



City of Gilroy

Community Development Department

Request for Proposals

On-Call Standard and Expedited Building, Fire Plan Check and Inspection Services

No. 21-RFP-CDD-453

ATTN: CARINA BAKSA
CITY OF GILROY
7351 ROSANNA STREET
GILROY, CA 95020-6197

Proposals Due by: 3:00 pm, Thursday, June 3rd, 2021



Request for Proposals No. 21-RFP-CDD-453

Notice is hereby given that ELECTRONIC Requests for Proposals will be received at the City of Gilroy, for **On-Call Standard and Expedited Building, Fire Plan Check and Inspection Services, Project No. 21-RFP-CDD-453** as described in the attached Request for Proposals. Please note that City Hall is closed to the public due to the ongoing COVID-19 pandemic. RFPs will be accepted by email to carina.baksa@cityofgilroy.org until 3:00 pm, Thursday, June 3rd, 2021. RFPs received after that time and date will not be considered. The City of Gilroy accepts no responsibility if delivery is made to another location other than location specified above and/or delayed deliveries. RFPs should be submitted in a complete, single electronic file to the email specified in this notice. An evaluation team will review proposals and select a vendor based on the selection criteria and process outlined in the RFP. The selected vendor will enter into an agreement for a period of three (3) years upon approval by City Council, with two, one-year extensions available after that.

A free electronic copy of the RFP can be obtained by going to the City of Gilroy website (www.cityofgilroy.org). Due to the ongoing COVID-19 pandemic, all prospective parties should check the City's website for any addendums.

Respectfully Requested,
Carina Baksa
Management Analyst

No. 21-RFP-CDD-453
On-Call Standard and Expedited Building, Fire Plan Check and Inspection Services

Table of Contents

Introduction..... 1

Project Description1

Issuing Office 1

Anticipated RFP Schedule2

Submission Date and Location 2

Protests 3

Rejection of Proposals3

Modification / Withdrawal 3

Cancellation3

Duration of Proposals 3

Public Record 3

Incurring Costs 3

Selection Process 3

Proposal Contents.....4

Proposal Evaluation Criteria and Scoring4

Total Score..... 5

Scope of Work 6

Attachment A - Sample Agreement for Services Contract 7

Introduction

The City of Gilroy is a charter city located in southern Santa Clara County with a population of approximately 57,000. The City is a council-administrator form of government with the mayor elected at large for a four-year term and six City Councilmembers who are elected at large for four year terms. Development activity in the original Gilroy town site dates back to the early 1800s, with the City formally incorporating in 1870. Since then, the City experienced several annexations and growth periods throughout the 20th and 21st centuries.

Information regarding the City and its organization, such as governmental structure, services provided, the Current Operating and Capital Budgets, is available on the City website at www.cityofgilroy.org

Project Description

The City of Gilroy's Building Division ensures that the City's adopted building codes are adhered to during the plan review and construction process. We oversee construction on private property to ensure safe buildings and compliance with building, electrical, mechanical, plumbing, energy, and accessibility codes and laws. The Fire Marshal conducts comprehensive plan review and inspection for all new development and construction projects, and the permitting and routine inspection of occupancies requiring permits under the Gilroy and California fire codes, the City's Hazardous Materials Ordinance and as required by the California Code of Regulations Title 27 for the CUPA programs. The following table represents the volume of permit activity that occurs in the City of Gilroy

Calendar Year	ALL TYPES of Building Permits Applied For	ALL TYPES of Building Permits Issued	Inspections Performed	Plan Checks - All Types	New Residential Permits Issued	Commercial / Industrial Permits
2016	2372	2180	22774	1256	326	102
2017	2126	1953	19361	1265	257	89
2018	1853	1669	15710	1289	137	106
2019	2055	1823	16570	1473	204	80
2020	1373	1138	10746	1056	95	66

The City is seeking consultants to conduct on-call plan check and inspection services, providing the City with the knowledge and resources to assist with the volume of permitting activity that the City manages. The approved consultant, or consultants, would be subject to an award for these services for a period of three (3) years, with two, one-year extensions available.

Issuing Office

The Finance Department is the Issuing Office for this Request for Proposal (RFP) and the point of contact for all process and contract questions as well as protest, and all correspondence shall be through e-mail. Technical questions shall be directed to the Project Manager.

Issuing Office

Finance Department
Carina Baksa

Project Manager

Community Development Department
Hipolito Olmos

Purchasing Coordinator
7351 Rosanna Street
Gilroy, CA 95020
carina.baksa@cityofgilroy.org

Building Official, Community Development Department
7351 Rosanna Street
Gilroy, CA 95020
hipolito.olmos@cityofgilroy.org

Anticipated RFP Schedule

The City anticipates the following general timeline for this RFP and the schedule may change as necessary.

Selection Process Actions	Target Date
RFP distributed to prospective Consultants and Advertised	Friday, May 7 th , 2021
Deadline to submit RFP questions	Wednesday, May 26 th , 2021 at 4:00 PM
Questions posted on the City's website	Thursday, May 27 th , 2021
RFP submissions due to City of Gilroy (Final)	Thursday, June 3 rd , 2021 at 3:00 PM
Interviews (If Necessary)	June 15 th to June 17 th , 2021
City Council staff report posted on website	Wednesday, June 28 th , 2021
City Council Meeting	Monday, July 3 rd , 2021

Submission Date and Location

Each responding Consultant must provide one electronic copy marked with the RFP number, the consultant's name before delivering to the address listed below. The packets must be emailed directly to carina.baksa@cityofgilroy.org before the deadline.

Solicitation Documents and Changes (Addenda)

All solicitation documents may be viewed or printed on line from the City's website at www.cityofgilroy.org or may be viewed onsite at the Issuing Office at the address listed above.

Proposals received from other sources will not be considered valid documents. Please contact the Issuing Office listed above with any problems viewing solicitation documents.

All questions regarding this solicitation shall be submitted via e-mail. The questions will be researched and the answers will be communicated to all known interested Consultants and posted on the City's website after the deadline for receipt of questions.

Prospective Consultant shall not contact City officers or employees with questions or suggestions regarding this solicitation except through the primary contact person listed above. Any unauthorized contact may be considered undue pressure and cause for disqualification of the Consultant.

Consultants are responsible for checking the City's website for the issuance of any addenda prior to submitting a proposal. The Consultant is held responsible for all addenda/changes to the documents and may be considered non-responsive if their proposal does not reflect those addenda/changes.

Protests

Any complaints or perceived inequities related to this RFP shall be made in writing and directed to the Issuing Office at the address listed above and accordance with the City purchasing policy procedure 17. This policy may be found on the City's website, located here: <http://www.cityofgilroy.org/DocumentCenter/View/10774/Gilroy-Purchasing-Policy->.

Rejection of Proposals

The City reserves the right to reject any and all proposals submitted. The City also reserves the right to waive or not waive any informalities or irregularities in proposal responses.

Modification / Withdrawal

Unless otherwise specified, modification of the Proposal will not be permitted; however a Consultant may withdraw his or her Proposal at any time prior to the scheduled closing time for receipt of Proposals; any Consultant may withdraw his or her Proposal, either personally or by written request to the Issuing Office. Withdrawal of Proposal shall not disqualify the Consultant from submitting another Proposal provided the time for receipt of Proposals has not expired.

Cancellation

The City reserves the right to cancel award of this contract at any time before execution of the contract by both parties if cancellation is deemed to be in the City's best interest. In no event shall the City have any liability for the cancellation of award.

Duration of Proposals

Proposals must remain valid for at least 90 days. Proposals must be signed by an official authorized to bind the Consultant.

Public Record

All proposals submitted are the property of the City and are public records. All documents received by the City are subject to public disclosure after the City selects a Consultant.

Incurring Costs

The City is not liable for any cost incurred by Consultants prior to execution of a contract.

Selection Process

The City reserves the right to select the Consultant on the basis of the proposals or to conduct interviews with the highest qualified Consultants following evaluation and scoring of the proposals, whichever is determined to best serve the needs of the City. The City reserves the right to seek clarifications of any or all proposals.

Proposal Contents

The qualification packet, per category, shall be organized to include the following sections. Each packet should be tabbed or marked with five (5) sections. The contents for each section are listed below, and must be presented in the same order. The Consultant shall be responsible for preparing an effective and clear proposal. Concise proposals without needless duplication are encouraged.

The packet must contain at a minimum the following information:

1. **Cover Letter:** Summarize the firm's qualifications to provide consulting services for the City of Gilroy. Provide name of contact person, phone number, and email address. Maximum one page.
2. **Qualifications:** Describe your firm's experience and qualifications in conducting plan-check and inspection services. Maximum four pages.
3. **Relevant Experience:** List projects completed by the firm relevant to the City of Gilroy and scope of services requested and provide the following information for each project. Maximum six pages:
 - a) outline the specific scope of services provided and describe how your firm met or exceeded expectations;
 - b) identify the role of the firm (e.g., work was performed exclusively by the firm or a joint venture);
 - c) highlight any key team members directly involved in the project who would be part of the City of Gilroy on-call team;
 - d) specify if the project was completed within budget and on schedule (if not completed within budget and schedule provide a very brief statement explaining why); and
 - e) provide the client's contact information including name, title, and phone number as a reference.
4. **Key Team Member Summary:** Identify key team members of the firm who would be directly involved with the Gilroy on-call services. For each team member, summarize the typical role and responsibilities of the individual, and list experience relative to the typical role(s). Maximum six pages.
5. **Costs:** Provide an outline of the hourly rate schedule for the key team members and include associated administrative/technical support fee structure (e.g., administrative fees, mileage, travel time, reproduction costs).

Proposal Evaluation Criteria and Scoring

The criteria listed below will be used to evaluate the Consultants.

- **Consultant's understanding of the scope of services**
Does the proposal reflect a clear understanding of the proposed Scope of Services?
- **Consultant's corporate and team member qualifications and experience**

Do the qualifications and experience of the consultant firm and individual proposed team members demonstrate a quality that gives confidence of a high value and excellence of service delivery for the City?

- **Consultant’s references quality and responses**

Are the references from similar sized cities, are they provided the same or similar services as proposed, and how did the reference rate the proposing Consultant?

- **Overall quality of the response to the RFP**

Were the answers clear, concise, and well formulated? Does the proposal document make sense, is it structured well, and address all matters fully?

- **Consultant’s cost proposal**

Is the proposed cost proposal acceptable? Is the basis for the billing structure reasonable?

Total Score

Each packet submittal will be reviewed and scored, per the criteria described above. Based on the number and quality of responses, Consultants may be asked to continue to the interview/presentation step in the process. Each package may receive a maximum of 50 points, as summarized below:

CRITERIA	POINTS
Understanding of the scope of services	15
Corporate and team member qualifications and experience	10
References quality and responses	10
Overall quality of the response to the RFP	10
Cost proposal	5
TOTAL	50

Scope of Work

1. Commercial and industrial (structural and non - structural) building plans and fire suppression, detection and alarm system plans.
2. Perform combination building and life safety inspections for residential, commercial, and industrial in accordance with the approved documents, adopted codes and standards amended by the City.

COMPLIANCE STANDARDS

3. Perform comprehensive plan review service including all trades; other functions include but are not limited to: writing plan review reports, holding meetings, answering inquiries and phone calls as needed.
4. Incorporated requirements from other City departments, divisions, regulating agencies and jurisdictions, i.e., Planning, Engineering, Fire and Chemical Control, Health Department, as they may apply to plan reviews and inspection services.
5. Process plan revisions and verify that corrections have been satisfactorily made in a timely manner.

COMMUNICATION STANDARDS

6. Provide a 1-800-number for service calls from Building and Fire Divisions and permit applicants.
7. Be available to confer with applicants and City staff at City Hall by telephone conversations, e-mail and fax during all normal business hours.
8. Provide in-house plans examining services at City Hall when requested to do so.
9. Provide pick-up and delivery service to and from City Hall when necessary.

STAFF MEETING /PROFESSIONAL DEVELOPMENT

10. Meet with Building and Fire Marshal staff upon request.

Attachment A - Sample Agreement for Services Contract

AGREEMENT FOR SERVICES

(For contracts over \$5,000 - CONSULTANT)

This AGREEMENT made this _____ day of _____, 20_____, between:
CITY: City of Gilroy, having a principal place of business at
7351 Rosanna Street, Gilroy, California

and CONSULTANT: _____, having a principal place of business at _____.

ARTICLE 1. TERM OF AGREEMENT

This Agreement will be effective on _____ and will continue in effect through _____ unless terminated in accordance with the provisions of **Article 7** of this Agreement.

Any lapse in insurance coverage as required by Article 5, Section D of this Agreement shall terminate this Agreement regardless of any other provision stated herein.

Initial

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

It is the express intention of the parties that CONSULTANT is an independent contractor and not an employee, agent, joint venture or partner of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONSULTANT or any employee or agent of CONSULTANT. Both parties acknowledge that CONSULTANT is not an employee for state or federal tax purposes. CONSULTANT shall not be entitled to any of the rights or benefits afforded to CITY'S employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical insurance, sick leave, retirement benefits or any other employment benefits. CONSULTANT shall retain the right to perform services for others during the term of this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONSULTANT

A. Specific Services

CONSULTANT agrees to: Perform the services as outlined in **Exhibit "A"** ("Specific Provisions") and **Exhibit "B"** ("Scope of Services"), within the time periods described in **Exhibit "C"** ("Milestone Schedule").

B. Method of Performing Services

CONSULTANT shall determine the method, details and means of performing the above-described services. CITY shall have no right to, and shall not, control the manner or determine the method of accomplishing CONSULTANT’S services.

C. Employment of Assistants

CONSULTANT may, at the CONSULTANT’S own expense, employ such assistants as CONSULTANT deems necessary to perform the services required of CONSULTANT by this Agreement, subject to the prohibition against assignment and subcontracting contained in **Article 5** below. CITY may not control, direct, or supervise CONSULTANT’S assistants in the performance of those services. CONSULTANT assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholding.

D. Place of Work

CONSULTANT shall perform the services required by this Agreement at any place or location and at such times as CONSULTANT shall determine is necessary to properly and timely perform CONSULTANT’S services.

ARTICLE 4. COMPENSATION

A. Consideration

In consideration for the services to be performed by CONSULTANT, CITY agrees to pay CONSULTANT the amounts set forth in **Exhibit “D”** (“Payment Schedule”). In no event however shall the total compensation paid to CONSULTANT exceed _____.

B. Invoices

CONSULTANT shall submit invoices for all services rendered.

C. Payment

Payment shall be due according to the payment schedule set forth in **Exhibit “D”**. No payment will be made unless CONSULTANT has first provided City with a written receipt of invoice describing the work performed and any approved direct expenses (as provided for in **Exhibit “A”**, **Section IV**) incurred during the preceding period. If CITY objects to all or any portion of any invoice, CITY shall notify CONSULTANT of the objection within thirty (30) days from receipt of the invoice, give reasons for the objection, and pay that portion of the invoice not in dispute. It shall not constitute a default or breach of this Agreement for CITY not to pay any invoiced amounts to which it has objected until the objection has been resolved by mutual agreement of the parties.

D. Expenses

CONSULTANT shall be responsible for all costs and expenses incident to the performance of services for CITY, including but not limited to, all costs of equipment used or provided by CONSULTANT, all fees, fines, licenses, bonds or taxes required of or imposed against CONSULTANT and all other of CONSULTANT’S costs of doing business. CITY shall not be responsible for any expenses incurred by CONSULTANT in performing services for CITY, except for those expenses constituting “direct expenses” referenced on **Exhibit “A.”**

ARTICLE 5. OBLIGATIONS OF CONSULTANT

A. Tools and Instrumentalities

CONSULTANT shall supply all tools and instrumentalities required to perform the services under this Agreement at its sole cost and expense. CONSULTANT is not required to purchase or rent any tools, equipment or services from CITY.

B. Workers’ Compensation

CONSULTANT agrees to provide workers’ compensation insurance for CONSULTANT’S employees and agents and agrees to hold harmless, defend with counsel acceptable to CITY and indemnify CITY, its officers, representatives, agents and employees from and against any and all claims, suits, damages, costs, fees, demands, causes of action, losses, liabilities and expenses, including without limitation reasonable attorneys’ fees, arising out of any injury, disability, or death of any of CONSULTANT’S employees.

C. Indemnification of Liability, Duty to Defend

1. As to professional liability, to the fullest extent permitted by law, CONSULTANT shall defend, through counsel approved by CITY (which approval shall not be unreasonably withheld), indemnify and hold harmless CITY, its officers, representatives, agents and employees against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys’ fees, to the extent arising or resulting directly or indirectly from any willful or negligent acts, errors or omissions of CONSULTANT or CONSULTANT’S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property.

2. As to other liability, to the fullest extent permitted by law, CONSULTANT shall defend, through counsel approved by CITY (which approval shall not be unreasonably withheld), indemnify and hold harmless CITY, its officers, representatives, agents and employees against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys’ fees, arising or resulting directly or indirectly from any act or omission of CONSULTANT or CONSULTANT’S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property.

D. Insurance

In addition to any other obligations under this Agreement, CONSULTANT shall, at no cost to CITY, obtain and maintain throughout the term of this Agreement: (a) Commercial Liability Insurance on a per occurrence basis, including coverage for owned and non-owned automobiles, with a minimum combined single limit coverage of \$1,000,000 per occurrence for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof; and (b) Professional Liability Insurance (Errors & Omissions) with a minimum coverage of \$1,000,000 per occurrence or claim, and \$2,000,000 aggregate; provided however, Professional Liability Insurance written on a claims made basis must comply with the requirements set forth below. Professional Liability Insurance written on a claims made basis (including without limitation the initial policy obtained and all subsequent policies purchased as renewals or replacements) must show the retroactive date, and the retroactive date must be before the earlier of the effective date of the contract or the beginning of the contract work. Claims made Professional Liability Insurance must be maintained, and written evidence of insurance must be provided, for at least five (5) years after the completion of the contract work. If claims made coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the earlier of the effective date of the contract or the beginning of the contract work, CONSULTANT must purchase so called "extended reporting" or "tail" coverage for a minimum of five (5) years after completion of work, which must also show a retroactive date that is before the earlier of the effective date of the contract or the beginning of the contract work. As a condition precedent to CITY'S obligations under this Agreement, CONSULTANT shall furnish written evidence of such coverage (naming CITY, its officers and employees as additional insured's on the Comprehensive Liability insurance policy referred to in (a) immediately above via a specific endorsement) and requiring thirty (30) days written notice of policy lapse or cancellation, or of a material change in policy terms.

E. Assignment

Notwithstanding any other provision of this Agreement, neither this Agreement nor any duties or obligations of CONSULTANT under this Agreement may be assigned or subcontracted by CONSULTANT without the prior written consent of CITY, which CITY may withhold in its sole and absolute discretion.

F. State and Federal Taxes

As CONSULTANT is not CITY'S employee, CONSULTANT shall be responsible for paying all required state and federal taxes. Without limiting the foregoing, CONSULTANT acknowledges and agrees that:

- CITY will not withhold FICA (Social Security) from CONSULTANT'S payments;

- CITY will not make state or federal unemployment insurance contributions on CONSULTANT’S behalf;
- CITY will not withhold state or federal income tax from payment to CONSULTANT;
- CITY will not make disability insurance contributions on behalf of CONSULTANT;
- CITY will not obtain workers’ compensation insurance on behalf of CONSULTANT.

ARTICLE 6. OBLIGATIONS OF CITY

A. Cooperation of City

CITY agrees to respond to all reasonable requests of CONSULTANT and provide access, at reasonable times following receipt by CITY of reasonable notice, to all documents reasonably necessary to the performance of CONSULTANT’S duties under this Agreement.

B. Assignment

CITY may assign this Agreement or any duties or obligations thereunder to a successor governmental entity without the consent of CONSULTANT. Such assignment shall not release CONSULTANT from any of CONSULTANT’S duties or obligations under this Agreement.

ARTICLE 7. TERMINATION OF AGREEMENT

A. Sale of Consultant’s Business/ Death of Consultant.

1. CONSULTANT shall notify CITY of the proposed sale of CONSULTANT’S business no later than thirty (30) days prior to any such sale. CITY shall have the option of terminating this Agreement within thirty (30) days after receiving such notice of sale. Any such CITY termination pursuant to this **Article 7.A** shall be in writing and sent to the address for notices to CONSULTANT set forth in **Exhibit A, Subsection V.H.**, no later than thirty (30) days after CITY’ receipt of such notice of sale.

2. If CONSULTANT is an individual, this Agreement shall be deemed automatically terminated upon death of CONSULTANT.

B. Termination by City for Default of Consultant

Should CONSULTANT default in the performance of this Agreement or materially breach any of its provisions, CITY, at CITY’S option, may terminate this Agreement by giving written notification to CONSULTANT. For the purposes of this section, material breach of this Agreement shall include, but not be limited to the following:

1. CONSULTANT’S failure to professionally and/or timely perform any of the services contemplated by this Agreement.

2. CONSULTANT'S breach of any of its representations, warranties or covenants contained in this Agreement.

CONSULTANT shall be entitled to payment only for work completed in accordance with the terms of this Agreement through the date of the termination notice, as reasonably determined by CITY, provided that such payment shall not exceed the amounts set forth in this Agreement for the tasks described on Exhibit C" which have been fully, competently and timely rendered by CONSULTANT. Notwithstanding the foregoing, if CITY terminates this Agreement due to CONSULTANT'S default in the performance of this Agreement or material breach by CONSULTANT of any of its provisions, then in addition to any other rights and remedies CITY may have, CONSULTANT shall reimburse CITY, within ten (10) days after demand, for any and all costs and expenses incurred by CITY in order to complete the tasks constituting the scope of work as described in this Agreement, to the extent such costs and expenses exceed the amounts CITY would have been obligated to pay CONSULTANT for the performance of that task pursuant to this Agreement.

C. Termination for Failure to Make Agreed-Upon Payments

Should CITY fail to pay CONSULTANT all or any part of the compensation set forth in Article 4 of this Agreement on the date due, then if and only if such nonpayment constitutes a default under this Agreement, CONSULTANT, at the CONSULTANT'S option, may terminate this Agreement if such default is not remedied by CITY within thirty (30) days after demand for such payment is given by CONSULTANT to CITY.

D. Transition after Termination

Upon termination, CONSULTANT shall immediately stop work, unless cessation could potentially cause any damage or harm to person or property, in which case CONSULTANT shall cease such work as soon as it is safe to do so. CONSULTANT shall incur no further expenses in connection with this Agreement. CONSULTANT shall promptly deliver to CITY all work done toward completion of the services required hereunder, and shall act in such a manner as to facilitate any the assumption of CONSULTANT's duties by any new consultant hired by the CITY to complete such services.

ARTICLE 8. GENERAL PROVISIONS

A. Amendment & Modification

No amendments, modifications, alterations or changes to the terms of this Agreement shall be effective unless and until made in a writing signed by both parties hereto.

B. Americans with Disabilities Act of 1990

Throughout the term of this Agreement, the CONSULTANT shall comply fully with all applicable provisions of the Americans with Disabilities Act of 1990 ("the Act") in its current form and as it may be amended from time to time. CONSULTANT shall also require such compliance of all subcontractors performing work under this Agreement, subject to the prohibition against

assignment and subcontracting contained in Article 5 above. The CONSULTANT shall defend with counsel acceptable to CITY, indemnify and hold harmless the CITY OF GILROY, its officers, employees, agents and representatives from and against all suits, claims, demands, damages, costs, causes of action, losses, liabilities, expenses and fees, including without limitation reasonable attorneys' fees, that may arise out of any violations of the Act by the CONSULTANT, its subcontractors, or the officers, employees, agents or representatives of either.

C. Attorneys' Fees

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

D. Captions

The captions and headings of the various sections, paragraphs and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

E. Compliance with Laws

The CONSULTANT shall keep itself informed of all State and National laws and all municipal ordinances and regulations of the CITY which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Without limiting the foregoing, CONSULTANT agrees to observe the provisions of the Municipal Code of the CITY OF GILROY, obligating every contractor or subcontractor under a contract or subcontract to the CITY OF GILROY for public works or for goods or services to refrain from discriminatory employment or subcontracting practices on the basis of the race, color, sex, religious creed, national origin, ancestry of any employee, applicant for employment, or any potential subcontractor.

F. Conflict of Interest

CONSULTANT certifies that to the best of its knowledge, no CITY employee or officer of any public agency interested in this Agreement has any pecuniary interest in the business of CONSULTANT and that no person associated with CONSULTANT has any interest that would constitute a conflict of interest in any manner or degree as to the execution or performance of this Agreement.

G. Entire Agreement

This Agreement supersedes any and all prior agreements, whether oral or written, between the parties hereto with respect to the rendering of services by CONSULTANT for CITY and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations,

inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

No other agreements or conversation with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Such other agreements or conversations shall be considered as unofficial information and in no way binding upon CITY.

H. Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflict of laws provisions of any jurisdiction. The exclusive jurisdiction and venue with respect to any and all disputes arising hereunder shall be in state and federal courts located in Santa Clara County, California.

I. Notices

Any notice to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in **Exhibit "A", Section V.H.** but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed delivered as of actual receipt; mailed notices will be deemed delivered as of three (3) days after mailing.

J. Partial Invalidity

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

K. Time of the Essence

All dates and times referred to in this Agreement are of the essence.

L. Waiver

CONSULTANT agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

Executed at Gilroy, California, on the date and year first above written.

CONSULTANT:

CITY:

CITY OF GILROY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Social Security or Taxpayer
Identification Number _____

Approved as to Form

ATTEST:

City Attorney

City Clerk

EXHIBIT "A"

SPECIFIC PROVISIONS

I. PROJECT MANAGER

CONSULTANT shall provide the services indicated on the attached **Exhibit "B"**, Scope of Services ("Services"). (All exhibits referenced are incorporated herein by reference.) To accomplish that end, CONSULTANT agrees to assign _____, who will act in the capacity of Project Manager, and who will personally direct such Services.

Except as may be specified elsewhere in this Agreement, CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to complete the Services in accordance with the terms of this Agreement.

II. NOTICE TO PROCEED/COMPLETION OF SERVICE

A. NOTICE TO PROCEED

CONSULTANT shall commence the Services upon delivery to CONSULTANT of a written "Notice to Proceed", which Notice to Proceed shall be in the form of a written communication from designated City contact person(s). Notice to Proceed may be in the form of e-mail, fax or letter authorizing commencement of the Services. For purposes of this Agreement, _____ shall be the designated City contact person(s). Notice to Proceed shall be deemed to have been delivered upon actual receipt by CONSULTANT or if otherwise delivered as provided in the **Section V.H.** ("Notices") of this **Exhibit "A"**.

B. COMPLETION OF SERVICES

When CITY determines that CONSULTANT has completed all of the Services in accordance with the terms of this Agreement, CITY shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination of completion when, in its opinion, it has completed all of the Services as required by the terms of this Agreement and, if so requested, CITY shall make this determination within two (2) weeks of such request, or if CITY determines that CONSULTANT has not completed all of such Services as required by this Agreement, CITY shall so inform CONSULTANT within this two (2) week period.

III. PAYMENT OF FEES AND DIRECT EXPENSES

Payments shall be made to CONSULTANT as provided for in **Article 4** of this Agreement.

Direct expenses are charges and fees not included in **Exhibit "B"**. CITY shall be obligated to pay only for those direct expenses which have been previously approved in writing by CITY. CONSULTANT shall obtain written approval from CITY prior to incurring or billing of direct expenses.

Copies of pertinent financial records, including invoices, will be included with the submission of billing(s) for all direct expenses.

IV. OTHER PROVISIONS

A. STANDARD OF WORKMANSHIP

CONSULTANT represents and warrants that it has the qualifications, skills and licenses necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT'S representations and warranties regarding its skills, qualifications and licenses. CONSULTANT shall perform such Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

Any plans, designs, specifications, estimates, calculations, reports and other documents furnished under this Agreement shall be of a quality acceptable to CITY. The minimum criteria for acceptance shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar purposes.

B. RESPONSIBILITY OF CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of the Services furnished by it under this Agreement. CONSULTANT shall not be responsible for the accuracy of any project or technical information provided by the CITY. The CITY'S review, acceptance or payment for any of the Services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONSULTANT'S negligent performance of any of the services furnished under this Agreement.

C. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT

CITY, through its authorized employees, representatives or agents, shall have the right, at any and all reasonable times, to audit the books and records (including, but not limited to, invoices, vouchers, canceled checks, time cards, etc.) of CONSULTANT for the purpose of verifying any and all charges made by CONSULTANT in connection with this Agreement. CONSULTANT shall maintain for a minimum period of three (3) years (from the date of final payment to CONSULTANT), or for any longer period required by law, sufficient books and records in accordance with standard California accounting practices to establish the correctness of all charges submitted to CITY by CONSULTANT, all of which shall be made available to CITY at the CITY'S offices within five (5) business days after CITY'S request.

D. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data (including, but not limited to, computer data and source code), drawings, descriptions, documents, discussions or

other information developed or received by or for CONSULTANT and all other written and oral information developed or received by or for CONSULTANT and all other written and oral information submitted to CONSULTANT in connection with the performance of this Agreement shall be held confidential by CONSULTANT and shall not, without the prior written consent of CITY, be used for any purposes other than the performance of the Services, nor be disclosed to an entity not connected with the performance of the such Services. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is or becomes generally known to the related industry (other than that which becomes generally known as the result of CONSULTANT'S disclosure thereof) shall be deemed confidential. CONSULTANT shall not use CITY'S name or insignia, or distribute publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

E. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall CONSULTANT have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

F. OWNERSHIP OF MATERIAL.

All material including, but not limited to, computer information, data and source code, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared (or caused to be prepared) under this Agreement shall be the property of CITY, but CONSULTANT may retain and use copies thereof subject to **Section V.D** of this **Exhibit "A"**.

CITY shall not be limited in any way in its use of said material at any time for any work, whether or not associated with the City project for which the Services are performed. However, CONSULTANT shall not be responsible for, and City shall indemnify CONSULTANT from, damages resulting from the use of said material for work other than PROJECT, including, but not limited to, the release of this material to third parties for work other than on PROJECT.

G. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

H. NOTICES.

Notices are to be sent as follows:

CITY:

City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

CONSULTANT: _____

I. FEDERAL FUNDING REQUIREMENTS.

- If the box to the left of this sentence is checked, this Agreement involves federal funding and the requirements of this **Section V.I.** apply.
- If the box to the left of this sentence is checked, this Agreement does not involve federal funding and the requirements of this **Section V.I.** do not apply.

1. DBE Program

CONSULTANT shall comply with the requirements of Title 49, Part 26, Code of Federal Regulations (49 CFR 26) and the City-adopted Disadvantaged Business Enterprise programs.

2. Cost Principles

Federal Acquisition Regulations in Title 48, CFR 31, shall be used to determine the allowable cost for individual items.

3. Covenant against Contingent Fees

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the Local Agency shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

EXHIBIT "B"
SCOPE OF SERVICES

EXHIBIT "C"
MILESTONE SCHEDULE

EXHIBIT "D"
PAYMENT SCHEDULE