



# City of Gilroy

## Community Development Department

### Request for Proposals

### Kerley Urban Service Area Amendment

### No. 22-RFP-CDD-468

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

**Proposals Due by: 12:00 pm (noon), Wednesday, October 20<sup>th</sup>, 2021**



**Request for Proposals**  
**Gilroy 2023-2031 Housing Element**  
**No. 22-RFP-CDD-468**

**Notice is hereby given that ELECTRONIC Requests for Proposals** will be received at the City of Gilroy, for the **Kerley Urban Service Area Amendment, Project No. 22-RFP-CDD-468** as described in the attached Request for Proposals. RFPs will be accepted by email to [carina.baksa@cityofgilroy.org](mailto:carina.baksa@cityofgilroy.org) until **12:00 pm (noon), Wednesday, October 20<sup>th</sup>, 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.

A free electronic copy of the RFP can be obtained by going to the City of Gilroy website ([www.cityofgilroy.org](http://www.cityofgilroy.org)).

Respectfully Requested,

Carina Baksa

Senior Management Analyst

**No. 22-RFP-CDD-468**  
**Kerley Urban Service Area Amendment**

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## **Introduction**

The City of Gilroy (City) is seeking proposals from qualified consultants or consultant teams to prepare all documents required for California Environmental Quality Act (CEQA) review as well as studies/documentation required by the Santa Clara County Local Agency Formation Commission (LAFCO) for Urban Service Area amendment applications.

## **Background**

The City of Gilroy is a charter city located in southern Santa Clara County with a population of approximately 57,000. Gilroy's population increased by 37.7% from 2000 to 2020, which is above the growth rate of the Bay Area. The number of homes in Gilroy increased, changing by 12.3% from 2010 to 2020, which is also above the growth rate of the region. In 2020, 75.3% of homes in Gilroy were single family, 10.2% were small multifamily (2-4 units), and 12.6% were medium or large multifamily (5+ units).

The Local Agency Formation Commission, or LAFCO, is a state mandated independent local agency established to oversee the boundaries of cities and special districts in Santa Clara County. LAFCO regulates the boundaries of cities and special districts. Cities and districts are required to obtain LAFCO's approval prior to extending services outside of their boundaries. LAFCO plans for orderly growth and development by considering proposed amendments to urban service areas of cities; and works collaboratively with local agencies on growth, preservation, governance and service issues by conducting service reviews, prior to updating the spheres of influence of cities and special districts once every five years, or as necessary.

## **Project Description**

The approximately 194.5-acre project site is made up of nine parcels (assessor's parcel numbers 808-25-001, -002, -003, -004, -005 and 808-21-001, -002, -003, -004) located just outside the southern City of Gilroy ("city") limits, south of Luchessa Avenue, east of Thomas Road, west of Highway 101, and north of Mesa Road. The site is within the Gilroy 2002/2020/2040 General Plan (hereinafter "2040 General Plan") 20-year planning boundary and outside of the Urban Service Area (USA) boundary. The USA boundary borders the project site to the north and east. The project site is designated as Neighborhood District High in the 2040 General Plan. Surrounding uses include Uvas Creek to the north and east, agricultural uses to the south and east, the City's Sports Park to the east, and residential uses to the north and west. Existing uses of the site include agricultural production and a home site.

As illustrated on the conceptual development plan, the proposed project would consist of 659 to 1,195 residential units ranging from low density (single-family detached) to high density (apartment/condominium), consistent with the 2040 General Plan Neighborhood District High land use designation. The conceptual plan also includes identification of the Uvas Creek Riparian Corridor and setback area, flood control easement, agricultural buffer and transition area, open

space/parks, collector streets, bicycle/pedestrian greenway, controlled intersections, and existing bus stops.

The proposed project would require a pre-zoning annexation agreement following LAFCO approval of the USA amendment. A Specific Plan would be required as part of the future annexation in compliance with the City’s Neighborhood District Policy. No detailed plans are proposed at this time; however, a conceptual development plan was submitted for purposes of showing how the property could be developed.

**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  
Purchasing Coordinator  
7351 Rosanna Street  
Gilroy, CA 95020  
[carina.baksa@cityofgilroy.org](mailto:carina.baksa@cityofgilroy.org)

**Project Manager**

Community Development Department  
Cindy McCormick  
Senior Planner  
7351 Rosanna Street  
Gilroy, CA 95020  
[cindy.mccormick@cityofgilroy.org](mailto:cindy.mccormick@cityofgilroy.org)

**Anticipated RFP Schedule**

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

<b>Selection Process Actions</b>	<b>Target Date</b>
RFP distributed and Advertised	Wednesday, September 22 <sup>nd</sup> , 2021
Deadline to submit RFP questions	Friday, October 8 <sup>th</sup> , 2021 at 12:00 PM
Questions and answers posted on the City’s website	Wednesday, October 13 <sup>th</sup> , 2021
RFP submissions due to City of Gilroy (Final)	Wednesday, October 20 <sup>th</sup> , 2021 at 12:00 PM
Interviews (If Necessary)	Monday, October 25 <sup>th</sup> , 2021, afternoon.

**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](mailto: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](http://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:

<https://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 proposal packet shall be organized to include the following sections. Each packet should be tabbed or marked with the relevant 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.

In addition to the scope of work, the packet must contain at a minimum the following:

1. **Cover Letter:** Please include a cover letter which includes your interest in the project and any other information that you would like to highlight. Maximum one page.
2. **Qualifications:** Describe your firm's experience and qualifications. Include a list of jurisdictions for which you provide similar services. Maximum four pages.
3. **Key Team Member Summary:** Provide a resume for the Project Manager, main point of contact, and other key staff who will be involved in the project. Maximum six pages.
4. **References:** Include the name, address, phone number, and email for a minimum of three (3) references for which you performed similar work. Maximum one page.

5. **Costs:** Submit a summary and breakdown of the costs associated with the scope of work. Include all relevant information such as:
  - a. Cost breakdown for each task
  - b. Hourly rates for staff
  - c. An indirect cost rate
  - d. The not-to-exceed amount
  - e. Costs for any additional services offered or recommended.

**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? Does the program administration and services proposed meet the needs of the City of Gilroy?
- **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 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 100 points, as summarized below:

<b>CRITERIA</b>	<b>POINTS</b>
Understanding of the scope of services	30
Consultant team member qualifications and experience	20
References quality and responses	20
Overall quality of the response to the RFP	20
Cost proposal	10
<b>TOTAL</b>	<b>100</b>

## ATTACHMENT A - SCOPE OF SERVICES

### Deliverables

- Electronic word documents of the CEQA and LAFCO documents.
- Prepare Administrative Draft CEQA document for review and comment by city staff.
- Prepare Administrative Drafts of each LAFCO required document for review and comment by city staff.
- Hold sufficient meetings (virtual or in-person) with staff to review comments on drafts and final documents.
- Prepare a response to all public comments received on the CEQA and LAFCO documents.
- Prepare Final CEQA document
- Prepare Final Draft LAFCO documents
- Prepare CEQA public notices, including but not limited to Notice of Completion (NOC) / Notice of Determination (NOD) and OPR summary form.
- Submit all required documents to County, OPR / State Clearinghouse.
- Attend at least one (1) Public Hearing each with Planning Commission and City Council

**California Environmental Quality Act (CEQA) Documentation:** Prepare all documents required for California Environmental Quality Act (CEQA) review and submittal, including the detailed project description, Initial Study, Mitigated Negative Declaration or Environmental Impact Report and associated technical studies, and CEQA Determination. It is anticipated that there will be significant agricultural and transportation (VMT) impacts.

The evaluation of the project's effects on VMT should include use of *Valley Transportation Authority's (VTA) VMT Evaluation Tool*.

The evaluation of the projects effects on agricultural uses should include review of *Santa Clara County* policies on agricultural projection and the following documents:

- [Gilroy Agriculture Mitigation Policy](#)
- [LAFCO Policies for Gilroy Agricultural Lands Area](#)
- [LAFCO Agricultural Mitigation Policies](#)

Please note that in November 2020, the City of Gilroy adopted an Environmental Impact Report for the 2040 General Plan. Please consider the Draft EIR and Final EIR when proposing alternative levels of analysis.

## **LAFCO Documentation**

The Santa Clara County Local Agency Formation Commission ([LAFCO](#)) requires a variety of studies/documentation to be submitted with the USA amendment application. These studies include a plan for providing urban services, a fiscal impact analysis, mapping, and a vacant land inventory. The scope of work for each of the items is briefly described below.

**Map:** Prepare a map depicting the subject properties and existing city, urban service area, sphere of influence boundaries and relationship of proposed boundary to any street right of way or property line. Reference attached Legal description and maps from applicant. If the proposal unavoidably splits lines of assessment, a legal description ([Exhibit A](#)) and map ([Exhibit B](#)) of the proposal area shall be submitted for which definite and certain boundaries can be determined.

**Parcel Table:** Prepare a list of Assessor's Parcel Numbers of all properties in the proposal along with acreage, existing land uses, and current & proposed general plan & zoning designations.

**Consistency Analysis:** Review Gilroy 2040 General Plan, applicable City of Gilroy policies (e.g., Neighborhood District Policy), LAFCO [Urban Service Area Policies](#), and LAFCO annexation policies. Prepare a detailed Consistency Analysis between the project and these policies.

**Plan for Services:** Prepare a [Plan for Services](#) in compliance with LAFCO requirements and California Government Code §56653, including but not limited to:

1. An enumeration and description of how services (including but not limited to water, sewer, storm drainage, solid waste collection/ disposal, fire, police, lighting, library services, roads and schools) will be provided and who will provide the services to the affected territory.
2. The level and range of those services including detailed information on the extent, size, location and capacity of existing infrastructure. In the event there are not enough service units available to serve the proposed project, the mitigations should address a plan for obtaining the capacity necessary to provide service.
3. The estimated time frame for service delivery.
4. A statement indicating any capital improvements, or upgrading of structures, roads, sewer or water facilities or other conditions the agency would impose or require within the affected territory prior to providing service if proposal is approved.
5. A description of how the services will be financed.
6. General statement of intent to provide services to the affected territory, indicating the agency's capability of providing the necessary services in a timely manner to the affected territory while being able to serve all areas within its current boundaries and without lowering the level of service provided to areas currently being served by the agency.

**Fiscal Impact Analysis:** Prepare a Fiscal Impacts Report analyzing the fiscal impacts of the proposal on the affected local agencies, including the City of Gilroy, the County, special districts, and any affected school districts. The impacts to the County shall be developed using the Fiscal Impacts Worksheet prepared by the County.

**Residential Vacant Land Inventory:** Prepare a Vacant Lands Inventory identifying vacant lands within the city limits and its urban service area for specific land use designations, and the rate of absorption of vacant lands. If the amount of vacant land exceeds a five-year supply, explanation is required for why the expansion is necessary and how an orderly and efficient growth pattern will be maintained.

**ATTACHMENT B - 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: \_\_\_\_\_

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Social Security or Taxpayer

Identification Number

Approved as to Form

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
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 "C"**  
**MILESTONE SCHEDULE**

**EXHIBIT "D"**  
**PAYMENT SCHEDULE**