

The City of Gilroy (CITY) is seeking proposals from qualified vendors for IRS Section 115 Retirement Trust Services

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.

City of Gilroy
Jimmy Forbis
Finance Director
7351 Rosanna Street
Gilroy, CA 95020
(408)846-0250
Jimmy.forbis@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, May 31, 2019
Deadline for RFP questions and comments – Thursday, June 20, 2019 (2:00 PM PDT)
Deadline for Electronic RFP Submission – Thursday, June 27 (2:00 PM PDT)
RFP Review – Completed by July 3, 2019
Telephone Interview (TBD) – Week of July 15, 2019
Notice of Intent to Award – July 22, 2019
City Council Approval – August 19, 2019

Submission Date and Location

Each proposer must provide one electronic copy submitted to jimmy.forbis@cityofgilroy.org by Thursday, June 27, 2019 by 2:00 PM PDT.

Solicitation Documents and Changes (Addenda)

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

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 2:00 PM Thursday, June 20, 2019.

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.

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.

Acceptance of Standard Agreement

As a condition of submitting an RFP response, all vendors are required to accept the term and conditions of the City's Standard Agreement (Exhibit A). Request for variations must be made prior to the deadline for RFP questions and comments – Thursday, June 20, 2019 (2:00 PM PDT). The CITY will address those questions and provide responses to vendors prior to the RFP submission deadline.

Project Overview and Environment

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.

The City is currently exploring options for managing its long-term pension liabilities. One of the options under consideration is the participation in a Trust. The primary objective of this RFP is to obtain information for purposes of evaluating prospective Firms who provide Trust services.

The City participates in the 2.5% at 55 (Miscellaneous Tier I), 2.0% at 62 (Miscellaneous Tier II PEPRAs), 3.0% at 50 (Police Safety Tier I), 2.0% at 50 (Police Safety Tier II), 2.7% at 57 (Police Safety Tier III PEPRAs), 3% at 55 (Fire Safety Tier I), 2% at 55 (Fire Safety Tier II), and 2% at 57 (Fire Safety Tier III PEPRAs) agent multiple-employer defined benefit plans.

The City's defined benefit pension plans provide retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. The Plans are part of the Public Agency portion of the California Public Employees Retirement System (CalPERS), an agent multiple-employer plan administered by CalPERS, which acts as a common investment and administrative agent for participating public employers within the State of California. A menu of benefit provisions as well as other requirements are established by state statutes within the Public Employees' Retirement Law.

As of the measurement date of June 30, 2017, the City has approximately \$81 million in net pension liability.

Proposal Evaluation Criteria and Scoring

The Evaluation Committee will evaluate each respondent's relevant experience and expertise. Firms will be evaluated on the information presented in the RFP response. Final selection may be based on the response as well as any supplemental information requested by the Evaluation Committee or obtained through interviews. Evaluation factors are expected to include the following:

1. Qualifications as they relate to this project (40%) in the order shown.
 - a. Firm's experience with the planning and implementation of a Pension and OPEB Trust.
 - b. Firm's experience with Fiduciary investment advisory services.
 - c. Qualification so proposed key personnel.
 - d. Communication skills.
2. Firm's reputation for integrity and competence (20%).
3. Price (20%).
4. Apparent ability to provide the required services in a timely matter (10%).
5. Responses to supplemental questionnaire (10%).

Contract negotiations will begin immediately with the first choice candidate after the evaluation process. If an agreement on scope and cost is not reached within fifteen (15) working days, with the first choice candidate, the next highest ranked candidate will be contacted and negotiations with that candidate will begin. This process will continue until an agreement is reached or it is decided to conduct a new RFP process. Interviews may be scheduled with the highest ranking firms.

Submittal of Response to RFP

The RFP response shall provide the information as follows:

- Cover Letter
 - Company Qualifications
 - Key Project Staff Experience and Qualifications
 - Client References
 - Cost Proposal
 - Response to Supplemental Questionnaire
1. **Cover Letter.** The response shall include a letter of transmittal attesting to its accuracy signed by an individual authorized to execute binding legal documents on behalf of the proposing firm or joint venture. The cover letter shall provide the name, address, email, and telephone numbers of the proposed Project Manager, serving as the primary contact for the company.
 2. **Company Qualifications.** The response shall describe the respondent's experience in serving as a Trust services provider. The response must clearly demonstrate that the respondent has the experience, skill, and expertise necessary to successfully plan, implement, and provide ongoing investment advisory services for the Trust. Preference will be given to respondents that have:
 - Specific knowledge and experience with Fiduciary investment functions.
 - Prior experience with implementation of IRS Section 115 Trusts (both Pension and OPEB).
 - Approval from the IRS in the form of a Private Letter Ruling (PLR) for a Single Employer and Multiple Employer trust accepting contributions for Pension and OPEB.
 3. **Key Project Staff/Qualifications.** The response must include a listing of the key personnel (including sub-consultants when applicable) who will be performing the work including a description of their background, qualifications, and recent similar experience and responsibility. Clearly specify the individual designated as the Project Manager.
 4. **Client References.** At least three (3) client references are required. They shall include contact person, current telephone number, and email address. References should focus on Trust services in which the personnel listed in Item 3 had responsibilities.
 5. **Cost Proposal.** Provide your current schedule of fees and charges for services. 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.
 6. **Response to Supplemental Questionnaire.** Provide responses to Exhibit B: City of Gilroy Request for Proposal for IRS Section 115 Trust Services.

Exhibit A

**City of Gilroy
Supplemental Questionnaire**

Firm Background and Organization

- 1) How many California local government clients do you currently have in your Section 115 retirement trust program for Pension and separately for OPEB? Provide a list of those agencies.
- 2) Will you utilize any subcontractors for the servicing of this Trust? If yes, describe your relationship with the subcontractor, the subcontractor's history and experience in providing similar fund services and the experience of the subcontractor's employees that will provide services to the plan.
- 3) Specify the number of years your organization or current subcontractor has been providing investment advisory services.
- 4) Is your firm or subcontractor a registered investment advisor under the Investment Advisor's Act of 1940? Please attach Part 2A of your most recent Form ADV as an Appendix.
- 5) Describe any SEC, FINRA, or regulatory censure or litigation involving your firm, subcontractor, or its employees within the past three years.

Section 115 Trust and Custody Services

- 6) Does your Section 115 trust program have approval from the IRS in the form of a Private Letter Ruling (PLR)?
- 7) Does your firm require a minimum invested amount to open a 115 retirement trust account?

Investment Approach

- 8) Please describe your investment research and resources including investment manager/fund selection.
- 9) Explain your views on passive versus active management. What is your recommended allocation between passive and active management?
- 10) What are your approaches to rebalancing or reallocating asset classes, styles, and sectors for or on behalf of the fund? How do you add value in this process?
- 11) Describe the investment options available. Please provide 1, 3, and 5 year return history and underlying expense ratios for each fund/portfolio. Do your total portfolio returns comply with Global Investment Performance Standards ("GIPS®")?

Reporting and Client Service

- 12) Please include a sample of all the type(s) of periodic reports that will be provided to the City.
- 13) How frequently would you suggest your staff meet with the City and why? Who will attend these meetings?

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 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; 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 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.

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 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

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

INSURED: Active Acquisition Partners LLC;

POLICY #: PHPK1143095

POLICY PERIOD: 03/03/2014

TO 03/03/2015

COMMERCIAL GENERAL LIABILITY
CG 20 26 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
City of Gilroy, its officers, officials and employees 7351 Rosanna Street Gilroy, CA 95020 Service Agreement: Fire Department Personnel Testing City of Gilroy, its officers, officials and employees are named as an additional insured, per the attached endorsement
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.