby represents and warrants to City that it is (a) a duly organized and validly existing limited liability partnership, formed and in good standing under the laws of the State of **Delaware**, (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Contractor hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Contractor in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

Executed as of the day and year first above stated.

CONTRACTOR:

Name of Firm: ERNST & YOUNG, LLP

TYPE OF BUSINESS ENTITY (*check one*):

☐ Individual/Sole Proprietor
☐ Partnership
☐ Corporation
☒ Limited Liability Partnership
☐ Other (please specify: _____)

Signatures of Authorized Persons:

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

City of Santa Rosa Business Tax Cert. No.

CITY OF SANTA ROSA

a Municipal Corporation

By: _____

Print
Name: _____

Title: _____

APPROVED AS TO FORM:

Office of the City Attorney

ATTEST:

City Clerk

Attachments:

Attachment One - Insurance Requirements

Exhibit A - Scope of Services

Exhibit B - Compensation

Exhibit C – Federal Provisions

ATTACHMENT ONE INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES AGREEMENTS

A. Insurance Policies: Contractor shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Professional liability (E&O)	\$ 1 million per claim \$ 2 million aggregate	Contractor shall provide on a policy form appropriate to profession. If on a claims made basis, Insurance must show coverage date prior to start of work and it must be maintained for three years after completion of work.
4. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled, except after prior written notice has been provided to the City in accordance with the policy provisions.

2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Contractor's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Contractor's insurance and shall not contribute with it; and,
 - b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Contractor shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the Agreement. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this Agreement shall prohibit Contractor from waiving any right of recovery prior to loss. Contractor hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either Contractor or City. Self-insured retentions above \$10,000 must be approved by City. At City's option, Contractor may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Tab C: Project Understanding, Approach, and Schedule

Project Understanding

The destruction in the Santa Rosa caused by the wildfires that broke out on October 9 and burned 5% of the City's housing stock, numerous commercial structures, and forced the long-term evacuation of many residents, will continue to drive hard decisions to address recovery issues for the months and years to come. These factors are complicated by the City and Sonoma County employees themselves faced with the daunting task to rebuild, as the widespread destruction having impacted its residents personally.

From response operations questions about the efficacy of the alert and notification system, to identifying immediate measures for shelter and the long term provision of temporary and immediate needs housing and the ultimate need to rebuild, to environmental clean-up issues stemming from air quality to contaminated debris, City's recovery is in its initial stages.

Debris removal priorities have been around life and safety facilities, schools and critical watershed areas will only be complicated by rains and the need to further protect life and property from additional damages that could be caused to these burned areas. Removal of residential debris and hazardous materials is critical to reducing further risk to Santa Rosa's air quality, watershed and the health of its residents.

The City's housing supply was limited before the fires, and median housing prices nearly triple the national average. This has led to many residents being in shelters and temporary housing for an extended time frame, intensifying the need for the City and Sonoma County to work collaboratively to provide services to its homeless due to an extreme shortage of housing options, affordable housing and a homeless rate nearly three times the national average.

Before the fires, Sonoma County's economy was thriving in many ways, as demonstrated by the Region having the fifth-lowest unemployment rate among California counties and the highest hotel-room occupancy rate. However, rebuilding the tourism industry in the region, attracting skilled contractors and construction workers, will continue to be a challenge.

The City has proactively conducted training and gained an understanding of its responsibilities to document its emergency response costs to ensure it maximizes the FEMA reimbursements for damaged property. That said, with estimated property losses rising to \$3 billion in the County as a whole, local governments will experience significant drops in property tax revenues, as well as sales taxes, given the many businesses destroyed, damaged or temporarily closed because of the fires. Further

tax degradation will be experienced due to loss of agricultural crops and diminished hotel stays.

Within the immediate future, the City may want to consider the following funding options to assist with immediate disaster needs and the depletion of the City's "unassigned funds".

- ▶ Community Disaster Loans ("CDL") - CDLs will be critical to Sonoma County's capacity to survive in the near term - it is the only source of federal disaster funds that can be used to replace general government revenues displaced/lost from Hurricane Irma. Each loan currently has a \$5 million cap, but Congress has previously lifted the \$5 million limit mandated in 42 USC § 5184(b). These loans will make a serious difference in Sonoma County's being able to make payroll for its workforce in the coming weeks and months. Additionally a waiver of the state level guarantee and local collateral requirements under the CDL program (44 CFR § 206.364(d)) should be requested.
- ▶ Immediate Needs Advance ("INA") Funding - INA funding expedites FEMA recovery dollars the government expects to ultimately recover. As much as 50% of eventual funding the government expects to receive can be sent immediately if requested. Immediate Needs Funding and Advances of the Non-Federal Share requests (see below) should be prepared for discussion with FEMA.
- ▶ Commercial Insurance Advances - Analysis should be underway to understand available commercial insurance coverage for damage and institute action plans to focus on obtaining cash advances. Commercial insurance recoveries is an essential short term funding source to keep the economy funded. This must be a priority. Sonoma County should be compiling a list of all government facilities with commercial insurance. It is likely, for instance, that many of Sonoma County properties have commercial insurance policies. In addition, properties that were repaired or replaced by FEMA in prior disasters must maintain insurance or they may not be eligible. A list of the affected properties should be updated.

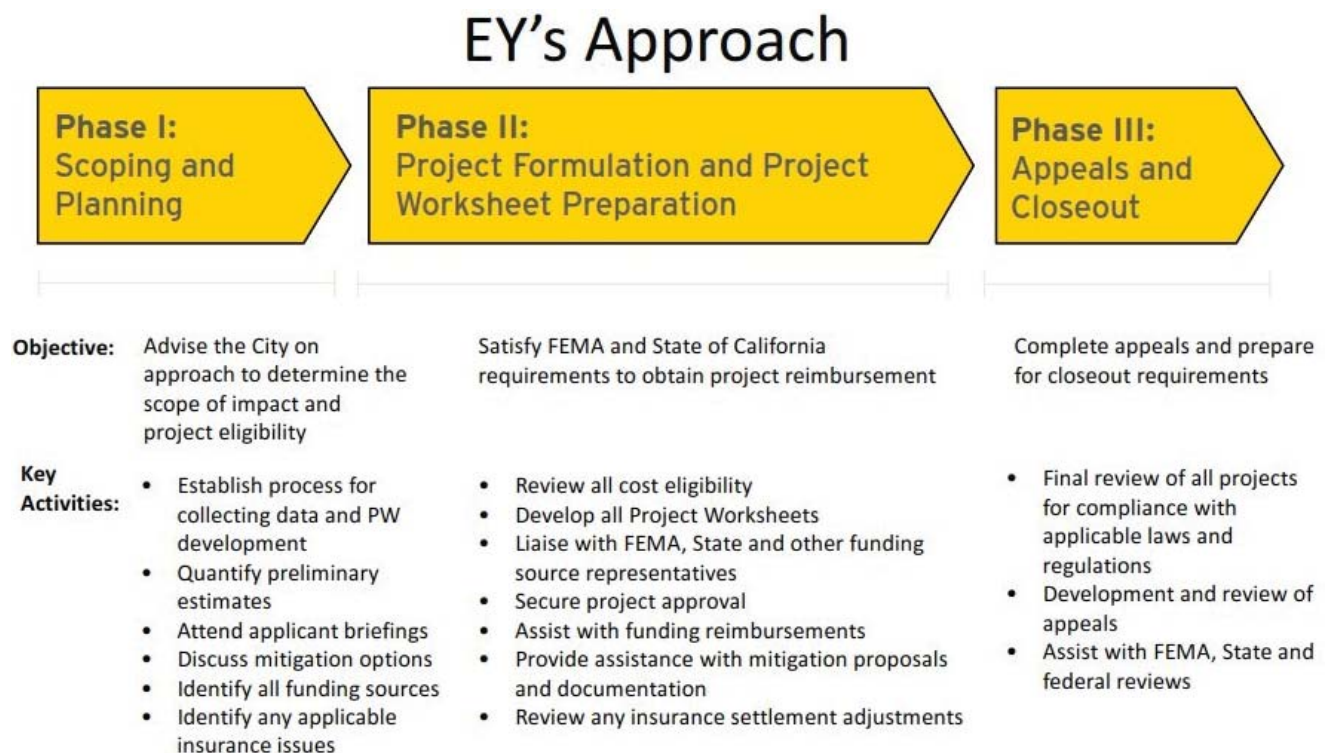
Field-proven approach

The methods that EY employs to assist applicants are designed to enhance the level of communication, documentation and proof of loss throughout the reimbursement process to (1) better prepare our clients to enter the closeout process, (2) mitigate the risk of losing funding that the Federal awarding agencies have already paid or obligated and (3) planning for long term recovery. We assist our clients throughout the process to meet Federal requirements, including: recovery training; preparing PWs; accounting for and reconciling project costs; attending and participating in site visits and inspections; assisting with the development of detailed damage descriptions and scopes of work; determining whether work was conducted according to the terms and conditions of the grant; and confirming that the required documentation is included in the project file. EY also assists clients in identifying and correcting issues that could potentially lower the risk of de-obligations, such as identification of ineligible costs or questioned costs (e.g., costs lacking supporting documentation) and out of scope work.

We have a unique perspective in the development and management of disaster recovery projects. With experience training city, county, state and federal officials and reviewing and offering recommendations for improvement at all levels of government relative to the claims and reimbursement process, our practice has the right capabilities to assist the City. We have a field-proven approach to collect, organize, and analyze data, and develop and maintain tracking systems. This approach is carried out and tracked for each individual project from initial development to project completion and closeout all within a culture of training City staff for future disasters.

For a disaster like the October wildfires with substantial damage and destruction to the community's social, environmental, physical and economic infrastructure, the recovery process could be lengthy and very expensive. When a community's infrastructure has been severely impacted and must be reconstructed, community recovery (short and long-term) entails community redevelopment or revitalization. It presents opportunities to restructure the devastated community or region and simultaneously make it more disaster resistant and/or resilient. Our approach will assist the City in identifying and maintaining your long term recovery goals in addition to immediate recovery needs.

Our team's overall approach is to start with what will be needed at closeout and work back to make sure that all of the required information is collected and a "clear path to eligibility" is identified. Our approach is implement by responsible, qualified, and experienced staff that will educate and train City staff involved with various aspects of the disaster. We have recently assisted a multitude of applicants with their FEMA recovery process and suggest an approach similar to the diagram below for the City:



Phase I: Scoping and Planning

We like to begin with an all-hands kickoff meeting that includes all the major stakeholders and as many of the key client contacts in the various departments as possible. The purpose of this meeting is to introduce the team and begin to forge the relationships which will be so important to completing a successful recovery.

We can:

- Work with the City to understand costs that are eligible for reimbursement, whether via FEMA, insurance, HUD or from other sources of funding
- Attend applicant briefings and kickoff meetings and provide additional guidance so the applicant is fully aware of eligibility and funding requirements
- Attend site visits with FEMA and State representatives, as necessary
- Review procurement procedures for compliance with federal, state and local procurement regulations
- Provide guidance with all document reporting requirements mandated by FEMA, HUD, and Cal OES
- Establish a database and tracking system for all disaster grants (or review the current system if already in place); the system will track the status of each grant and cross reference to supporting files and documentation
- Assess the current existing plans, policies and procedures and assist with the development of new procedures and provide training, as needed to the City and staff

Key features of EY's approach that focus on the delivery of high-quality services:

- ▶ An emphasis on your end-to-end disaster recovery process in a training environment. Based on our working understanding of your current recovery processes, we will be able to quickly identify potential risk areas associated with particular operations and processes, as well as to communicate and develop client service objectives so you receive the benefits you expect.
- ▶ A project-based focus that allows us to quickly identify significant projects, high-risk areas and bottlenecks and bring the right resources to assist. This will be achieved by encouraging consideration of operations and environmental aspects in deciding "what could go wrong," and by focusing attention on known areas of risk as identified by the OIG, GAO and other oversight entities in previous disasters. Our team's experience on both sides of the table gives us a unique perspective on the types of issues that can cause delays, and unique perspectives on how to remediate them.
- ▶ A risk assessment process that provides the basis for planning the necessary steps to hold risk in each area to an acceptable level. This enables us to plan our effort to be responsive to the likelihood of problematic issues, and to plan increased oversight that directly relates to your particular situation. An

effective risk management process will help to minimize the likelihood of future de-obligations.

- ▶ Once we have an understanding of the current process and issues, obstacles, roadblocks and specific bottlenecks that the City may be facing with its recovery, we will identify and analyze leading practices, including the use of IT solutions and staff augmentation to help achieve your recovery goals.
- ▶ We will develop a protocol for periodic reporting, including “flash reports” on key indicators of performance that will enable managers to monitor progress, confirm that processes are working and meeting expectations, highlight problems at an early stage, identify strengths and weaknesses, target areas for improvement, and recognize improvements when they occur.

At the completion of Phase I, we will complete a detailed work plan that addresses not only timing but also staffing training needs.

Phase II: Project Formulation and Project Worksheet Preparation

Once the various areas of loss, activity and grants have been identified, we work with the identified leaders at the City to begin the process of gathering and reviewing supporting documentation, contracts, and discussing specific issues and concerns. Documentation can be gathered using a web-based tool that allows multiple parties to post documents to their specific area while also allowing our team and management to have access to each area to monitor progress and resolve issues. As the various Federal and State grant and assistance programs begin to take form, specific project plans, meetings and needs are also identified so that each program receives the unique form of support, oversight and assistance required to expedite and maximize recovery.

Based on our experiences with past presidentially declared disasters, we work to proactively anticipate, assess, document, mitigate and monitor issues. Issues are monitored through an issues risk matrix and provided to the duly designated representatives when identified. Once we identify issues, we will work with the City to develop mitigation strategies specific to each task in order to implement and monitor the mitigation procedures.

Compliance with federal acquisition regulations, historic and environmental regulations, direct administrative cost rules and regulations, and alternative/improved project rules and regulations are just a few examples of key challenges that must be addressed early in the process, so as not to subject future funding to undue risk of denial.

We assist clients to achieve cash advances during this phase, including from FEMA and insurance. For example, FEMA’s PA program anticipates that state and local agencies may need funds quickly in the aftermath of a disaster. FEMA has several programs to allow for funding beyond the types of advance funding provided under other Federal grant programs. These include Immediate Needs Funding (“INF”) and expedited payments. INF is a long standing FEMA procedure that provides for funding for urgent emergency work that is complete and requires funding within 60 days.

Expedited payments were added to the Stafford Act by Congress in 2006 and require payment of 50% of the estimate costs for debris removal within 90 days.

We can:

- ▶ Coordinate development of Project Worksheets and versions as required by California and FEMA, including scope changes, appeals, and assistance with all FEMA PA Categories
- ▶ Assist the City in responding to FEMA document requests and questions
- ▶ Assist the City in obtaining and tracking funding, including obtaining advance payments on project worksheets or insurance claims
- ▶ Provide technical support on documentation and compliance requirements, including environmental issues, historical preservation issues, insurance issues and strategic approaches to Section 404 and 406 hazard mitigation grants
- ▶ Provide strategic assistance to address unique needs that are not satisfied by routine disaster assistance programs and assist with FEMA reimbursement for Alternate and Improved Projects
- ▶ Work with and provide oversight to departments as needed to assist them through the process
- ▶ Prepare the City personnel for meetings and attend meetings as needed with FEMA, State and other funding agencies
- ▶ Attend periodic status meetings with the City and provide a weekly flash report that summarizes recent accomplishments, project worksheet summary and funding tracker, outstanding document requests/issues and key deadlines and deliverables

The primary goal of this phase is to prepare and document claims for submission to FEMA, HUD, or other disaster grant funding sources, review and provide guidance on all available insurance adjustments, and provide assistance and guidance as needed related to mitigation proposals and efforts.

Phase III: Appeals and Closeout

Federal, State and local government budgets are tight, and Federal oversight over the receipt and disbursement of disaster recovery funding are significant and increasing. Grant recipients must account for the Federal disaster funding on a project by project basis and both recipients and sub-recipients are required to establish controls and processes to account for these funds. EY's staff have conducted hundreds of reviews of FEMA grants, including reviews of internal controls and accounting systems used by both the State and sub-recipients. In addition, our experienced staff conducted FEMA grant administration and program reviews of almost every State. These reviews included PW accounting, State and sub-recipient drawdown activity, the systems used to account for the disaster funding, and project closeout.

We can assist with the closeout process by helping the City gather and provide the documentation necessary to meet Federal requirements and compliance with grant terms and conditions.

Grant Monitoring	Compliance Review	Close Out / A-133 Review
<ul style="list-style-type: none"> ▶ Gather and review grant support and documentation ▶ Provide technical assistance ▶ Assess critical needs ▶ Review progress reporting ▶ Identify high risk projects for increased monitoring ▶ Provide training to responsible staff 	<p>Review projects for:</p> <ul style="list-style-type: none"> ▶ Compliance with laws and regulations ▶ Project accounting requirements ▶ Cost eligibility and allowability ▶ Improper payments ▶ Fraud waste and abuse ▶ Other considerations such as insurance allocations 	<ul style="list-style-type: none"> ▶ Facilitate close-out process ▶ Prepare for FEMA and IG review and audit ▶ Support any A-133 reviews ▶ Identify and analyze FEMA related findings ▶ Provide input for management decisions on findings ▶ Follow-up on finding resolution

We can assist the City with closeout and FEMA cost recovery processes, including appeals, special requests for information, arbitration, audit assistance, mitigation, and a variety of related activities. Finally, we will help the City prepare for audits and resolving audit findings, including preparation of supporting documentation, resolution of compliance and eligibility issues and development of corrective action plans.

We can:

- Review appropriate and sufficient documentation and justification for project extensions
- Review documentation for project changes, including improved or alternate projects to verify compliance with regulations
- Review compliance with contracting requirements, including specific review of the tracking and support for labor and equipment hours, which is an area of high risk for ineligible costs
- Review compliance with procurement regulations around full and open competition for contractors performing disaster recovery work for the City
- Identify procedures to detect improper payments, out-of- scope expenses, improper contracts, and other grant payments that could result in refunds or de-obligations
- Review documentation for the appropriate application of insurance proceeds to reduce grant funding
- Report on each project with recommended remedial actions, where needed

Long Term Recovery and Planning

Throughout our three-phase approach, EY will begin to gather the information needed to assist the City in identifying and developing a long term recovery plan. Long term recovery planning will engage the whole community, including government, for profit, non-profit and the community itself in disaster recovery preparedness. Inclusive planning can involve a wide array of entities, such as social services agencies, City services and agencies, the transportation sector, building officials from planning and codes, private companies, the local Chamber of Commerce, the Association of Bay Area Governments (“ABAG”), and a range of philanthropic, non-profit and faith-based organizations. With whole community planning for long term recovery conducted up front, the City will be better able to identify any critical shortfalls in advance: staffing shortages, availability to shelter and return to permanent housing, evacuations, mass notifications and tracking overtime costs for public safety officials and donations. Furthermore, the planning effort opens dialogue regarding shortfalls in continuity of operations and business continuity planning, allowing planning assumptions to be based on realistic expectations.

Quality control approach

At EY, quality is central to our strategy and to the promise we make to our clients - to deliver seamless, consistent and high-quality service worldwide. What this means to the City is that we will define with the City not only precise needs but also how we can deliver services to create a superior experience for the City and thereby lay the foundation for a trusted objective relationship.

Our team employs a diligent self-inspection process and detailed review of all work performed. Every task is rigorously reviewed at multiple levels before discussions are

held or submission is made to the City. For example, when a team member prepares a documentation review, another team member will perform a detailed review of the entire work. The third level detailed review may also be performed, as necessary based on the complexity of the analysis. The Project Manager / Partner will perform a high level review to determine whether the work has met the requirements and objectives of the task and will review for potential issues that may need to be communicated. Senior subject matter resources with relevant and appropriate FEMA and HUD experience will be utilized as necessary throughout the work and review.

Our quality control plan will be prepared according to the City's expectations. In the first week of the engagement we will meet with the City to confirm our understanding of quality standards, requirements, metrics and expectations. Based on our experiences with past Presidential declared disasters and working with public sector clients, we will proactively anticipate, assess, document, mitigate, and monitor task risks or issues. Our staff is trained and has an expectation placed by EY management to identify and raise issues if and when they occur. If issues cannot be addresses at the staff level, they are raised to the Project Manager for resolution and will be communicated with the City.

Proposed schedule to begin the project

Following a confirmation from the City to proceed, we propose the following schedule to begin the project.

Activity	Timeline
All-hands kick off meeting with City representatives to discuss the FEMA Program Assistance Approach	2 - 3 days
Develop data management tool and process and discuss with City staff	2 - 3 days
Begin to gather and review documentation for completeness	30 - 45 days
Discuss and provide guidance to City staff on FEMA, Insurance and HUD requirements	Ongoing
Discuss and identify projects for 404 and 406 mitigation	7 - 14 days
Summarize costs incurred to present initial loss estimate	30 - 45 days
Begin to work with City, State and FEMA to draft PWs	Ongoing
Discuss all available funding options with the City, such as CDBG-DR	Ongoing
Attend site visits with FEMA and State	As needed

Following an initial kickoff meeting with the City and key representatives, we will work with the City to complete a detailed work plan that addresses not only timing of deliverables but also staffing needs. Additionally, as documentation is received and more information is gained, a more detailed schedule of activities can be prepared and presented to the City. We understand the immediate needs of the City and are ready to begin once awarded a contract.

Tab D: Firm Qualifications, Team Organization, Experience and Certifications

It is critical that recipients of federal disaster funds spend those dollars appropriately as the DHS OIG and other Federal Offices of Inspector General will continue to scrutinize compliance and project eligibility issues.

Failure to comply with applicable laws and regulations can result in sizable refunds and increased scrutiny by oversight organizations. We have worked on dozens of presidentially declared disasters to assist recipients and sub-recipients to properly account for disaster relief funds, comply with applicable requirements, and obtain reimbursement for response and recovery projects. Along with this experience, EY brings a wealth of FEMA and HUD institutional knowledge to assist recipients and sub-recipients in expediting their disaster recovery process.

We have assisted clients with recovering more than \$18 billion of funding from FEMA, HUD, and insurance as a result of damage from some of the largest recent disasters, including:

"It's not just how much you get on the front end, it's also what you are able to document and keep on the back end"

*Hurricane Matthew
Hurricane Sandy
Hurricane Irene
Hurricane Isaac
Hurricane Katrina
Hurricane Ivan
Hurricane Charley
Hurricane Jeanne*

*Severe Flooding in Texas
Severe Flooding in South Carolina
Winter Storm Nemo
Midwest Tornado
Hurricane Ike
Hurricane Wilma
Hurricane Francis*

As a result, we understand the key issues and areas of interest to provide assistance to the City with recovery from the impact of the October 2017 wildfires, as well as any other existing, open disaster recovery efforts, and future disasters.

Prior select experience

EY is currently assisting various state and local agencies with FEMA, insurance and other disaster financial recovery assistance. The following is a selection of contracts of similar size and scope performed by members of our proposed engagement team for the City.

- ▶ Assisting multiple Florida entities with all aspects of their recovery from Hurricanes Irma and Matthew including FEMA PA and property insurance claims. Assistance includes developing project worksheets, scopes of work, damage assessments, all categories of FEMA PA recovery, mitigation, time

REQUEST FOR PROPOSALS - Disaster Recovery Management Services

ATTACHMENT B
COST PROPOSAL FORM

The City prefers to issue fixed price or cost reimbursement type agreements. All non-labor related costs and other than direct costs will be billed to the City at cost without mark-up.

<u>POSITIONS</u>	<u>HOURLY RATES</u>
Project Executive	\$ <u>298</u>
Subject Matter Expert	\$ <u>279</u>
Project Manager	\$ <u>298</u>
Project Accountant	\$ <u>253</u>
Senior Closeout Specialist	\$ <u>279</u>
Closeout Specialist	\$ <u>186</u>
Other: <u>Manager</u>	\$ <u>253</u>
Other: <u>Senior Consultant</u>	\$ <u>186</u>
Other: <u>Staff Consultant</u>	\$ <u>133</u>

OTHER REQUIRED POSITIONS

Proposer may include other positions, with hourly rates and attach a job description and required years of experience for each position.

ATTACHMENT B – COST PROPOSAL FORM

Page 1 of 1

Exhibit C

FEDERAL PROVISIONS

A. Definitions

1. Government means the United States of America and any executive department or agency thereof.
2. FEMA means the Federal Emergency Management Agency.
3. Third Party Subcontract means a subcontract at any tier entered into by Contractor or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.

B. Federal Changes

1. Contractor shall at all times comply with all applicable regulations, policies, procedures, and FEMA Directives as they may be amended or promulgated from time to time during the term of this Agreement, included but not limited to those requirements of 2 C.F.R. §§ 200.317 through 200.326 and more fully set forth in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, which is included herein by this reference. Contractor's failure to so comply shall constitute a material breach of this Agreement.
2. Contractor agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

C. Compliance with the Contract Work Hours and Safety Standards Act.

Pursuant to section 3701 of title 40 of the United States Code, this Section C shall apply to Contractor in the event the amount payable under this Agreement exceeds \$100,000 and may involve the employment of mechanics or laborers.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation

of the clause set forth in paragraph (1) of this section Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

D. Clean Air Act and Federal Water Pollution Control Act

This Section D shall apply in the event the amount payable under this Agreement exceeds \$150,000.

Clean Air Act

1. Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*
2. Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*
2. Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

E. Suspension and Debarment

1. This Agreement is a covered transaction for purposes of title 2 Code of Federal Regulations parts 180 and 3000. As such, Contractor is required to verify that none of Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 "Debarment and Suspension." Contractor agrees that neither Contractor nor any of its third-party subcontractors shall enter into any third-party subcontracts for any of the work under this Agreement with a third-party subcontractor that is debarred, suspended, or otherwise excluded for or ineligible for participation in Federal assistance programs under executive Order 12549.
3. Contractor must comply with title 2 Code of Federal Regulations, part 180, subpart C and title 2 Code of Federal Regulations, part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
4. This certification is a material representation of fact relied upon by City. If it is later determined that Contractor did not comply with title 2 Code of Federal Regulations, part 180, subpart C or title 2 Code of Federal Regulations, part 3000, subpart C, in addition to remedies available to the State of California and the City of Santa Rosa, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

F. Procurement of Recovered Materials

1. In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—
 - a. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
 - b. Meeting Agreement performance requirements; or
 - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

G. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by section 1352 of title 31 of the United States Code. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

H. MBE/WBE REQUIREMENTS

1. Contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible through the "Good Faith Effort" process in 2 C.F.R. § 200.321. Contractor shall document and report its Good Faith Effort processes. Contractor shall also ensure that all of its subcontractors take the affirmative steps required under 2 C.F.R. § 200.321. Affirmative steps must include:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- f. Requiring all subcontractors to take the affirmative steps listed in paragraphs (a) through (e) above.

I. MISCELLANEOUS PROVISIONS

- 1. DHS Seal. Contractor shall not use the Department of Homeland Security ("DHS") seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.
- 2. FEMA Assistance. Contractor acknowledges that FEMA financial assistance will be used to fund this Agreement only. Contractor shall comply will all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.
- 2. Federal Government Not Party. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to City, Contractor, or any other party pertaining to any matter resulting from this Agreement.
- 3. False Claims. Contractor acknowledges that Title 31 United States Code Chapter 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Agreement.