

**CITY OF GILROY  
COMMUNITY DEVELOPMENT DEPARTMENT**



**REQUEST FOR PROPOSAL NO.  
10-RPF-CDD-342  
CONSTRUCTION  
MANAGEMENT AND RELATED  
SERVICES FOR THE NEW  
CITY OF GILROY PUBLIC  
LIBRARY**

**Proposals Due: August 26, 2009, by 2:00 P.M.**

**Interviews: September 23, 2009 (time to be determined)**

**Contact:**

Rick Smelser  
City Engineer  
Community Development Department  
City of Gilroy  
7351 Rosanna Street  
Gilroy, CA 95020

Phone: (408) 846-0260

FAX: (408) 846-0429

Email: [rick.smelser@cityofgilroy.org](mailto:rick.smelser@cityofgilroy.org)

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## PROPOSAL REQUIREMENTS

### ***Introduction***

The City of Gilroy is a California charter city with a population of over 51,000. It is located in the southern portion of Santa Clara County approximately twenty-five miles south of central San Jose. Until the last ten to fifteen years, Gilroy was primarily an agricultural center. However, with the rapid growth of San Jose to the north, the character of Gilroy is beginning to change and is becoming more of a bedroom community for people employed in the North county area.

The current library, located at 7387 Rosanna Street, was constructed in 1975 when the city's population was 15,589. In 2000 the City of Gilroy anticipated reaching General Plan "build-out" (or maximum land use within the City's boundaries according to the new General Plan) by the year 2040. The projected population was expected to increase to approximately 90,305 at General Plan build-out and create significant additional demands on the library and other city facilities. In addition, the library no longer met critical earthquake codes and faced other costly improvements that were not an efficient expenditure for a facility of its size, age and maintenance status. In 2000 the City Council approved a Library Expansion Committee to develop a Master Plan for a new library facility. The committee was later directed to procure grant funding and design services to ultimately construct a new Library Facility. In the fall of 2000, Fields Devereaux, Architects and Engineers, now Harley Ellis Devereaux, Architects and Engineers, were hired to develop the Master Plan and provide these design services.

The Library Master Plan was completed in February 2003. The Master Plan quantified the demands created by a projected growing city population and determined that in order to provide adequate library services to the present city population of more than 51,000 as well as a 2020 population of 69,500, a facility of 53,500 square feet was needed to replace the current Library. It also determined that limited additions would be necessary to continue to meet the space demands beyond 2020. To procure grant funding for ultimate construction of the library, design plans were authorized up to 90% design. The plans were submitted to the State of California for grant funding in three different cycles of the Library Bond Act of 2000 but the state was not able to fund the grant.

In May 2008 the City Council directed staff to take the steps necessary to place a measure on the November 2008 ballot for bond funding. In November 2008 bond funding in the amount of \$37 million was approved by the voters to complete the new library design, move the existing library to temporary facilities, demolish the existing library, acquire property and construct additional parking improvements along Dowdy Street and construct a new library facility and library related civic center improvements.

On April 6, 2009 Council approved Harley Ellis Devereaux to provide design services to complete their design of the new library which was brought to 90% completion in 2003. In order to establish a scope of work for the final design phase of the new library, Council authorized Harley Ellis Devereaux to determine what design changes and services would be needed to bring

the existing plans into conformance with current codes, Title 24 energy standards, changes in library programs and technology and to perform an analysis of the opportunities and cost benefits related to each level of LEED certification.

After performing new code reviews, new structural code analysis, Title 24 energy calculations and analyses, cost benefit sustainability analyses for each level of LEED and a three part review of library programming, services, and technology needs, Harley Ellis Devereaux presented their findings to Council on May 18, 2009. The results of their analysis indicated that the initial 90% design effort for the library building was very good and very few new code related design changes were necessary to bring the initial 90% design up to existing standards. In addition, the cost benefit sustainability analyses performed for each of the LEED certification levels revealed that the initial 90% design, with upgrades to meet current code standards and available equivalent materials, was eligible to target certification at the level of LEED Silver. It was noted that a Silver Level LEED certification could be pursued within the revised baseline hard construction cost range of \$22 to \$24 million, excluding “soft” costs such a fees, permits, CM services and additional design services.

To better quantify the LEED analysis and determine that every possible enhancement was being made to get the best return for the money spent on the project, Council directed staff to review all possible LEED enhancements beyond LEED Silver. The analysis revealed that with some design enhancements involving storm water management, natural day lighting, integrated energy management control systems and mixed mode thermal conditioning to improve performance the initial 90% design could be eligible to target certification at the level of LEED Gold or better. The total number of targeted attainable points based on these enhancements was determined to be 55 to 59. The point range for LEED Gold is 39-51. On June 8, 2009 Council directed staff to add these enhancements to the project and pursue certification at the level of LEED Gold or better.

Final design is scheduled to start in July 2009 and continue through October 2009. City permit review is scheduled to start concurrently with constructability review in November 2009 and continue through February 2010. During this final design/permit review period, revised architectural and site and environmental approvals will be completed, existing library materials and staff will be relocated to a temporary library site and the existing library will be demolished.

Project construction will consist of separate contracts for demolition of the existing library, scheduled to start in November 2009, and construction of the new library building including civil site improvements and new library equipment and furnishings, scheduled to begin in April 2010. Construction may be able to start earlier should any of the design, permit review, relocation and demolition periods be completed sooner than expected.

The City of Gilroy Community Development Department will act as Project Manager and Owner’s Representative. The City’s Project Manager will be the City Engineer. The Construction Manager as envisioned in this RFP will report directly to the Project Manager.

City of Gilroy Building Permits and CEQA environmental clearances will be provided by the City of Gilroy.

This Request for Proposal (RFP) states the City's requirements and specifies the general rules for preparing the proposal.

### ***Proposal Content Requirements***

The City desires to obtain the services of an outside organization or individual to perform Construction Management and Other Related Services as described generally in Exhibit A attached during several phases of construction of the new Gilroy library, including the demolition of the existing library building, construction of the new library building, construction of additional parking improvements and other site improvements related to the new library. Interested, qualified parties should respond to this request for proposals as outlined below. The city is seeking a firm well qualified in all aspects of construction management along with demonstrated successful LEED construction, facilitation and commissioning experience with a minimum of three (3) LEED Silver Library projects of a size and scope similar to this project having a construction cost of \$25 million or greater.

#### Project Statement

- A. Statement of Understanding - Provide a brief statement indicating an overall understanding of the project.
- B. Project Approach - Provide an understanding of the projects issues. Include a short discussion of the intended approach to the project that demonstrates that the proposer understands the issues and the proposer's ability to address them. Identify key elements of the project and what special approach your firm will use to control these elements. Include a list of all proposed sub consultants expected to be engaged in any work including their qualifications and experience.
- C. Declaration of Non-Affiliation - The Consultant shall sign a notarized declaration of non-affiliation certifying that the consultant is not affiliated with nor has any financial interest in any manufacturer, distributor, supplier or other company connected with consultant's recommendation. Form is included.
- D. Costs – Although cost will not determine the selection, each consultant shall provide his/her estimated costs.
- E. Project Team References - List each member of the project team including any sub-consultant managers to be utilized on the project and their qualifications and past experience for relevant Library projects. For each key project team member and sub-consultant manager, provide LEED certification qualifications and demonstrated successful LEED construction, facilitation and commissioning experience with a minimum of three (3) LEED Silver Library projects of a size and scope similar to this project having a construction cost of \$25 million or greater. Key project team member relevant information as needed.

- a) Describe the key project team member's including sub-consultant manager's role on the team (principal, project director, etc.) and the type of work performed. If possible show examples of their work in their area of concern with special emphasis on expertise in library construction and LEED certification. Each key project team member and sub-consultant manager will be required to attend the oral presentation.
  - b) For each key project team member's project descriptions include the following information:
    - 1. Project name and location.
    - 2. Brief description of project scope and construction cost.
    - 3. Month and year services began and ended.
    - 4. Team Members and sub-consultants construction management responsibility.
    - 5. Client name, address, contact person and telephone.
- F. Consultant Firm References - Provide LEED certification qualifications and submit a Library Project list completed by your firm with demonstrated successful LEED construction, facilitation and commissioning experience with a minimum of three (3) LEED Silver Library projects of a size and scope similar to this project having a construction cost of \$25 million or greater. Relevant information as needed.
- a) Describe experience in providing comprehensive construction and project management of Library projects of the size and scope similar to this project and have a construction cost of \$25 million or greater.
  - b) Firms litigation history, include pending litigation and outcome of completed litigation.
  - c) Describe ability to work with multiple government agencies, City staff and translate agency requirements into a successful project.
  - d) For each project description and litigation history provide the following information:
    - 1. Project name and location.
    - 2. Brief description of project scope and construction cost.
    - 3. Month and year services began and ended.
    - 4. Approximate fees.
    - 5. Name of Project Manager.
    - 6. Firm's project/construction management responsibility.
    - 7. Client name, address, contact person and telephone.
    - 8. Project Approach and Organization
- G. Noncollusion Declaration - The Consultant shall sign, date and notarize a Noncollusion Declaration. Form is included.
- H. Questionnaire – Fill out enclosed questionnaire.

## **Proposal Information**

- A. To assist potential proposers evaluate their level of interest and prepare proposals for the project proposers can go to the City of Gilroy home page to view information compiled by the city regarding this project at <http://www.cityofgilroy.org> and to an FTP site provided by the Architect containing all available design documents, including the 90% construction documents. In order to access the FTP site, simply connect to the Internet and access <ftp://ftp.heudev.com>. You will be prompted for a user name and password. After typing in your user name and password, you will see the folder(s) you have access to and you may copy and paste files to and from that location. Please remember that your Password IS Case Sensitive and must be typed accordingly.

User Name: rsmelser  
Password: K93s0GA7

If you are using **Internet Explorer 7** you may see the following statement in your browser windows: **To view this FTP site in Windows Explorer, click Page, and then click Open FTP Site in Windows Explorer.** Please make the changes in your browser window in order to view the FTP Site correctly and allow "drag and drop capabilities".

If you experience a problem accessing the Harley Ellis Devereaux FTP site, there are two options that need to be enabled in Internet Explorer.

Internet Explorer:

Click Tools>Internet Options. Go to the Advanced tab.

Under the Browsing Section,

Enable folder view for FTP Sites

Use Passive FTP (for firewall and DSL modem compatibility)

- B. Direct questions regarding this RFP to the following:

Rick Smelser  
City Engineer  
7351 Rosanna Street  
Gilroy, CA 95020  
Phone: (408) 846-0260  
FAX: (408) 846-0429  
Email: [rick.smelser@cityofgilroy.org](mailto:rick.smelser@cityofgilroy.org)

- C. Incurring Costs - The City is not liable for any cost incurred by a consultant responding to this Request for Proposal (RFP).
- D. News Release - News releases pertaining to this RFP or to the award of a contract

shall not be made without the prior written approval of the City.

- E. Insurance – The successful Consultant will not start work until all insurance requirements meet the approval of the City. The consultant is also responsible for all sub-consultant insurance requirements.
- F. Acceptance or Rejection and Negotiation of Proposals - The City reserves the right to accept or reject any or all proposals. After selection by the City, the contents of the submitted proposal will become a contractual obligation. Failure to agree to include the proposal as part of the contractual agreement may result in cancellation of the selection. The City reserves the right to negotiate a modification to or accept any part of the proposal and will not be obligated in any way to accept those parts that do not meet with the approval of the City. Other terms and conditions of the contract will be negotiated at the time of selection and will be subject to the approval of the City Attorney.
- G. Length of Proposal - Due to a restricted time schedule, the maximum length of the RFP shall be 20 pages, Project Team References and exhibits excluded.
- H. Response Submission - Six (6) copies of each proposal are required. All proposals must be sealed in a package showing the following information on the outside and addressed to the Purchasing Division, City of Gilroy, 7351 Rosanna Street, Gilroy, CA 95020.

**Request for Proposal No. 10-RFP-CDD-342**

**RFP Title: CONSTRUCTION MANAGEMENT AND RELATED SERVICES  
FOR THE NEW CITY OF GILROY PUBLIC LIBRARY**

**Consultant's name and address**

**City of Gilroy**

The proposal package must be mailed or delivered to the above address prior to the deadline for receipts of proposals. All respondents who mail or ship their proposals must allow sufficient delivery time to ensure receipt of their proposals by the time specified. Late proposals will not be accepted for consideration.

- I. Deadline for Receipt of Proposals - All proposals must be received by the Purchasing Division, City of Gilroy, 7351 Rosanna Street, Gilroy, CA, 95020, by 2:00 P.M. on August 26, 2009.
- J. It is the City's intent to enter into Agreements which result from this RFP immediately after City Council approval.
- K. Selection Criteria for Oral Interviews - All proposals will be evaluated against the following criteria:

- 1) The Professional experience and background of prime consultant including the experience of principals, project managers and other key personnel. Prime consultant prior similar project experience with LEED projects and record of firm in accomplishing LEED goals and certification.
- 2) Record of similar work performed for other cities and/or other agencies by the firm, the project team and each project team members.
- 3) Completeness of the proposal and conformance to RFP requirements for content and format, and level of effort in answering the RFP.
- 4) Technical quality of the approach and methodology. The level of effort utilized to identify key elements of the project and suggested approach to provide a successful project.
- 5) The firm's ability to perform the services at a fair and reasonable price to the City.

Based on the above criteria, a minimum of four (4) consultants will be selected to make an oral presentation before the Selection Advisory Committee on September 23, 2009 (time to be determined). Each key project team member will be required to attend the oral presentation including the project team manager and any sub-consultant managers. The consultant's presentation should relate primarily to the specific work under the proposal, including demonstrated successful LEED construction, facilitation and commissioning experience with LEED Silver Library projects of a size and scope similar to this project having a construction cost of \$25 million or greater, rather than to general qualifications. The City will evaluate the consultant's interview and incorporate that evaluation as part of its selection procedure.

The City will schedule a time and location in Gilroy for each oral presentation. Recordings may be made by the City of all oral presentations for further study and analysis. Should a consultant refuse to honor the request for an oral presentation or interview or key project team member fail to attend the oral presentation including the project team manager or any sub-consultant managers it may result in the rejection of their proposal by the City. Final selection will be approved by the City Council based on recommendations of the Selection Advisory Committee.

The Selection Advisory Committee will rate firms based on the following questions and scoring sheet.

ISSUE	Points Awarded	Possible Points
1. Similar project experience		20
2. Discussion of the firm's and subconsultant(s) capacity to perform the work.		20

3. Discussion of the firm's understanding project needs.		20
4. Discussion of proposed services to satisfy project needs and the firm's methods used in providing these services.		20
5. Discussion of the firm's LEED certification experience and qualifications to successfully certify the Library for LEED Gold Plus.		20
<b>TOTAL</b>		<b>100</b>

The following exhibits are included in this RFP:

A. Construction Management Services Generalized Scope of Work for the New Library. Note that this is for proposal preparation purposes only and is subject to change.

B. Draft Project Schedule. Note that this is for proposal preparation purposes only and is subject to change.

C. City of Gilroy Sample Standard Consultant Agreement. Note that this document is continually being updated. The document signed by the successful consultant may differ from the sample agreement. If a proposer wishes to take exception to any of the terms and conditions contained in the consultant agreement, these should be identified specifically; otherwise it will be assumed that the proposer is willing to enter into the agreement as it is written. The City will consider such exceptions as part of the evaluation process which may constitute grounds for rejection of the proposal. The consultant agreement will not be executed by the City without first being signed by the proposer.

## REQUIRED FORMS

### ***DECLARATION OF NON-AFFILIATION***

Under penalty of perjury, I certify that \_\_\_\_\_ is not affiliated with, nor has any financial interest in any manufacturer, distributor, supplier or other company connected with consultants' recommendations.

\_\_\_\_\_

\_\_\_\_\_

Date

Name \_\_\_\_\_

Signed \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**NONCOLLUSION DECLARATION**

I, \_\_\_\_\_ declare as follows:

That I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the attached bid; that the bid is not made in the interest of any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and had not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid or that anyone shall refrain from bidding, that the bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true, and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member of agent thereof to effectuate a collusive or sham bid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_ day of \_\_\_\_\_, at Gilroy, California.

By \_\_\_\_\_

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

**NOTE: Signature must be notarized.**

Authority: Public Contract Code 7106

CCP 2015.5

## QUESTIONNAIRE

As necessary, complete a copy of the Questionnaire for the prime Consultant and each subconsultant involved in the project. Identify which consultants are MBE, WBE, and/or DBE. However, there must be one consolidated response with all total costs clearly identified.

### A. CONSULTANT BACKGROUND

1. Consultant Name, Address and Phone
2. Describe the responsibilities of the Consultant in this project.
3. Years in Business: \_\_\_\_\_
4. Number of Employees: \_\_\_\_\_

Technical Support: \_\_\_\_\_

Marketing/Sales: \_\_\_\_\_

Administrative: \_\_\_\_\_

Other: \_\_\_\_\_

TOTAL: \_\_\_\_\_

5. Primary contact person:  
Name, Title and Phone
6. Revenues for previous fiscal year \$ \_\_\_\_\_

## **EXHIBIT A - CONSTRUCTION MANAGEMENT SERVICES GENERALIZED SCOPE OF WORK FOR THE NEW LIBRARY**

Note that this is for proposal preparation purposes only and is subject to change.

The work of the Construction Manager (CM) will, at a minimum, consist of the following for the various project phases. For proposal purposes, it should be assumed that tasks not enumerated below will be performed by others such as the Architect and/or Project Manager:

### **A. Basic Services**

**1. Schematic Design:** None.

**2. Design Development:** None.

**3. Construction Documents:** Much of the Design process from Preliminary Design through Design Development will be completed before the CM is under contract. CM will become familiar with project by reviewing all preliminary design documents through to Design Development. CM will review the planned construction schedule and all construction documents including plans, specifications, and estimates currently in the final design process for consistency, construction feasibility, material testing, and cost issues and become familiar with all aspects of the project related to construction.

CM will perform a complete constructability biddability review for construction feasibility, cost issues, long lead-time materials and equipment and prepare a third party construction cost estimate for comparison with the most current Construction Document Opinion of Probable Cost developed by the Architect.

Following the review the CM will work with the City and the Architect to address the review comments and in general assist to prepare for the bid phase.

The new Gilroy Library Building will be owned by the City and operated by the Santa Clara County Library. The project will be overseen by three members of the City of Gilroy City Council and representatives of the County Library who will meet regularly with the Architect and CM to discuss the project and project related issues. The CM will attend these meetings of the Library Review Committee (LRC) and will be responsible to prepare and distribute meeting minutes. The CM will also conduct bi-weekly meetings with project team including Architect and Project Manager and will be responsible to prepare the meeting agenda and prepare and distribute the meeting minutes.

Deliverables: Written constructability biddability report and third party construction cost estimate with comparison to the most current Construction Document Opinion of Probable Cost developed by the Architect to Project Manager with follow up of identified items to insure they are all addressed prior to the start of the bid phase. Attend bi-weekly meetings with project team including Architect and Project Manager and monthly meetings with the Library Review Committee (LRC). Prepare and distribute meeting minutes of all bi-weekly meetings with project

team and monthly meetings with Library Review Committee (LRC).

**4. Bidding Phase:** CM will conduct pre-bid conference site visit and coordinate a response to questions and develop addenda as necessary for issuance by Project Manager. CM will attend bid opening. CM will perform bid tabulations and error check bids, review DBE performance of bidders, perform reference checks, and fiscal well being analysis of the Bidders. In the event that bids exceed budget, CM will review and recommend strategy for rebidding project.

Deliverables: Written report to Project Manager regarding recommendation for award of bids, and bid tabulation. Attend bi-weekly meetings with project team including Architect and Project Manager and monthly meetings with the Library Review Committee (LRC). Prepare and distribute meeting minutes of all bi-weekly meetings with project team and monthly meetings with Library Review Committee (LRC).

## **5. Construction Contract Administration.**

A. Construction Coordination: CM will conduct bi-weekly meetings with Contractor, City and Architect to assure timely review and response to questions and resolution of field conflicts or incorporation of design changes. Progress is reviewed as well as two week schedules. Special inspections, Building Department inspections, and anticipated issues are identified. Budget is reviewed. CM will document all field conflicts and help resolve these issues by coordinating with Architect and other regulatory agencies. CM will review Architect/Contractor proposals for cost effectiveness. CM will prepare or review contract change orders and make recommendations to the Project Manager regarding approval.

B. Inspections: - CM will provide daily on-site inspection of the project except as described below to assure compliance with bid documents. This work includes pre-construction photo's and site documentation as well as progress photos, daily inspection reports identifying type and number of crews and equipment working. Daily records shall also identify when conflicts, actions approved, and resolution of minor conflicts. CM will witness specialty testing and inspection.

Note: City of Gilroy Community Development Department will provide building inspections as needed to ensure adequate inspection of the work. CM will co-ordinate all CM inspections with City Building Inspector(s) to prevent over-lap of tasks and ensure proper coverage of construction.

C. Review of Submittals/Shop Drawings: CM will record and distribute submittals and coordinate responses with Architect and Project Manager and resolve conflicting comments. CM will coordinate reviews with Architect and review submittals when appropriate.

D. Contract Compliance - CM will monitor Contractor's Insurance and Bonds to assure total coverage at all times. CM will record all Liens and Stop Notices and resolve any outstanding ones prior to acceptance.

E. Correspondence - CM will log all of the general contractor's requests for information (RFI's) and other correspondence. CM will review issues with Consultant and other professionals and City and other regulatory agencies to provide timely complete, correct, and cost-effective responses to Contractor questions.

F. Invoices and Pay Estimates - CM will develop monthly pay estimates; review with Contractor and Architect and forward to Project Manager. Payments will be based on % of work progress less any monies associated outstanding contract compliance issues.

Deliverables: Daily records, inspection logs, monthly statements and invoices, log of RFI's, log of change orders, submittal review and processing log, correspondence and correspondence log, photo log or similar record, and other documentation as required by the City of Gilroy. Attend bi-weekly meetings with project team including Architect and Project Manager and monthly meetings with the Library Review Committee (LRC). Prepare and distribute meeting minutes of all bi-weekly meetings with project team and monthly meetings with Library Review Committee (LRC).

**6. Project Acceptance & Close Out** CM will schedule and conduct punch list walk and will prepare and distribute punch list to all parties, including Project Manager, Architect. CM will assure that punch list work is completed. CM will collect and distribute all required O&M manuals. CM will review and accept warranties. CM will schedule and assure that all training and equipment testing, is completed prior to acceptance. CM will review as-built drawings to assure they reflect built conditions.

**7. LEED Facilitation and Assistance** CM will assist the City with the LEED certification process and monitor the contractor's activities in the field to promote compliance with the LEED process. CM will assist the independent commissioning agent by facilitating his work and coordinating it with ongoing project close out activities.

## **EXHIBIT B – DRAFT PROJECT SCHEDULE**

Note that this is for proposal preparation purposes only and is subject to change.

### **BOND FINANCING**

- Series A Bond Issuance (January 1, 2009 thru April 1, 2009)
- **Council Approval of Bond Documents (March 16, 2009)**
- Series B Bond Issuance (January 1, 2010 thru April 1, 2010)
- **Council Approval of Bond Documents (March 15, 2010)**

### **BOND OVERSIGHT COMMITTEE**

- **Council Approval of Role of Oversight Committee (May 19, 2009)**
- Recruitment of Oversight Committee Members (June 2, 2009 thru July 20, 2009)
- **Council Selection of Oversight Committee (July 20, 2009)**
- Financial Oversight Committee Review (July 2009 thru End)

### **RELOCATION to TEMPORARY LIBRARY BUILDING**

- Develop Lease Agreement (February 1, 2009 thru July 20, 2009)
- **Council Approval of Draft Lease Agreement (June 1, 2009)**
- Design of Tenant Improvements (June 8, 2009 thru July 24, 2009)
- City Review and Permit for Tenant Improvements (July 27, 2009 thru August 6, 2009)
- Tenant Improvements (August 10, 2009 thru August 31, 2009)
- Relocate Library to Temporary Building (September 1, 2009 thru October 14, 2009)

### **DEMOLITION of EXISTING LIBRARY BUILDING**

- PreDesign (April 1, 2009 thru July 24, 2009)
- Design (July 27, 2009 thru September 8, 2009)
- Plan Check (September 9, 2009 thru October 5, 2009)
- Contract Bidding (October 6, 2009 thru November 2, 2009)
- **Council Approval of Demolition Contract (November 2, 2009)**
- Demolition (November 3, 2009 thru December 11, 2009)

### **CM SERVICES**

- Finalize RFP (July 1, 2009 thru July 31, 2009)
- RFP Review Process (August 3, 2009 thru October 19, 2009)
- CM Proposals Due (August 26, 2009)

- CM Oral Board (September 23, 2009)
- **Council Approval of CM Contract (October 19, 2009)**
- CM Services During Design and Bidding (October 19, 2009 thru April 5, 2010)
- Constructability Analysis (November 16, 2009 thru February 12, 2010)
- CM Services During Construction (April 2010 thru April 2012)
- CM Commissioning Assistance (April 2010 thru May 2013)

## **PREDESIGN of NEW LIBRARY BUILDING**

- Base Line Findings/Current Code Compliance (February 2, 2009 thru March 16, 2009)
- **Council Review of Base Line Findings (March 16, 2009)**
- Library Technical Analysis (March 2, 2009 thru June 29, 2009)
- **Library User Agreement on Library Technical Revisions (June 29, 2009)**
- LEED Sustainable Options and Scope Confirmation (April 1, 2009 thru June 8, 2009)
- **Council Approval of LEED Sustainable Options (June 8, 2009)**
- Final Design Contract Council Approval (June 9, 2009 thru August 3, 2009)
- **Council Approval of Design Contract (August 3, 2009)**
- Update Existing Arch and Site Review (August 3, 2009 thru November 16, 2009)
- **Council Approval of Arch and Site Update (November 16, 2009)**
- Revise Existing Initial Study Review (August 3, 2009 thru November 16, 2009)
- **Council Approval of Revised Initial Study (November 16, 2009)**

## **DESIGN and BIDDING SERVICES for NEW LIBRARY BUILDING**

- Preliminary Design Analysis (July 7, 2009 thru July 31, 2009)
- Schematic (August 3, 2009 thru September 4, 2009)
- Design Development (August 3, 2009 thru October 16, 2009)
- Construction Documents (August 3, 2009 thru February 12, 2010)
- Specifications (September 7, 2009 thru February 12, 2010)
- Plan Check (November 16, 2009 thru February 12, 2010)
- Constructability Analysis (November 16, 2009 thru February 12, 2010)
- Contract Bidding (February 15, 2010 thru April 5, 2010)
- **Council Approval of Construction Contract (April 5, 2010)**
- Design Services During Construction (April 2010 thru April 2012)
- Design Services for Commissioning (April 2010 thru May 2013)

## **CONSTRUCTION of NEW LIBRARY BUILDING**

- Construction (April 2010 thru April 2012)

## **COMMISSIONING of NEW LIBRARY BUILDING**

- LEED Certification Documentation (April 2010 thru April 2012)
- LEED Measurement and Verification Commissioning (May 2012 thru May 2013)

## **PARKING LOT ACQUISITION & CONSTRUCTION**

- Acquisition (January 1, 2009 thru April 2011)
- Construction (May 2011 thru April 2012)

**EXHIBIT C – CITY OF GILROY STANDARD CONSULTANT AGREEMENT**

Note that this document is continually being updated. The document signed by the successful consultant may differ from this agreement. If a proposer wishes to take exception to any of the terms and conditions contained in the consultant agreement, these should be identified specifically; otherwise it will be assumed that the proposer is willing to enter into the agreement as it is written. The City will consider such exceptions as part of the evaluation process which may constitute grounds for rejection of the proposal. The consultant agreement will not be executed by the City without first being signed by the proposer.

**AGREEMENT FOR SERVICES**

This AGREEMENT made this \_\_\_\_ day of \_\_\_\_, 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  
\_\_\_\_\_.

**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.

**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.

## SERVICES TO BE PERFORMED BY CONSULTANT

### ***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 and **Exhibit “C”** (“Milestone Schedule”).

### ***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.

### ***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.

### ***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.

## COMPENSATION

### ***Consideration***

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

### ***Invoices***

CONSULTANT shall submit invoices for all services rendered.

### ***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.

### ***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."

## **OBLIGATIONS OF CONSULTANT**

### ***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.

### ***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 attorneys' fees, arising out of any injury, disability, or death of any of CONSULTANT'S employees.

### ***Indemnification of Liability, Duty to Defend***

#### **Professional Liability**

To the fullest extent permitted by law, CONSULTANT shall defend through counsel approved by CITY, 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 misconduct 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.

#### **Other Liability**

To the fullest extent permitted by law, CONSULTANT shall defend through counsel approved by CITY, 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 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.

### ***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, 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 and aggregate. As a condition precedent to CITY'S obligations under this Agreement, CONSULTANT shall furnish 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) and requiring thirty (30) days written notice of policy lapse or cancellation, or of a material change in policy terms.

### ***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.

### ***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.

## OBLIGATIONS OF CITY

### ***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.

### ***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.

## TERMINATION OF AGREEMENT

### ***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.I.**, 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.

### ***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 satisfactorily completed 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.

### ***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.

### ***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.

## **GENERAL PROVISIONS**

### ***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.

### ***Americans with Disabilities Act of 1990***

Throughout the term of this Agreement, the CONSULTANT shall use due professional care to 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 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.

### ***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.

### ***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.

### ***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.

### ***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.

### ***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.

**Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the State of California.

**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.I.** 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.

**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.

**Time of the Essence**

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

**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 satisfactorily complete the Services required herein.

#### 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.I.** ("Notices") of this **Exhibit "A"**.

##### B. COMPLETION OF SERVICES

When CITY determines that CONSULTANT has satisfactorily completed all of the Services, 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 satisfactorily completed all of the Services and, if so requested, CITY shall make this determination within two (2) weeks of such request, or if CITY determines that CONSULTANT has not satisfactorily completed all of such Services, 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. CONSULTANT'S SERVICES TO BE APPROVED BY A REGISTERED PROFESSIONAL ENGINEER

All reports, costs estimates, plans and other documents which may be submitted or furnished by CONSULTANT shall be approved and signed by a qualified registered professional engineer in the State of California.

The title sheet for specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the professional engineer responsible for their preparation.

B. 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.

C. 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. 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.

**D. 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.

**E. 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.

**F. 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.

**G. 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.E** 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.

H. 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.

I. NOTICES.

Notices are to be sent as follows:

CITY: Rick Smelser  
City Engineer  
  
City of Gilroy  
7351 Rosanna Street  
Gilroy, CA 95020

CONSULTANT:

J. 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.J.** 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.J.** 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**

(Similar to RPF EXHIBIT A)

**EXHIBIT “C”**

**MILESTONE SCHEDULE**

(Similar to RPF EXHIBIT B)

**EXHIBIT “D”**

**PAYMENT SCHEDULE**

(To be determined)