



**City of Gilroy**  
**Recreation Department**

**Request for Proposals**  
**GILROY CENTER FOR THE ARTS**  
**CONSTRUCTION DRAWINGS & COST ESTIMATES**  
**7341 Monterey Street, Gilroy**

ATTN: BRYCE ATKINS  
PURCHASING COORDINATOR  
CITY OF GILROY  
7351 ROSANNA STREET  
GILROY, CA 95020-6197

**Proposals Due by: 4:00 pm, Monday, October 1, 2018**



## **Request for Proposals No. 19-RFP-REC-420**

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 Gilroy Center for the Arts Construction Drawings and Cost Estimates as described in the attached Request for Proposal. Submittals will be accepted up until 4:00 PM, PST, Monday, October 1, 2018. Proposals 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 proposals and select the best qualified firm. The proposal of that firm will be evaluated for consideration for award of the construction drawings and cost estimates contract for the Gilroy Center for the Arts, 7341 Monterey Street, Gilroy.

A free electronic copy of the RFP can be obtained by emailing [hipolito.olmos@cityofgilroy.org](mailto:hipolito.olmos@cityofgilroy.org) (please put "Gilroy Center for the Arts Construction Drawings and Cost Estimates RFP" as the subject). More information may be obtained from the City of Gilroy website at <http://www.cityofgilroy.org/Bids.aspx?CatID=18>.

Respectfully Requested,

Bryce Atkins  
Purchasing Coordinator

**19-RFP-REC-420 Gilroy Center of the Arts Construction Drawings and Cost Estimates  
Services**

**Table of Contents**

Request for Proposals ..... i

PROPOSAL(S) SUBMITTAL CHECKLIST ..... 1

    Introduction ..... 2

    Intent and Selection Process..... 2

    Project Description ..... 2

    Schedule ..... 6

SUBMISSION FORMAT & CONTENT INFORMATION ..... 6

    Submission Content Requirements ..... 6

    Qualifications & Scoring System ..... 6

    Proposals ..... 7

    City Consultant Agreement for Services..... 8

    Other Terms and Conditions ..... 8

SCOPE OF SERVICES ..... 11

    Milestone Schedule ..... 16

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

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

    Exhibit A: Specific Provisions..... C-1

    Exhibit B: Scope of Services..... D-1

    Exhibit C: Milestone Schedule..... E-1

    Exhibit D: Payment..... F-1

**PROPOSAL(S) SUBMITTAL CHECKLIST**  
**GILROY CENTER OF THE ARTS CONSTRUCTION DRAWINGS AND**  
**COST ESTIMATES SERVICES**

**RFP No. 19-RFP-REC-420**

The following documents/information must be filled out and/or included in the submittal in order to be considered for this project:

- Proposal 6 copies – proposal should be in a separate sealed envelope within the whole submittal package and labeled as “Proposal for 19-RFP-REC-420”
  - Consultant Qualifications
  - Required Attachments
  - Supporting information
  
- 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
  
- Deliver submittal package to **City of Gilroy at address given by 4:00 pm, Monday, October 1, 2018**

## **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 over 50,000. 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: U.S. 101 and U.S. 152. Gilroy is located at the southern tip of the Silicon Valley.

The City of Gilroy invites your company to submit proposals pertaining to your firm's capability to provide Construction Drawings and Cost Estimates for the Gilroy Center for the Arts. Your submission should clearly demonstrate how your firm's resources and expertise can meet the needs of this City project. This Request for Proposals (RFP) outlines the general scope of the City's project needs.

### **Intent and Selection Process**

The intent of this RFP is to evaluate each interested consulting firm's specific qualifications and experience relevant to each project, select the best qualified firm for the project, and negotiate a contract price which the City determines is fair and reasonable to the City.

Should the City be unable to negotiate a satisfactory contract with the firm considered to be the best qualified, at a price the City determines to be fair and reasonable to the City, negotiations with that firm shall be formally terminated. The City shall then undertake negotiations with the second best qualified firm. Failing accord with the second best qualified firm, the City shall terminate negotiations. The City shall then undertake negotiations with the third best qualified firm.

The City intends to award a contract to the successful consultant firm for the services proposed on by that firm. However, 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.

### **Project Description**

Gilroy Center for the Arts Construction Drawings and Cost Estimates project involves the development of construction drawings which illustrate all the necessary off-site and on-site upgrades and improvements required to increase the current building occupancy limits of 49 to the maximum occupancy allowable within the final building footprint. Along with the construction drawings of the required upgrades, an itemized estimate of each upgrade and a summarized total project upgrade cost will be provided. This project is currently budgeted for 1 year.

### **BACKGROUND**

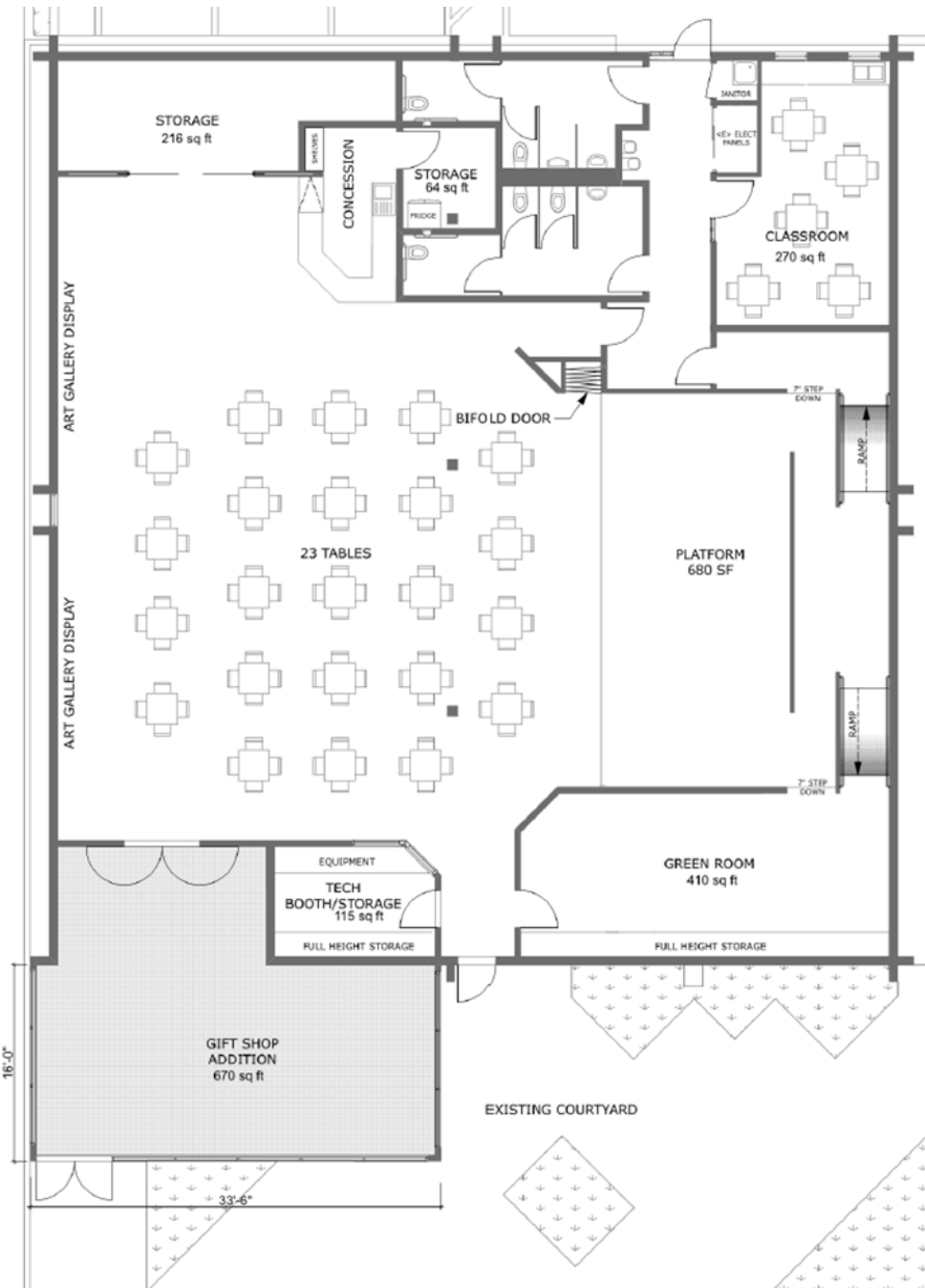
The Gilroy Center for the Arts building is designed as a large single open floor layout with a maximum occupancy of 49 because of the lack of existing life safety features required by the California Building Codes such as fires sprinklers and egress features. Regardless of how the building is used, due to the age of the facility there are several existing elements that are out of

compliance and would need to be rectified. This includes the restrooms which do not meet accessibility codes, environmental issues, and a non-compliant parking lot.

Meetings between the Gilroy Arts Alliance (GAA) and City staff, as well as receiving tours of the facility, WMA's objective of the conceptual design was to create opportunities for more usable spaces, that enabled simultaneous usage. To maximize the building's size, space would be needed for a theater with a backstage room, a classroom, an art gallery, a gift shop and a concession stand.

In August 2017, the City of Gilroy sought proposals from architectural firms for the design of conceptual plans and cost estimates for the City-owned Gilroy Center for the Arts facility, located on 7341 Monterey Street. The scope of work consisted of developing design options for facility upgrades to increase the building occupancy from the 49 to 92 (147 without tables). Included in the conceptual design were the ADA, seismic, HVAC, entry and exiting, plumbing, electrical improvements and parking improvements. Cost estimates provided were based on projections for environmental documents, building permits, design, construction, construction management, and any other associated cost with this project. Of the three firms the committee interviewed, the project contract was awarded to Weston Miles Architects of Morgan Hill, in the amount of \$35,000.

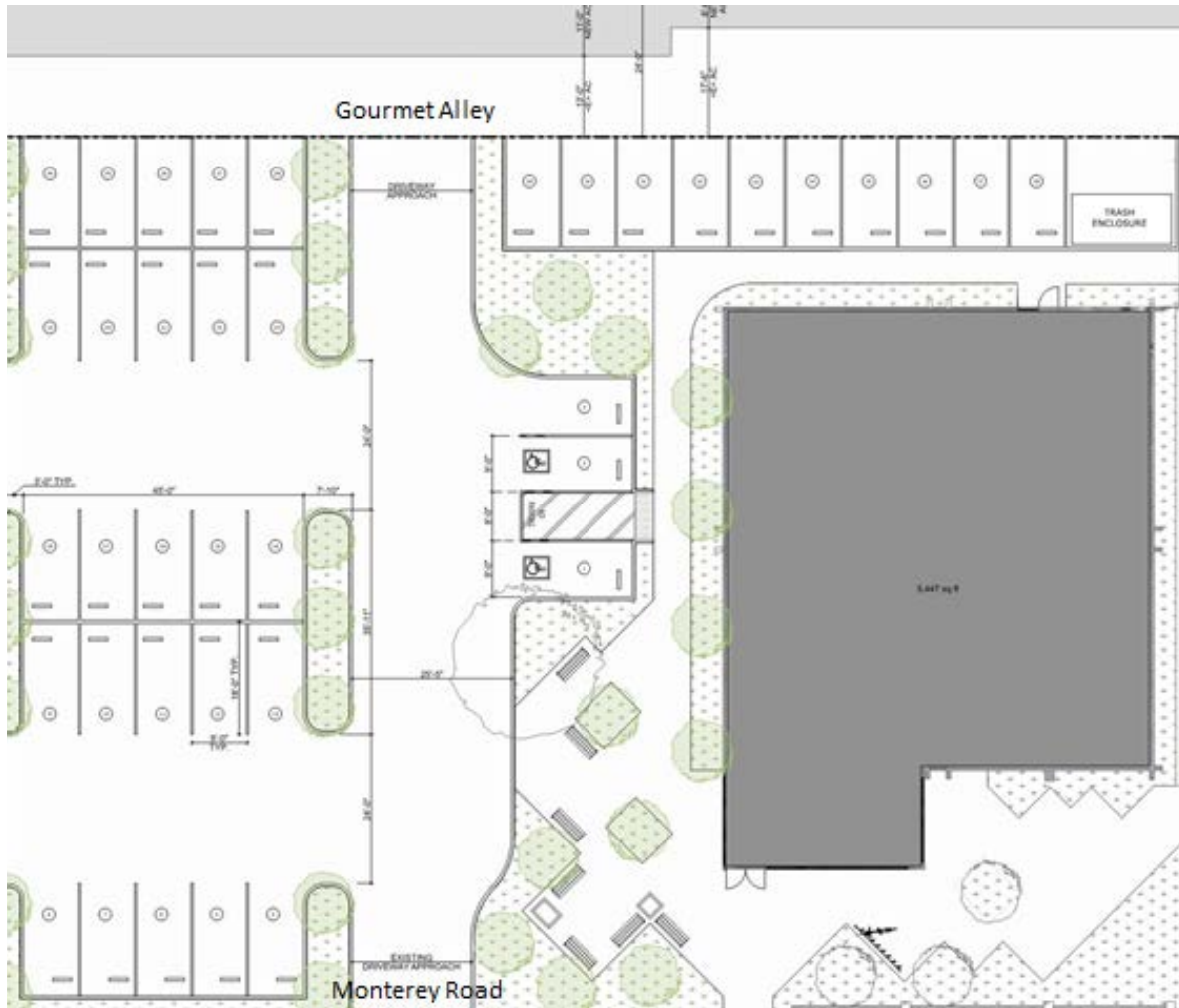
On May 2018, Weston Miles Architects (WMA) prepared two conceptual design options that address all of these matters. Council supported the second option, which included a 660 square-foot addition that could be used as a foyer.



### Facility Interior

The performance area includes a large platform that is slightly larger than the existing platform and seating for 92 at tables (as opposed to the existing maximum occupancy of 49). In addition, the design includes a backstage and secure tech booth, an enclosed platform space for rehearsals and other small meetings, an enclosed classroom or meeting space, larger and accessible restrooms and a 660 square-foot addition that could provide a larger foyer space, as well as a gift shop to be operated independently. It is designed with the intent that it could be added at a later date. The layout allows GAA more flexibility to both utilize and rent multiple spaces at the same time. It is designed with the intent that it could be added at a later date.

## Parking Plan



In the site plan, the parking lot has been reconfigured to accommodate the necessary ADA stalls, as well as to make it safer for drivers and pedestrians. Despite the changes, with only one more stall factored into the current design (bringing the total number to 37, including 2 ADA spots), based on the maximum occupancy levels and the size of the building, 56 spots are required per the city's zoning code. According to the City's Planning Division, since the extra 660-foot foyer is not expected to be used for classroom, meeting, or performance space, a variance could be granted, which would keep the number of stalls required to 49.

## Schedule

A draft schedule for this RFP is given below. Please keep in mind that schedules are subject to change.

<b>Draft RFP/Design Project Schedule</b>	<b>Target Date(s)</b>
RFP distributed to prospective Consultants	9/10/2018
Mandatory Job Walk of site at 11:00 a.m.	9/18/2018
City response to a request for clarification by a Consultant sent to all parties to whom the RFP has been issued	9/25/2018
RFP submissions due to City of Gilroy	10/1/2018
Selection Committee evaluate RFP submissions	10/2/2018-10/5/2018
Interview Selected Consultants	Tentative
Notify Selected Consultant	10/16/2018
<b>Contract awarded to Council</b>	December 2018

## SUBMISSION FORMAT & CONTENT INFORMATION

### Submission Content Requirements

Please respond to each of the requests for information by number. Provide number with each response and include page numbering. Any attachments/exhibits should also be labeled when provided.

### Qualifications & Scoring System

1. **Statement of Qualifications (25 pts)** – Provide a brief statement of qualifications for your firm and include why your firm should be selected. You may include more information as an attachment to your submittal if you wish.
2. **References (15 pts)** - Provide three references (name, address and phone number) for the project team for recent similar work that the City may contact and inquire about your work.
3. **Key Staff (20 pts)** – Provide resumes for proposed key staff to be assigned if your firm is selected, including education and relevant experience. Please note that because your submittals are being evaluated, in part, on the basis of the key staff as submitted, any substitution of key staff will be subject to approval in writing by the City.
4. **Contract Performance (15 pts)** – Please describe how your firm met or exceeded expectations on 2 projects prepared by your firm, and how you helped develop or shape

the project for your client. Also, please list any contracts with your firm that have been terminated in the past 3 years, and describe the circumstances involved.

5. **Project Understanding (15 pts)** – Provide a brief statement indicating your overall understanding of the project design and constraints, and a brief explanation of your design approach.
6. **Ability to Meet Project Schedule (10 pts)** – Provide a draft project schedule, showing milestones, that shows how you will meet the desired city schedule, or provide a revised schedule and explain why you believe it will either take longer or you can finish sooner. The schedule will be subject to change to meet the needs of the City or if the final scope of the design work changes.

The selection for qualifications will be based on the above items with the point weighting shown by the evaluation team.

### **Proposals**

Please provide a separate consultant cost proposal submitted in a sealed envelope within the sealed envelope for the proposal for the Construction Drawings and Cost Estimates.

7. **Proposed fee for services** Provide in a separate sealed envelope the proposed cost for this work. Include staff by name, title and hours toward each task. Also include the hourly rate for the individuals working on this project, any outside consultant costs and hard costs, such as copying, etc. The cost and rates should be consistent through the life of this project contract, or until December 31, 2019 at the latest.
8. **Proposed Sub-Consultants** – Provide a list of proposed sub-consultants, if any, and their role(s) in the project design. A brief statement of qualifications should also be provided for each proposed sub-consultant.
9. **Hourly Rate Schedule** – Provide an hourly rate schedule for various consultant staff positions, as well as hourly rate schedules for sub-consultants. This is in addition to the rate schedule in the sealed envelope.

**Length of Submission** - Due to the time it takes to review submittals, please limit the length of the RFP submission to approximately 20 pages or less; exhibits and attachments are excluded.

**Response Submission** - Six copies of each submission are required. All submissions must be sealed in a package showing the following information on the outside and addressed to:

City of Gilroy - Purchasing Division  
7351 Rosanna Street  
Gilroy, CA 95020  
**Request for Proposals No. 19-RFP-REC-420**  
**RFP Title: Center for the Arts Construction Drawings and Cost Estimates**  
**Consultant's name and address**

The submission package must be mailed or delivered to the above address prior to the deadline for receipts of submissions. 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.

**Deadline for Receipt of Submissions** - All submissions must be received by the Purchasing Division, City of Gilroy, 7351 Rosanna Street, Gilroy, CA, 95020 by 4:00 P.M. on Monday, October 1, 2018.

### **City Consultant Agreement for Services**

After being selected by staff and approved by Council, the selected Consultant 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 Consultant 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.

### **Other Terms and Conditions**

Certain other terms and conditions will apply to this RFP:

#### **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 all prospective Consultants by email.

#### **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, or on a modified project, which may include portions of the originally proposed project 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 submittal and/or proposal preparation, printing, or the negotiation process. 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 by the consultant 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 in a timely manner 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 proposals 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. City Use of RFP Ideas**

The City reserves the right to use any or all prospective Consultant service and project approach ideas presented. Selection or rejection of a Consultant does not affect this right.

**9. 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 to all parties to whom the RFP has been issued not later than five (5) business days prior to the due date for receipt of the proposal and will become a part of the RFP. Consultants should await responses to inquiries prior to delivering their submittal. City response will be by email. All submitting Consultants shall provide the City with their email address.

**10. Use of Sub-consultants**

Various Consultants may wish to combine resources in responding to the RFP. In such instances, the City requires the designation of a prime Consultant, accountable for the entire contract proposal including the contract agreement that may result. Consultants should discuss the work any Sub-consultants are to perform and provide similar references for previous service projects where the Consultant/Sub-consultant relationship was the same as proposed for this project.

**11. Notification of Withdrawal of Proposals**

Consultant may modify or withdraw their proposal prior to the date and time specified for proposal submission by an authorized representative of that organization or by formal written notice. Proposals submitted will become the property of the City of Gilroy after the proposal submission deadline.

## **12. 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.

## **13. Licenses**

In addition to all other requirements set forth in the Contract, the successful Consultant to whom the contract is awarded 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 Consultant.

## **14. Contract Period**

The contract period, once awarded by the City Council, is proposed to follow a mutually agreeable schedule as negotiated in the final proposal, up December 31, 2019. The City may request and/or grant an extension of terms should the project require it, through an amendment to the Agreement for Services.

## **15. RFP Questions**

Direct questions regarding this RFP, via email, no later than 5 business days prior to the due date for the RFP to the following:

Hipolito Olmos, Building Inspector II  
(408) 846-0572  
[hipolito.olmos@cityofgilroy.org](mailto:hipolito.olmos@cityofgilroy.org)

# SCOPE OF SERVICES

## Gilroy Center for the Art's Construction Drawings & Cost Estimates

### A. Project Description and Statement of Design Purpose

The City is seeking an architectural design team to review and incorporate the results of the program level design phase completed by Weston Miles Architects, Inc., see attachment C. The Project is comprised of a 660 square-foot addition and a 5,147+/- square foot tenant improvement and facility upgrades to increase the building occupancy from the 49 to 92 (147 without tables). This includes addressing improvements to the ADA, seismic, HVAC, entry and exiting, plumbing, electrical and parking using the approved floor layout designed by Weston Miles Architects. The architectural team will provide development/construction level plans, prepare construction specifications, project schedules, and project cost estimates, including, furniture and fixture schedules. The agreement will also need to include bid and construction support services.

### B. General Requirements

1. The CONSULTANT shall provide architectural construction level plans and project specifications; attend meetings, project documentation, bid support, contract administration, and construction support services for the Gilroy Center for the Arts Expansion project.
2. The CONSULTANT shall be responsible for submitting completed documents for review and approval by the CITY. Final plans shall be produced on Mylar and provided in electronic format, AutoCad or equivalent.
3. The CONSULTANT shall meet with City staff and/or other stakeholders to consider their recommendations for the project. Multiple meetings will be necessary. CONSULTANT may also be required to meet with the community to gather their input.
4. The CONSULTANT shall provide interior and exterior renderings and finish color/materials to ensure a 1) high quality, and 2) complements the existing building materials, colors and finishes.
5. The CONSULTANT shall ensure that all Americans with Disabilities Act regulations are adhered to in the design and document development.
6. The CONSULTANT shall be required to work with the CITY'S Building Department and adhere to all of the City's building code requirements.
7. The CONSULTANT shall attend at least two City Council meetings and/or designated public meetings during the design of the project. CONSULTANT may be required to provide presentations as necessary for approval.

### **C. Site Information**

The CITY shall provide CONSULTANT with information on the Project site, as it has in its possession, but makes no representation as to the accuracy of these documents. CONSULTANT shall be responsible for requesting, in writing, any information from the CITY, as it requires, for completion of its obligation under this Agreement.

### **D. Conceptual Plan and Site Analysis Review**

1. Attend a project “kick-off” meeting with CITY staff to review project goals, conceptual design, and scope of work.
2. Clarify building program requirements, adjustments, and extent of site improvements required for ADA accessibility.
3. Discuss the design approach with CITY staff to determine a strategy for the LEED elements of the existing building and propose “Green” building strategies. CONSULTANT shall assist CITY in evaluating alternatives.
4. Finalize schedules and Project milestones.

### **E. Schematic Design**

1. Define schedule and construction budget requirements, produce schematic level site plan, floor plan, elevations, sections, diagrams and narratives to describe structural, mechanical, and electrical designs, among others necessitated by the Project.
2. Review proposed “Green” sustainable design principles, with features and life cycle costs and determine if there are any changes. Review HVAC system to determine effectiveness of space expansion load on the existing unit.
3. At the end of Schematic Design, CONSULTANT shall prepare an estimate of construction cost based on a mutually agreed-upon program and schedule. CONSULTANT’S estimate shall include contingency allowances for the cost of implementing changes due to the CONSULTANT’S drawing clarifications, unforeseen conditions, and escalation of prices for materials and labor that are appropriate for bidding according to the approved Project schedule.

### **F. Design Development/Construction Level Documents**

After receiving the CITY’S approval of the revised and final Schematic Design drawings and estimate, CONSULTANT will be authorized to proceed with the Design Development/Construction Level Documents (DD/CLD) phase of the Project. This work shall consist of the following:

1. CONSULTANT shall develop documents to describe the architectural elements of the Project, and confirm the CITY’S budget for the Cost of the Work.

2. CONSULTANT shall provide all necessary architectural and other design services and shall produce a site plan, floor plans, sections, exterior elevations, key interior elevations, and typical enlarged building sections as needed. The CONSULTANT shall also provide structural, mechanical, electrical, ADA, and audio/video drawings as necessary to identify and describe the work.
3. At the completion of Design Development, CONSULTANT shall prepare an estimate of construction costs. CONSULTANT'S estimate shall include contingency allowances for the cost of implementing changes due to the CONSULTANT'S drawing clarifications, unforeseen conditions, and escalation of prices for materials and labor that are appropriate for bidding according to the approved Project schedule.
4. CONSULTANT shall complete the construction documents to set forth the requirements for the construction of the Project and serve as a basis for the CITY'S plan check, bidding and construction of the Project and provide a set of reproducible construction documents.
5. CONSULTANT shall submit construction documents for City plan check. CONSULTANT shall be prepared to revise cost estimates and revise drawings based on City direction.
6. CONSULTANT shall conduct two meetings with CITY staff to review the drawings, specifications, and cost estimate at 50% & 100% of completion.
7. CONSULTANT shall prepare the final (100%) construction documents package for CITY'S final approval and construction bidding.

#### **G. Bidding Documents**

CONSULTANT shall develop all drawings and specifications for project and respond to any questions or comments on architectural drawings by bidders. CONSULTANT may be asked to prepare addendums as necessary to clarify or correct bid documents.

1. CONSULTANT shall review, coordinate and perform self quality control for the production of the "Bid Documents."
2. CONSULTANT shall note the comments from bidders and amend the construction documents as necessary or as requested the CITY prior to construction "Amended for Construction" documents.
3. If the lowest bid exceeds, by more than ten percent (10%), the CITY'S budget for the Cost of the Work as established by the CONSULTANT'S adjusted estimate incorporating all value engineering, the CITY may, in its discretion:
  - a. Approve in writing an increase in budget for the Cost of Work; or
  - b. Authorize rebidding; or
  - c. Terminate this Agreement; or

d. Direct CONSULTANT to modify the documents to utilize more cost effective materials until the cost complies with the budget for the Cost of Work, and assist the CITY with rebidding, without additional compensation; or

e. Direct CONSULTANT to modify the documents to reduce the scope or scale of the design until the cost complies with the budget for the Cost of Work, and assist the CITY with rebidding, as an Additional Service

#### **H. Basic Construction Support Services.**

This work shall consist of construction support services once the construction contract has been awarded.

1. CONSULTANT shall attend the CITY'S construction meetings with the contractors when required or necessary.

2. CONSULTANT shall visit the site and attend progress meetings as requested by the CITY. The CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction, means, methods, techniques, sequences or procedures, or the safety precautions and program in connection with the work, since these are solely the Contractor's rights and responsibilities under the Construction Contract Documents.

3. CONSULTANT shall report to the CITY on any deviations from the Contract Documents and on the progress of the Project. The CONSULTANT shall not be responsible for the Contractor's failure to perform the work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT'S negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for, acts or omissions of the Contractor, or their agents or employees, or of any other persons or entities performing portions of the work.

4. CONSULTANT shall review and take appropriate action upon Contractor's Requests for Information and review all submittals and Shop Drawings, Product Data, and Samples, for the purpose of checking for visual design concept and conformance in a timely manner to enable construction to proceed on schedule.

5. CONSULTANT shall generate supplemental drawings and clarification, if required, as a basic service.

6. CONSULTANT shall perform an inspection with the CITY, when requested by the Contractor, for the purpose of preparing a punch list of incomplete and/or unacceptable items for the CITY'S review. Upon receiving advice from the Contractor that the punch list items are completed, CONSULTANT shall make a final inspection of the Project with the CITY for the purpose of signing off the completed punch list items in accordance with the requirements of the construction documents.

7. CONSULTANT shall provide all necessary architectural and other design services as required by the General Conditions of Contract for this Project, including Project close-out, and other tasks that are referred to in the Conditions of Contract for this Project.

**I. Additional Services**

Any services not identified in the Scope of Services will be considered additional services. Additional services will be provided only as authorized in writing and on an hourly basis unless otherwise approved. Additional services must be brought to the attention and approved by the City prior to commencement of the particular task and/or activity.

**J. CITY'S Responsibilities.**

1. CITY shall furnish such information as is reasonably required for the Project and requested in writing by the CONSULTANT.
2. CITY shall furnish all available documents of the existing building.
3. CITY shall provide prompt notice to the CONSULTANT if CITY becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the CONSULTANT'S construction documents.
4. Prior to the commencement of the Design Development/Construction Document phase, CONSULTANT shall obtain from the CITY the specifications, standards and guidelines for the preparation of the construction documents during the Design Development/Construction Document phase.

## RFP MILESTONE SCHEDULE

Draft RFP/Design Project Schedule	Target Date(s)
RFP distributed to prospective Consultants	9/10/2018
Mandatory Job Walk of site at 11:00 a.m.	9/18/2018
City response to a request for clarification by a Consultant sent to all parties to whom the RFP has been issued	9/25/2018
RFP submissions due to City of Gilroy	10/1/2018
Selection Committee evaluate RFP submissions	10/2/2018-10/5/2018
Interview Selected Consultants	Tentative
Notify Selected Consultant	10/16/2018
Contract awarded to Council	December 2018

**ATTACHMENT A - CONTRACT REQUIREMENTS  
ACKNOWLEDGEMENT**

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

That I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the attached proposal; and 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 can be established.

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

By \_\_\_\_\_

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

AGREEMENT FOR SERVICES  
(For design professional contracts over \$5,000)

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.

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

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

1. As to professional liability, to the fullest extent permitted by law, CONSULTANT shall defend, through counsel approved by CITY (which approval shall not be unreasonably withheld), indemnify and hold harmless CITY, its officers, representatives, agents and employees against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, to the extent arising or resulting directly or indirectly from any willful or negligent acts, errors or omissions of CONSULTANT or CONSULTANT'S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property.

2. As to other liability, to the fullest extent permitted by law, CONSULTANT shall defend, through counsel approved by CITY (which approval shall not be unreasonably withheld), indemnify and hold harmless CITY, its officers, representatives, agents and employees against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, arising or resulting directly or indirectly from any act or omission of CONSULTANT or CONSULTANT'S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property.

### **D. Insurance**

In addition to any other obligations under this Agreement, CONSULTANT shall, at no cost to CITY, obtain and maintain throughout the term of this Agreement: (a) Commercial Liability Insurance on a per occurrence basis, including coverage for owned and non-owned automobiles, with a minimum combined single limit coverage of \$1,000,000 per occurrence for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof; and (b) Professional Liability Insurance (Errors & Omissions) with a minimum coverage of \$1,000,000 per occurrence or claim, and \$2,000,000 aggregate; provided however, Professional Liability Insurance written on a claims made basis must comply

with the requirements set forth below. Professional Liability Insurance written on a claims made basis (including without limitation the initial policy obtained and all subsequent policies purchased as renewals or replacements) must show the retroactive date, and the retroactive date must be before the earlier of the effective date of the contract or the beginning of the contract work. Claims made Professional Liability Insurance must be maintained, and written evidence of insurance must be provided, for at least five (5) years after the completion of the contract work. If claims made coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the earlier of the effective date of the contract or the beginning of the contract work, CONSULTANT must purchase so called "extended reporting" or "tail" coverage for a minimum of five (5) years after completion of work, which must also show a retroactive date that is before the earlier of the effective date of the contract or the beginning of the contract work. As a condition precedent to CITY'S obligations under this Agreement, CONSULTANT shall furnish written evidence of such coverage (naming CITY, its officers and employees as additional insureds on the Comprehensive Liability insurance policy referred to in (a) immediately above via a specific endorsement) and requiring thirty (30) days written notice of policy lapse or cancellation, or of a material change in policy terms.

#### **E. Assignment**

Notwithstanding any other provision of this Agreement, neither this Agreement nor any duties or obligations of CONSULTANT under this Agreement may be assigned or subcontracted by CONSULTANT without the prior written consent of CITY, which CITY may withhold in its sole and absolute discretion.

#### **F. State and Federal Taxes**

As CONSULTANT is not CITY'S employee, CONSULTANT shall be responsible for paying all required state and federal taxes. Without limiting the foregoing, CONSULTANT acknowledges and agrees that:

- CITY will not withhold FICA (Social Security) from CONSULTANT'S payments;
- CITY will not make state or federal unemployment insurance contributions on CONSULTANT'S behalf;
- CITY will not withhold state or federal income tax from payment to CONSULTANT;
- CITY will not make disability insurance contributions on behalf of CONSULTANT;
- CITY will not obtain workers' compensation insurance on behalf of CONSULTANT.

## **ARTICLE 6. OBLIGATIONS OF CITY**

### **A. Cooperation of City**

CITY agrees to respond to all reasonable requests of CONSULTANT and provide access, at reasonable times following receipt by CITY of reasonable notice, to all documents reasonably necessary to the performance of CONSULTANT'S duties under this Agreement.

### **B. Assignment**

CITY may assign this Agreement or any duties or obligations thereunder to a successor governmental entity without the consent of CONSULTANT. Such assignment shall not release CONSULTANT from any of CONSULTANT'S duties or obligations under this Agreement.

## **ARTICLE 7. TERMINATION OF AGREEMENT**

### **A. Sale of Consultant's Business/ Death of Consultant.**

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

### **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 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.

**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 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.

**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.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.

**J. Partial Invalidity**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**K. Time of the Essence**

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

**L. Waiver**

CONSULTANT agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

**Executed at Gilroy, California,** on the date and year first above written.

**CONSULTANT:**

**CITY:**

\_\_\_\_\_

CITY OF GILROY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Social Security or Taxpayer  
Identification Number \_\_\_\_\_

Approved as to Form

ATTEST:

---

City Attorney

---

City Clerk

## EXHIBIT "A"

### SPECIFIC PROVISIONS

#### I. PROJECT MANAGER

CONSULTANT shall provide the services indicated on the attached **Exhibit "B"**, Scope of Services ("Services"). (All exhibits referenced are incorporated herein by reference.) To accomplish that end, CONSULTANT agrees to assign \_\_\_\_\_, who will act in the capacity of Project Manager, and who will personally direct such Services.

Except as may be specified elsewhere in this Agreement, CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to 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 civil (including structural and geotechnical) engineering plans, calculations, specifications and reports shall be prepared by, or under the responsible charge of, a licensed civil engineer and shall include his or her name and license number. Interim documents shall include a notation as to the intended purpose of the document, such as “preliminary” or “for review only.” All civil engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal of the licensee and the date of signing and sealing or stamping. All final civil engineering calculations and reports shall bear the signature and seal or stamp of the licensee, and the date of signing and sealing or stamping.

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**

**EXHIBIT "C"**  
**MILESTONE SCHEDULE**

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