

The City of Gilroy (CITY) is seeking proposals from qualified consultants to provide project oversight and advisory services related to the CITY's Enterprise Resource Planning (ERP) software selection and implementation project.

**Issuing Office**

The Finance Department-Purchasing Division is the issuing office for this Request for Proposal (RFP) and the point of contact for the City for all process and contract questions as well as protest.

**Issuing Office**

City of Gilroy  
Jimmy Forbis  
Finance Director  
7351 Rosanna Street  
Gilroy, CA 95020  
(408)846-0250  
[Jimmy.forbis@cityofgilroy.org](mailto:Jimmy.forbis@cityofgilroy.org)

**Technical Questions**

City of Gilroy  
Scott Golden  
Information Technology Manager  
7351 Rosanna Street  
Gilroy, CA 95020  
(408) 846-0237  
[scott.golden@cityofgilroy.org](mailto:scott.golden@cityofgilroy.org)

**Anticipated RFP Schedule**

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

- Issuance of RFP documents – Friday, November 3, 2017
- Deadline for RFP questions and comments – Thursday, November 30, 2017 (5:00 PM)
- Deadline for RFP Submission – Friday, December 15, 2017 (2:00 PM)
- RFP Review by ERP Steering Committee – Completed by January 21, 2018
- Interview Date with Finalist – Wednesday, January 24, 2018
- Notice of Intent to Award – Wednesday, January 31, 2018
- City Council Approval – March 5, 2018
- Commencement of Contract – April 2, 2018

**Submission Date and Location**

Each proposer must provide one electronic copy and six hard copies of the proposal; one hard copy should be marked "Original". The outside of the sealed envelope or box should be marked with the Contractor name and "Enterprise Resource Planning Consultant" before delivering to the address listed below. The proposals must be physically received by the CITY issuing office by the Deadline for Proposal Submission, as defined above.

<p>If by mail: City of Gilroy Finance Department/Purchasing Division 7351 Rosanna Street Gilroy, CA 95020</p>	<p>If hand delivered: City of Gilroy – Finance Counter Finance Department/Purchasing Division 7351 Rosanna Street Gilroy, CA 95020</p>
---	--

**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.

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

Any clarifications or revisions will be addressed and issued in addenda; CITY must receive requests for changes in writing prior to 5:00 PM November 30, 2017.

Proposers are responsible for checking the CITY'S website for the issuance of any addenda prior to submitting a proposal. The proposer 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 in accordance with the CITY purchasing policy procedure 17 which can be found on the City's website at: <http://www.cityofgilroy.org/233/Bids-Proposals>

**Rejection of Proposals**

The CITY reserves the right to cancel 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 proposer may withdraw his or her Proposal at any time prior to the scheduled closing time for receipt of Proposals; any proposer may withdraw his or her Proposal, either personally or by written request to the Issuing Office. Withdrawal of Proposal shall not disqualify the proposer 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 proposer.

**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 contractor.

**Incurring Costs**

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

### **Selection Process**

The City specifically reserves the right to evaluate, in its absolute discretion, the total proposal of each vendor so as to select the services which best serve the needs of the City, thus insuring that the best interest of the City will be served.

### **Proposal Evaluation Criteria and Scoring**

The evaluation will be based on the technical and administrative capabilities in relation to the needs of the project/task. The criteria listed below will be used to evaluate the proposers.

- Project Understanding and Approach Max. Points: 250 Score

Evaluate the consultant's project understanding and approach to accomplish the objectives and tasks set forth in the Scope of Work. Consider methodologies proposed to accomplish the work, including the types of information or data required. Review the proposed schedule for compliance with stated milestone dates and/or suggested schedule enhancements or deviations.

- Project Team, Experience and Quality of Service Max. Points: 300 Score

Evaluate the proposed team's qualifications, experience, skills, commitment to perform the work, and references. Evaluate the firm's recent project experience, specifically for this type of work, level of complexity, and comparable size with the proposed project. Were proposed team members actively involved in the referenced projects? Consider the quality of the firm's completed projects and the quality of service the firm provided on previous projects.

- Cost Max. Points: 250 Score

The proposal that accomplishes the stated objectives and tasks at the lowest cost will receive the highest points for this criterion. Consideration of the hourly rates and number of project hours may be considered in the scoring, as well as other customer's perception of value received for services rendered.

- Presentation Max. Points: 100 Score

Evaluate the quality of presentation demonstrated in the proposal submitted with the expectation it is representative of the quality of deliverables one might anticipate receiving in the future from the proposer.

**TOTAL SCORE**

## Proposal Contents

Proposals are to include, but not necessarily be limited to, the content listed below. The volume, or size of the proposal, should be consistent with the relative size of the project. Concise proposals without needless duplication are encouraged.

1. **Letter of transmittal.** Include an introductory letter expressing interest in the project, as well as what value you add to the ERP selection and implementation process. The letter should include name of firm, RFP contract person, email address, mailing address, telephone number, and must be signed by a person authorized to bind the firm.
2. **Project Description and Approach.** Provide a statement of the services to be provided including a detailed explanation of how the services are to be provided and managed. Indicate how important each service is to successful project completion. Identify the expected involvement by City staff for each major activity in the project. A project schedule should be included in this section.
3. **Project Team.** List the experience and qualifications of staff who will be working on the project. Describe the applicable skills and accomplishments of the project manager including experience negotiating ERP contracts, knowledge of Governmental Accounting Standards and knowledge of California laws and practices. Describe project methodology experience and any applicable certifications such as Certified Project Management Professional from the Project Management Institute. Confirm availability and commitment of named key staff to the project. Describe how project management, coordination and communications with the City will be accomplished. Do not include persons who will not be working on the project. Indicate what resources are available if additional support is requested.

Include resumes at the back of the proposal which reflect education, registrations and experience of key staff.

4. **Related Experience.** Provide project descriptions for up to five recent projects similar in nature and size to the proposed project, including type of entity, start and completion dates, selected software vendor; and measures used to indicate quality and successful project completion. Include the company names of all software vendors responding to each of these five recent projects and the company names of market share leaders you anticipated, but who chose not to respond. Provide client reference names and phone numbers. Indicate the involvement of the firm and proposed key staff. Provide any background information on the size, capability and location of the firm that may be beneficial.
5. **Cost Proposal.** Provide a cost proposal to perform the scope of work. Include estimated person hours, labor costs and expenses for each task listed in the scope of work. The proposed costs should include any applicable travel and/or other expenses. Travel costs must be included in the cost proposal. Travel costs will only paid through reimbursements.

Clearly describe any deviation from the listed scope of work that would significantly affect costs. Separate the cost of any proposed optional services from the cost of services requested. The format for the cost proposal is to be selected by the consultant.

Include a listing of hourly rates for all employee classifications anticipated to work on the project, as well as rates for non-labor direct expenses. Include similar information for any major sub consultants. The listed rates will be used in preparation of any future change orders.

6. **Sample Deliverables.** Provide, in electronic format, samples of project and communication plans and project status reports created for referenced projects.

**Project Overview and Environment**

Overview

The City of Gilroy is a chartered city with a population of 60,000 and is located in southern Santa Clara County. The City is a council-manager form of government with the mayor is elected at large for a four year term and six City Councilmembers who are elected at large for four year terms.

Current Environment

The City’s current ERP software is Sungard – Pentamation, FinancePlus and CommunityPlus that serves the approximately 250 employees with approximately 100 active users. This system was originally purchased and implemented by the City in 1998. Below is a list of the functional components of the current software platform.

Accounting	Community Development
General Ledger	Building Permits
Budget	Planning & Engineering Code
Accounts Receivable	Enforcement/Citations
Purchasing & Inventory	Occupational Licensing Land
Fixed Assets	Management
Payroll	General
Employee Time Card	Customer Facing Web Interface
Cash Receipts	Custom Data Reporting Custom
Payment Card Processing	Modification Support Document
Utility Billing	Imaging
Customer Information Management	Other
Municipal Court	Fleet Management
Case Management	Work Orders

Project Staffing

The project has an ERP Steering Committee consisting of the Finance Director, Information Technology Manager, and representatives of each City department. This team will represent all executive level decision-making for the project. The current project staffing model for the City includes – a full-time Information Technology Manager, a full- time Public Safety Systems Administrator, a full-time IT Technology Technician, and a full-time IT Application Analyst (vacant). All other designated project team staff will be available on a project-need basis, while sharing time with normal job duties. It is recognized there may be additional needs for staffing based upon consultant recommendations.

## Project Drivers

The following are considerations that are driving this project and the decisions of the executive team.

- The current ERP system is considered a legacy software solution, which seems to be nearing end of life. We anticipate in the not too distant future support for this product will terminate.
- The current ERP system was developed around a Unix based terminal emulation environment. While the user interface is browser based, many aspects of the browser interaction with the system still reflect the original environment. The resulting end user experience is disjointed and not efficient.
- The industry trend is to drive access to customers with web and app based delivery models that are not available with the current ERP system.
- Management requires better access to data, information and reporting that is currently unavailable, significantly restricted, or requires custom programming to obtain.
- City personnel find the current ERP system difficult to use and understand, which significantly increases the time it takes for new employees to be productive.
- As a result of current limitations to functionality and access to data, City personnel have developed work-around processes that are impacting City business and are difficult to support.
- Third-party software integrations with the current system are extremely difficult, limited or unavailable.
- City is increasingly being exposed to legal and compliance risks due to the current systems stagnation and lack of vendor investment.

## EXHIBIT A: SCOPE OF WORK

### Scope of Work

- 1) Develop and document detailed existing (as is) and proposed (to be) functional and data requirements, including business process work flow for all City departments for the new ERP software.
- 2) Prepare a Request for Proposals (RFP) to be issued by the City for new ERP software and implementation services that will allow for thorough comparison of all qualified vendors. The RFP must be prepared in compliance with the City Purchasing Code and applicable California Government Codes and Statutes.
- 3) Lead the City through the ERP software selection process including coordinating software demonstrations and on-site visits. Assist with the identification of potential risks and issues to ensure the City makes a quality selection decision, which achieves the City's ERP requirements.
- 4) Participate in contract negotiations with selected vendor to insure a performance- based contract, where milestones are paid when accomplished.
- 5) Guide the City through the implementation of the selected software and assist with the identification and assessment of process changes necessary for a successful ERP software roll-out.
- 6) Perform the duties of an Executive Project Manager through all phases of this project, ending with the successful implementation of new Enterprise Resource Planning (ERP) software.
  - a) Act as a liaison between the steering committee stakeholder team, project team, vendor(s) and City staff.
  - b) Work with vendor and project team to develop and manage a comprehensive project plan, detailing project stages, milestones and resources.
  - c) Manage the change management process with oversight from the Finance Director for both the project and the selected vendor contract.
  - d) Insure adequate knowledge transfer to city staff to configure, manage, operate and support the new ERP software.
  - e) Provide project status reports, deliver presentations, act as public information officer to media, Council, Boards & Commissions, other outside agencies, and citizens, as deemed appropriate by the steering committee.

### Project Deliverables

- 1) Project documents necessary to support a project of this size – project plan, communications plan, executive status reports, etc.
- 2) Requirements Analysis Report detailing the functional and data requirements, including business process work flow needed for the new ERP system.
- 3) Completed RFP for new ERP software and implementation.
- 4) Evaluation and recommendation of vendor proposals for the new ERP software and implementation.
- 5) Successful completion of the ERP replacement project scope of work.

**EXHIBIT B: SAMPLE AGREEMENT**

**AGREEMENT FOR SERVICES**  
(For contracts over \$5,000 - CONSULTANT)

**[NOTE: This is for non-design professional (i.e., non-engineer, architect, or surveyor) contracts. For Construction Services, change CONSULTANT to CONTRACTOR throughout entire Agreement.]**

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:

**[NOTE: The contracting party must be either an individual or a legal entity with the capacity to enter into contracts, such as a corporation, partnership or limited liability company. If an individual is simply doing business as “x”, and “x” is not in itself a legal entity, then the contracting party is the individual, doing business as “x”] \_\_\_\_**, having a principal place of business at \_\_\_\_.

**ARTICLE 1. TERM OF AGREEMENT**

This Agreement will become 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 venturer 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 **[NOTE: If applicable to the particular contract add here: "and (c) Vendor's Protective Liability and Property Damage Insurance in the same minimum coverage as for the Commercial Liability Insurance described above."]**; 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 insureds on the Comprehensive Liability **[NOTE: If applicable add: "and Vendor's Protective Liability"]** insurance policy referred to in (a) **[NOTE: If applicable add: and (c)]** 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. **[Note: Professional liability insurance (also called errors and omissions insurance) is essential for professional services rendered by professionals such as engineers, architects, attorneys, medical professionals, and environmental consultants, but may be eliminated for other professions for which such coverage is not written. Generally, contracts solely for construction work do not require professional liability insurance (e.g. a contract with a roofing contractor to do some repair work), unless the services being rendered include some element of engineering or architectural work (e.g. design/build contracts). When in doubt, call the City Attorney's office. If professional liability insurance does not apply, this requirement can be deleted in this Section and the lettering for the listed items of insurance should be revised accordingly.]**

**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.**

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.

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 office 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. PROGRESS SCHEDULE**

The schedule for performance and completion of the Services will be as set forth in the attached **Exhibit "C"**.

**IV. 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.

V. 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**