



**City of Gilroy**  
**Community Development Department**

**Request for Proposal**

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

**No. 18-RFP-CDD-406**

ATTN: PATRICIA PRETELL, PURCHASING COORDINATOR  
CITY OF GILROY  
7351 ROSANNA STREET  
GILROY, CA 95020-6197

**Qualifications Due by: 4:00 pm, Friday, January 26, 2018**



**Request for Proposal  
No. 18-RFP-CDD-406**

Notice is hereby given that the Purchasing Coordinator of the City of Gilroy at 7351 Rosanna Street, Gilroy, CA 95020-6197 will receive SEALED PROPOSAL SUBMITTALS. The City of Gilroy is soliciting Proposals for On-Call Standard and Expedited Building and Fire Plan Check and On-Call Building and Fire Inspection Services as described in the attached Request for Proposal. Submittals will be accepted up until 4:00 PM, PST, Friday, January 26, 2018. Qualifications received after that time and date will not be considered. The City of Gilroy accepts no responsibility if delivery is made to another location other than location specified above and/or delayed deliveries by your chosen carrier. An evaluation team will review submitted qualifications and select up to three of the best qualified firms based on the evaluation criteria and selection process outlined in the RFP. The selected consultants will remain on the pre-qualified on-call list for three years, with up to two, one-year extensions possible.

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

Respectfully Requested,  
Patricia Pretell  
Purchasing Coordinator

**RFP No. 18-RFP-CDD-406**

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

**Table of Contents**

Request for Proposals..... i

RFP/CONSULTANT OVERVIEW ..... 1

    Introduction ..... 1

    Intent and Selection Process..... 1

    Contract Period..... 1

    Schedule ..... 1

    RFP Questions ..... 2

QUALIFICATION(S) SUBMITTAL REQUIREMENTS CHECKLIST ..... 3

SUBMISSION INSTRUCTIONS AND EVALUATION CRITERIA..... 5

    Submission Instructions ..... 5

    Submittal Deadline ..... 5

    Evaluation Criteria ..... 5

SCOPE OF SERVICES ..... 7

    On-Call Standard and Expedited Building & Fire Plan Review ..... 7

    On-Call Building and Fire Inspection Services ..... 7

TERMS AND CONDITIONS ..... 8

    City Consultant Agreement for Services ..... 8

    City-Consultant Relationship ..... 8

    Conflicts ..... 8

    Other Terms and Conditions ..... 8

ATTACHMENT A - CONTRACT REQUIREMENTS ACKNOWLEDGEMENT ..... A-1

ATTACHMENT B - SAMPLE AGREEMENT FOR SERVICES CONTRACT ..... B-1

## RFP/CONSULTANT OVERVIEW

### Introduction

The City of Gilroy is located 28 miles south of San Jose, California. It is a developing community in transition with a population of just over 55,900. The small family farms of the past have given way to sophisticated seed culture, high tech food processing, recreational shopping, and modern wine production. Gilroy is situated in the Santa Clara Valley, just 15 miles from the Pacific Ocean, and strategically located at the junction of two key highways: US 101 and US 152.

The City of Gilroy invites you to submit qualifications information about your firm's capability to provide On-Call Standard and Expedited Building and Fire Plan Check and On-Call Building and Fire Inspections for the City. Your submission should clearly demonstrate how your firm's resources and expertise can meet the needs of the city for which you are submitting your qualifications. This Request for Proposal (RFP) outlines the general scope of the city's On-Call Standard and Expedited Building and Fire Plan Check and On-Call Building and Fire Inspection consultant needs.

There is more than one category for which the city needs consultant services. Firms can submit qualifications for one or more of the categories. The city reserves the right to select a firm for one category, even if qualifications are submitted for multiple categories.

### Intent and Selection Process

The intent of this RFP is to evaluate each interested firm's qualifications submission based on the evaluation criteria outlined in this RFP, interview the highest scoring firms (up to five for each category), select the firms from those interviewed that best meet the needs of the city based on the City's sole discretion (up to five for each category), and negotiate a final scope of services for the Consultant Agreement for Services. All contracts are subject to approval by the Gilroy City Council, and the city reserves the right to not award any such contract at the discretion of the Council.

### Contract Period

The contract period, once awarded by the City Council, will be for three (3) years. The city, through the approval of the City Administrator, may request and/or grant up to two, one-year extension of terms should the project or projects require it, through an amendment to the Agreement for Services.

### Schedule

The draft schedule for this RFP is given below. Please keep in mind that the interview and Council meeting dates are subject to change.

<b>Selection Process Actions</b>	<b>Target Date</b>
RFQ distributed to prospective Consultants	December 20, 2017
Qualifications submissions due to City of Gilroy (Final)	4:00 p.m., PST January 26, 2018
Interviews (Tentative)	January 31 and February 2, 2018
City Council Meeting	February 26, 2018

**RFP Questions: Direct questions regarding this RFP, via email, no later than eight (8) business days prior to the due date for the RFP to the following:**

ATTN: Rob Allen, Chief Building Official/Interim Fire Marshal  
(408) 846-0258 (phone)  
(408) 846-0429 (fax) [rob.allen@cityofgilroy.org](mailto:rob.allen@cityofgilroy.org)

## QUALIFICATION(S) SUBMITTAL REQUIREMENTS CHECKLIST

RFP No. 18-RFP-CDD-406

The following documents/information must be filled out and/or included in the submittal in order to be considered for the On-Call Consultant List:

- Separate qualifications submittal for each category (1. On-Call Standard and Expedited Building and Fire Plan Check; 2. On-Call Building and Fire Inspection Services) If you wish to be considered for either or both categories ó qualification(s) should be in separate sealed envelope within the whole submittal package and labeled as “Qualifications for \_\_\_\_\_ [fill in category title]”, one for each category
- A signed statement (Attachment A) indicating that the consultant has read, understands, and agrees to the requirements and terms of the sample contract (Attachment B), including insurance & indemnification requirements
- COVER LETTER - Summarize the firm’s qualifications to provide consulting services for the City of Gilroy. Provide name of contact person, phone number, and email address (maximum one page).
- RELEVANT QUALIFICATIONS ó Offer short, focused paragraphs in a summary format by topic (maximum three pages).
- RELEVANT EXPERIENCE óBased on Scope of Work- Perform on-call (onsite and offsite) and expedited plan review of submitted residential, commercial, and industrial (structural and non-structural) building plan and fire suppression, detection, alarm system plans. Perform combination building and life safety inspections for residential, commercial, and industrial in accordance with the approved documents, adopted codes, and standards as amended by the City Council approved November 21<sup>st</sup>, 2016. List projects completed by the firm relevant to the City of Gilroy and scope of services requested, and provide the following information for each project: a) outline the specific scope of services provided and describe how your firm met or exceeded expectations; b) identify the role of the firm (e.g., work was performed exclusively by the firm or a joint venture); c) highlight any key team members directly involved in the project who would be part of the City of Gilroy on-call team; d) specify if the project was completed within budget and on schedule (if not completed within budget and schedule provide a very brief statement explaining why); and e) provide the client’s contact information including name, title, and phone number as a reference (maximum six pages).
- TECHNICAL ANALYSES (for both On-Call Plan Review and Inspection Services qualification submissions only) ó Identify if your firm has in-house staff based on plan review results and experienced and qualified field inspectors capable of performing Residential, Commercial, and Industrial inspections to perform the proposed scope of work identified in the relevant experience section above.
- KEY TEAM MEMBER SUMMARY ó Identify key team members of the firm who would be directly involved with the Gilroy on-call services. For each team member, summarize the typical role and responsibilities of the individual, and list experience relative to the typical role(s).

- ❑ **FIRM'S BILLING STRUCTURE** ó Provide an outline of the hourly rate schedule for the key team members, and include associated administrative/technical support fee structure (e.g., administrative fees, mileage, travel time, reproduction costs).

## SUBMISSION INSTRUCTIONS AND EVALUATION CRITERIA

### Submission Instructions

Four copies of each submission are required as follows: two (2) bound copies, one (1) unbound reproducible copy, and one (1) electronic copy in PDF format saved on a USB flash drive. Double-sided printing is strongly encouraged.

All submissions must be sealed in a package showing the following information on the outside and addressed to:

Attn: Patricia Pretell- Purchasing Coordinator  
City of Gilroy  
7351 Rosanna Street  
Gilroy, CA 95020

**Request for Proposal No. 18-RFQ-CDD-406**

**RFP Title: On-Call Standard and Expedited Building and Fire Plan Check and On-Call Building and Fire Inspection Services. Consultant's name and address**

The submission package must be mailed or delivered to the above address prior to the submittal deadline.

### Submittal Deadline

All submissions must be received by the Purchasing Division, City of Gilroy, 7351 Rosanna Street, Gilroy, CA, 95020 by 4:00 P.M. on Friday, January 26, 2018.

All respondents who mail or ship their submissions must allow sufficient delivery time to ensure receipt of their submissions by the time specified. Late submissions will not be accepted for consideration.

### Evaluation Criteria

The qualifications package submitted in response to this RFP, together with the consultants' interview, will be used as the basis for establishing the on-call list of pre-qualified consulting firms. Ideally, up to five qualified firms (On-Call Standard and Expedited Building and Fire Plan Check and On-Call Building and Fire Inspection Services) will be selected for the On-Call Consultant List.

It is anticipated that no more than five firms for each category will be invited for an interview. Firms will be ranked according to the evaluation criteria listed below. The highest scoring firms (up to five) will be invited for an interview. The City may elect to interview fewer than five firms based on the number and quality of submissions.

The City's On-Call Consultant list will be established from the qualifications package and interviewed firms that best meet the needs of the City. The City may choose to select all or only some of the interviewed firms for the On-Call List at the City's sole discretion.

Qualification submissions will be evaluated and ranked to determine which firms will be invited for an interview based on the following criteria and scoring system:

1. **Statement of Qualifications Submittal (up to 25 pts.)**

Points will be awarded based on the firm's ability to perform the work; demonstrated knowledge of the applicable policies, rules and regulations pertaining to the category for which the firm is submitting qualifications including the City's adopted Building and Fire Code Standards and policies, City standards and guidelines; and the responsiveness to this RFP.

2. **Relevant Experience (up to 20 pts.)**

Demonstrated experience with similar Building and Fire projects relevant to the City of Gilroy will be awarded up to 20 points.

3. **Communication/Presentation of Material (up to 15 pts.)**

Demonstrated ability to communicate and work effectively and efficiently with the public, applicant/developers, contractors, staff, policy, and review bodies will be awarded up to 15 points.

4. **References (up to 15 pts.)**

References provided for the projects listed under Relevant Experience may be contacted regarding your work. Additionally, the City may inquire with other jurisdictions the consultant may be performing similar work as requested in this RFP.

5. **Key Team Members (up to 15 pts.)**

Up to 15 points will be awarded based on the key team members identified for the City of Gilroy on-call team for plan review and inspection services. Please note that because your submittals are being evaluated, in part, on the basis of the key team members as submitted, any substitution of key team members will be subject to approval in writing by the City.

6. **Ability to Meet Project Budget and Schedule (up to 10 pts.)**

Demonstrated ability to keep projects on time and within budget for plan reviews and inspection services will be awarded up to 10 points. Ability to respond to unexpected and regularly scheduled requests for services with minimal delay will also be considered, as well as the firm's ability to identify cost-saving opportunities such as expedited plan review for the client in the management and fulfillment of their permit submittals.

### **Scope of Services**

1. Perform on-call standard (onsite and offsite) and expedited plan review of residential, commercial and industrial (structural and non - structural) building plans and fire suppression, detection and alarm system plans.
2. Perform combination building and life safety inspections for residential, commercial, and industrial in accordance with the approved documents, adopted codes and standards amended by the City.

### **COMPLIANCE STANDARDS**

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

### **COMMUNICATION STANDARDS**

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

### **STAFF MEETING /PROFESSIONAL DEVELOPMENT**

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

## TERMS AND CONDITIONS

### City Consultant Agreement for Services

After being selected by staff and approved by Council, the selected Consultants will have to enter into a contract with the city for said services. A sample contract is included with this RFP as **Attachment B**. The contract also spells out insurance and indemnification requirements which the Consultants will have to meet. By signing and submitting the form in **Attachment A**, the Consultant is acknowledging that they have read the agreement, and will be able to meet all the requirements of the contract without asking for changes in the contract language.

### City-Consultant Relationship

Selected firms for the on-call list will enter into a three-year Agreement for Services contract with the City. As projects are identified, the City may, at its sole discretion, select a Consultant from the on-call list and assign such work to the chosen consultant to perform the services. If the chosen firm is unable to deliver services as requested, the City may, at its sole discretion, attempt to assign the work with another firm on the on-call list. The City's agreement with any firm shall not be considered exclusive, and the City may elect to procure alternate services for any designated project. Commencement of any services outlined in the scope of work shall begin only after the Consultant receives written Authorization to Proceed from the City.

### Conflicts

The selected firms for the on-call list will not be able to provide Building and Fire plan reviews or inspection services for applicants that are current clients of the firm or with which the firm has worked within the 12 months preceding the firm's execution of a contract with the City. Other potential conflict issues will be addressed on a case-by-case basis.

### Other Terms and Conditions

1. Addendum and Supplements to the RFP. If it becomes necessary to revise any part of this RFP, an addendum or revision will be transmitted to prospective Consultants by email and posted on the City of Gilroy website ([www.cityofgilroy.org](http://www.cityofgilroy.org)).
2. Right to Reject. The City reserves the right to reject any or all submittals, or any part of the submittal, to waive minor technicalities, or to solicit new submittals on the same project/services, or on a modified project/services, which may include portions of the originally proposed project/services as the City may deem necessary in its interest.  
  
Submittals may be rejected for any alterations of form, additions or alternates not called for, incomplete submittals, erasures or irregularities of any kind.
3. False or Misleading Statements. Any submittals containing, in the opinion of the City, false or misleading statements will be rejected.
4. Incurring Costs. The City of Gilroy will not pay costs incurred in the submittal and/or preparation, printing, or the negotiation process for the qualifications submission or future proposals. All such costs shall be borne by the proposing Consultant.
5. 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.

6. Clarification of Submittals. The City reserves the right to obtain clarification information of any point in any Consultant's submittal or to obtain additional related information necessary to properly evaluate the submittal. Failure of a Consultant to respond to a request for more information may result in the submittal being rejected.
7. Disclosure of Submittal Information. All submittals become a matter of public record once a contract is awarded. If a prospective Consultant wishes to submit information that is considered confidential or proprietary, they must so indicate in the submittal which portions of the material are confidential or proprietary and why it is proprietary. The City will take reasonable efforts to protect the confidentiality of such material but makes no guarantees that such material may be protected. Entire qualifications submittals designated as confidential may be rejected. Prospective Consultants must understand that the City must abide by the California Public Records Act (Government Code 6250, et seq.).
8. Reliance on Information. Consultants may rely only upon written information and/or instructions from the city and the city shall not be responsible for any oral information and/or instructions given with regard to this RFP.

Any City response to a request for clarification by a Consultant will be made in the form of an addendum to the RFP, which will be sent via email to all parties to whom the RFP has been issued and posted on the City of Gilroy website ([www.cityofgilroy.org](http://www.cityofgilroy.org)) not later than five (5) business days prior to the due date for receipt of the qualifications and will become a part of the RFP. Consultants should await responses to inquiries prior to delivering their submittal. All submitting Consultants shall provide the city with their email address.

9. Notification of Withdrawal of Qualifications Submittal. Consultant may modify or withdraw their qualifications submittal prior to the date and time specified for qualifications submission by an authorized representative of that organization or by formal written notice. Qualifications submitted will become the property of the City of Gilroy after the qualifications submission deadline.
10. Safety. Safety of city workers, the Consultant's workers and the general public is of primary importance to the city. The Consultant and all sub-Consultants (if any) must adhere to all applicable federal, state, and city rules, regulations, and policies related to the safe execution of the work to be performed. This includes the use of proper safety gear (e.g., eye protection, hearing protection, reflective safety vests, etc.), and traffic control measures as per the Manual of Uniform Traffic Control Devices (latest edition), or other regulations as applicable. The city reserves the right to halt work in the event safety rules/regulations are not being followed until corrected to the satisfaction of city.
11. Licenses. In addition to all other requirements set forth in the Contract, the successful Consultants selected for the On-Call Consultant List must obtain and keep in force throughout the progress of the service, a valid City of Gilroy Business License issued by the City of Gilroy prior to or concurrently with delivery of the executed agreement to the successful Consultants.

**ATTACHMENT A - CONTRACT REQUIREMENTS ACKNOWLEDGEMENT**

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

That I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the attached qualifications submission; that I have read the sample Agreement for Services, including the insurance & indemnification requirements contained therein, and hereby state that I understand and am willing to abide by, and can meet the requirements of the contract, including insurance and indemnification requirements, without modification thereto, should my firm be selected for a project or projects based on my qualifications and proposal, assuming a mutually agreeable scope, fee, and schedule has been established.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2018

By \_\_\_\_\_

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

**ATTACHMENT B - SAMPLE AGREEMENT FOR SERVICES CONTRACT**

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

This AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, between:

CITY: City of Gilroy, having a principal place of business at  
7351 Rosanna Street, Gilroy, California

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

**ARTICLE 1. TERM OF AGREEMENT**

This Agreement will 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.**

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

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

### **B. Termination by City for Default of Consultant**

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

1. CONSULTANT'S failure to professionally and/or timely perform any of the services contemplated by this Agreement.
2. CONSULTANT'S breach of any of its representations, warranties or covenants contained in this Agreement.

CONSULTANT shall be entitled to payment only for work completed in accordance with the terms of this Agreement through the date of the termination notice, as reasonably determined by CITY, provided that such payment shall not exceed the amounts set forth in this Agreement for

the tasks described on Exhibit Cö 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: \_\_\_\_\_

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

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 (öServicesö). (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 öNotice to Proceedö, 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.** (öNoticesö) of this **Exhibit "A"**.

##### B. COMPLETION OF SERVICES

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

#### III. PAYMENT OF FEES AND DIRECT EXPENSES

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

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

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

#### IV. OTHER PROVISIONS

##### A. STANDARD OF WORKMANSHIP

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

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

##### B. RESPONSIBILITY OF CONSULTANT

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

##### C. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT

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

##### D. CONFIDENTIALITY OF MATERIAL

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

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

E. NO PLEDGING OF CITY'S CREDIT.

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

F. OWNERSHIP OF MATERIAL.

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

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

G. NO THIRD PARTY BENEFICIARY.

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

H. NOTICES.

Notices are to be sent as follows:

CITY:

\_\_\_\_\_  
City of Gilroy  
7351 Rosanna Street  
Gilroy, CA 95020

CONSULTANT: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I. FEDERAL FUNDING REQUIREMENTS.

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

1. DBE Program

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

2. Cost Principles

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

3. Covenant against Contingent Fees

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

## **EXHIBIT “B”**

### **Scope of Services**

1. Perform on -call (onsite and offsite) and expedited plan review of submitted residential, commercial and industrial (structural and non - structural) building plan and fire suppression, detection and alarm system plans.
2. Perform combination building, fire, and life safety inspections for residential, commercial, and industrial in accordance with the approved documents, adopted codes and standards amended by the City.

### **COMPLIANCE STANDARDS**

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

### **COMMUNICATION STANDARDS**

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

### **STAFF MEETING /PROFESSIONAL DEVELOPMENT**

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

**EXHIBIT "C"**  
**PAYMENT SCHEDULE**