

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

This AGREEMENT made this 21st day of August, 2023, between:

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

and CONTRACTOR: Perkins & Will, having a principal place of business at 475 Lincoln Street, Suite 100, Denver, CO 80203.

ARTICLE 1. TERM OF AGREEMENT

This Agreement will become effective on 8/21/2023 and will continue in effect through 8/31/2024 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 CONTRACTOR 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 CONTRACTOR or any employee or agent of CONTRACTOR. Both parties acknowledge that CONTRACTOR is not an employee for state or federal tax purposes. CONTRACTOR 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. CONTRACTOR shall retain the right to perform services for others during the term of this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

A. Specific Services

CONTRACTOR 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

CONTRACTOR 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 CONTRACTOR'S services.

C. Employment of Assistants

CONTRACTOR may, at the CONTRACTOR'S own expense, employ such assistants as CONTRACTOR deems necessary to perform the services required of CONTRACTOR by this Agreement, subject to the prohibition against assignment and subcontracting contained in **Article 5** below. CITY may not control, direct, or supervise CONTRACTOR'S assistants in the performance of those services. CONTRACTOR 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

CONTRACTOR shall perform the services required by this Agreement at any place or location and at such times as CONTRACTOR shall determine is necessary to properly and timely perform CONTRACTOR'S services.

ARTICLE 4. COMPENSATION

A. Consideration

In consideration for the services to be performed by CONTRACTOR, CITY agrees to pay CONTRACTOR the amounts set forth in **Exhibit "D"** ("Payment Schedule"). In no event however shall the total compensation paid to CONTRACTOR exceed \$250,000.00.

B. Invoices

CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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

CONTRACTOR 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 CONTRACTOR, all fees, fines, licenses, bonds or taxes required of or imposed against CONTRACTOR and all other of CONTRACTOR'S costs of doing business. CITY shall not be responsible for any expenses incurred by CONTRACTOR in performing services for CITY, except for those expenses constituting "direct expenses" referenced on **Exhibit "A."**

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

A. Tools and Instrumentalities

CONTRACTOR shall supply all tools and instrumentalities required to perform the services under this Agreement at its sole cost and expense. CONTRACTOR is not required to purchase or rent any tools, equipment or services from CITY.

B. Workers' Compensation

CONTRACTOR agrees to provide workers' compensation insurance for CONTRACTOR'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 CONTRACTOR'S employees.

C. Indemnification of Liability, Duty to Defend

1. As to professional liability, to the fullest extent permitted by law, CONTRACTOR 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 CONTRACTOR or CONTRACTOR'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, CONTRACTOR 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 CONTRACTOR or CONTRACTOR'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, CONTRACTOR 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, CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR under this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of CITY, which CITY may withhold in its sole and absolute discretion.

F. State and Federal Taxes

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

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

ARTICLE 6. OBLIGATIONS OF CITY

A. Cooperation of City

CITY agrees to respond to all reasonable requests of CONTRACTOR and provide access, at reasonable times following receipt by CITY of reasonable notice, to all documents reasonably necessary to the performance of CONTRACTOR'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 CONTRACTOR. Such assignment shall not release CONTRACTOR from any of CONTRACTOR'S duties or obligations under this Agreement.

ARTICLE 7. TERMINATION OF AGREEMENT

A. Sale of CONTRACTOR's Business/ Death of CONTRACTOR.

CONTRACTOR shall notify CITY of the proposed sale of CONTRACTOR'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 CONTRACTOR set forth in **Exhibit A, Subsection V.H.**, no later than thirty (30) days after CITY's receipt of such notice of sale.

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

B. Termination by City for Default of CONTRACTOR

Should CONTRACTOR 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 CONTRACTOR. For the purposes of this section, material breach of this Agreement shall include, but not be limited to the following:

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

CONTRACTOR shall be entitled to payment only for work completed in accordance with the terms of this Agreement through the date of the termination notice, as reasonably determined by CITY, provided that such payment shall not exceed the amounts set forth in this Agreement for the tasks described on Exhibit C" which have been fully, competently and timely rendered by CONTRACTOR. Notwithstanding the foregoing, if CITY terminates this Agreement due to CONTRACTOR'S default in the performance of this Agreement or material breach by CONTRACTOR of any of its provisions, then in addition to any other rights and remedies CITY

may have, CONTRACTOR 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 CONTRACTOR for the performance of that task pursuant to this Agreement.

C. Termination for Failure to Make Agreed-Upon Payments

Should CITY fail to pay CONTRACTOR 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, CONTRACTOR, at the CONTRACTOR'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 CONTRACTOR to CITY.

D. Transition after Termination

Upon termination, CONTRACTOR shall immediately stop work, unless cessation could potentially cause any damage or harm to person or property, in which case CONTRACTOR shall cease such work as soon as it is safe to do so. CONTRACTOR shall incur no further expenses in connection with this Agreement. CONTRACTOR 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 CONTRACTOR's duties by any new CONTRACTOR 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 CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR 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, CONTRACTOR 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

CONTRACTOR 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 CONTRACTOR and that no person associated with CONTRACTOR 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 CONTRACTOR 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

CONTRACTOR 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.

CONTRACTOR:

CITY:

Perkins & Will

CITY OF GILROY

By: _____

Name: Joseph T. Dyer AIA

Title: Associate Principal

By: _____

Name: Jimmy Forbis

Title: City Administrator

Social Security or Taxpayer

Identification Number _____

Approved as to Form

ATTEST:

City Attorney

City Clerk

DRAFT

EXHIBIT "A"

SPECIFIC PROVISIONS

I. PROJECT MANAGER

CONTRACTOR 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, CONTRACTOR agrees to assign Joseph T. Dyer, 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, CONTRACTOR 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

CONTRACTOR shall commence the Services upon delivery to CONTRACTOR 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, Karl Bjarke shall be the designated City contact person(s). Notice to Proceed shall be deemed to have been delivered upon actual receipt by CONTRACTOR or if otherwise delivered as provided in the **Section V.H.** ("Notices") of this **Exhibit "A"**.

B. COMPLETION OF SERVICES

When CITY determines that CONTRACTOR has completed all of the Services in accordance with the terms of this Agreement, CITY shall give CONTRACTOR written Notice of Final Acceptance, and CONTRACTOR shall not incur any further costs hereunder. CONTRACTOR 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 CONTRACTOR has not completed all of such Services as required by this Agreement, CITY shall so inform CONTRACTOR 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 CONTRACTOR 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. CONTRACTOR shall obtain written approval from CITY prior to incurring or billing of direct expenses.

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

V. OTHER PROVISIONS

A. STANDARD OF WORKMANSHIP

CONTRACTOR 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 CONTRACTOR’S representations and warranties regarding its skills, qualifications and licenses. CONTRACTOR 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 CONTRACTOR

CONTRACTOR shall be responsible for the professional quality, technical accuracy, and the coordination of the Services furnished by it under this Agreement. CONTRACTOR 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 CONTRACTOR shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONTRACTOR’S negligent performance of any of the services furnished under this Agreement.

C. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

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 CONTRACTOR for the purpose of verifying any and all charges made by CONTRACTOR in connection with this Agreement. CONTRACTOR shall maintain for a minimum period of three (3) years (from the date of final payment to CONTRACTOR), 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 CONTRACTOR, 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 CONTRACTOR and all other written and oral information developed or received by or for CONTRACTOR and all other written and oral information submitted to CONTRACTOR in connection with the performance of this Agreement shall be held confidential by CONTRACTOR 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 CONTRACTOR which is otherwise known to CONTRACTOR or is or becomes generally known to the related industry (other than that which becomes generally known as the result of CONTRACTOR'S disclosure thereof) shall be deemed confidential. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR shall not be responsible for, and City shall indemnify CONTRACTOR 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: Attn: Karl Bjarke
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

CONTRACTOR: Joseph T. Dyer
Perkins & Will
475 Lincoln Street, Suite 100
Denver, CO 80203

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

CONTRACTOR 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 CONTRACTOR warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONTRACTOR, 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

DRAFT

Perkins&Will

August 6, 2023

Karl Bjarke, Project Manager
City of Gilroy, CA
Re: Gilroy Ice Center

Dear Karl,

We are pleased to submit this proposal to you for performing Design Services for the Gilroy Ice Center. This proposal is for Perkins&Will only and does not assume any consultant to be hired by Perkins&Will. The listed Consultants are excluded and assumed to be hired directly by the owner or design build contractor. Perkins&Will can submit design fees for the listed consultants if it's determined to be needed. The level of document completion will include Concept Design, Schematic Design, and Design Development as further defined below. This proposal assumes that at the end of Design Development, there will be a 4-week transition period between Perkins&Will and the hired Architect of Record brought on by the Design Build Contractor. We propose the following services:

DESIGN TEAM

- | | |
|--------------------------|---|
| 1. Design / Program – | Perkins&Will |
| 2. Architect of Record – | Hired direct by owner / Design Build Contractor |
| 3. Civil / Landscape – | Hired direct by owner / Design Build Contractor |
| 4. Structural Engineer – | Hired direct by owner / Design Build Contractor |
| 5. Mechanical Engineer – | Hired direct by owner / Design Build Contractor |
| 6. Electrical Engineer – | Hired direct by owner / Design Build Contractor |
| 7. Plumbing Engineer – | Hired direct by owner / Design Build Contractor |
| 8. Technology Engineer – | Hired direct by owner / Design Build Contractor |
| 9. Audio Visual – | Hired direct by owner / Design Build Contractor |
| 10. Food Service – | Hired direct by owner / Design Build Contractor |
| 11. LEED Consultant – | Hired direct by owner / Design Build Contractor |
| 12. Other Consultants – | Hired direct by owner / Design Build Contractor |

SCOPE AND DESCRIPTION

We understand the primary goal of the project is to design a two-sheet ice facility for the City of Gilroy and Sharks Sports & Entertainment. The total project cost as Perkins&Will understand is a total project budget of \$30 million and will be approximately 100,000 square feet on two levels. Level 1 (Rink Level) will have a building footprint of approximately 70,000 sf with access to an existing 387 parking spaces. Level 2 (Mezzanine Level) will be approximately 30,000 sf with a total building height of roughly 30'-0".

GENERAL PROGRAM LIST

1. Level 01 – Rink Level
 - a. Two NHL Sized Ice Rinks
 1. Including seating capacity of 150 – 200 seats per rink
 - b. Public Locker Rooms with Restrooms and Showers
 - c. Entrance Lobby / General reception area
 - d. Skate Rentals / Food Concessions / Merchandise / Retail Area
 - e. Administrative Offices
 - f. Support Spaces
 1. Electrical / Technology / Ice Equipment / Boiler Room / Water Entry / Fire Pump / Ice resurfacing room / Storage
2. Level 01 – Mezzanine Level
 - a. Viewing Deck
 1. Includes seating capacity of 100 – 150 seats per rink
 - b. Training Room / Fitness Area

Perkins&Will

- c. Multipurpose Rooms
- d. Conference Rooms
- e. Bar / Restaurant Space
- f. Facility Support Areas
 - 1. Restrooms / Concessions / Pantry / Kitchen
- g. Storage

DOCUMENTATION PHASE SERVICES:

Perkins & Will plan is to issue documents and services for all the phases listed below.

Concept Design Phase:

Deliverables

- 1. (6) Total Enscape Renderings to help convey design intent
- 2. Precedent Images representing design intent.
- 3. Concept Design Development and Diagrams of critical program areas
- 4. Overall Color Plans showing proposed layouts.
- 5. Enlarged Color Plans of scope areas.
 - a. Square footage and dimension shown as needed.
 - b. Multiple layout solutions for ownership consideration for all studied program elements
 - c. Furniture, Fixtures, and Equipment general layouts on all plans
 - i. Design Intent images shown for reference.
- 6. Reflected Ceiling Plans, Sections, Elevations
- 7. Architectural Level 3D images for design approval

Schematic Design Phase: Services provided per standard AIA contract B101 section 3.2

Design Development Phase: Services provided per standard AIA contract B101 section 3.3

In addition to the services listed above Perkins & Will, will also provide the following:

- 1. Design Schedule
- 2. Assist in early identification of long lead items.
- 3. Updates to Enscape Renderings provided at the Concept Design Deliverable
 - o 1 round of updates assumed.
- 4. Architectural Level 3D images for design approval
- 5. Interior Design Services and Documentation per issuance
- 6. Material and product research
- 7. Coordination with Owner Provided Design / Build team members.
 - o Consultants are assumed to be hired by the owner or design build contractor.
- 8. Attend all meetings as requested and review equipment list with the ownership team.
- 9. Meeting Minutes for all meetings with the client and/or stakeholders
- 10. Meetings with Code Official to discuss existing and proposed conditions and negotiated solutions.
- 11. Updated Building Plans / Reflected Ceiling Plans / Sections / Elevations / Interior Elevations / Interior Details / Schedules / Interior Finish Plans as needed to submit complete drawings per phase of issuance.

CLARIFICATIONS

- 1. Design Schedule Assumptions
 - a. Concept Design - 4 weeks (min)
 - b. Schematic Design - 6 weeks (min)
 - c. Design Development - 8 weeks (min)
 - d. Transition Period - 4 weeks (max)
 - e. **Total Duration - 22 weeks**

EXCLUSIONS FROM FEE

1. Construction Document Phase
2. Construction Administration Phase
3. Value Engineering efforts after the 100% Design Development documents are issued
4. Fixtures, Fixtures, and Equipment: Additional Services can be provide for this scope of work
 - a. Perkins & Will, will assist the owner in developing FF&E needs and will show general layout of furniture and equipment in the documentation. Fixtures, furnishings, and equipment research, pricing, specification development, or purchasing is not included within our scope.
5. Graphics Package: Additional Services can be provide for this scope of work
 - a. Content creation and documentation of signage, wayfinding, and branding. Perkins & Will, will assist in locating / visualizing graphic content and coordinating any associated architectural related details to accommodate.
6. Photo-realistic renderings outside of the quantity listed above.
7. Any building system design, other than those listed.
8. Any consultants other than those specifically listed.
9. Detailed cost estimate by trade or system. Cost estimating will be provided by the contractor
10. Formal survey of existing conditions, including measured as-builts. Field verification of critical dimensions is included.
11. Hazardous material investigation or abatement
12. Life cycle cost studies. Our analysis and recommendations will include general information about the lifespan of assets and building systems, but calculations of operational costs/savings based on capital investments are not included.
13. LEED certification/energy modeling/specialized sustainable design studies

Perkins&Will

FEE PROPOSAL

We have developed our base fee on the tasks outlined above. Fees listed below are for Perkins&Will only. Our fee breakout per phase is as follows:

1. <u>Perkins&Will</u>	
a. <u>Concept Design</u>	<u>\$50,000</u>
b. <u>Schematic Design</u>	<u>\$75,000</u>
c. <u>Design Development</u>	<u>\$100,000</u>
d. <u>Transition Coordination</u>	<u>\$25,000</u>

TOTAL FEE	\$250,000
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FEE CONDITIONS

1. Additional Services: For any additional services not included above, a lump sum fee will be negotiated, or we will be compensated on a time basis at our prevailing hourly rate schedule.
2. Reimbursable: Expenses will be billed monthly at cost for the following: travel cost to the site, included transportation and subsistence; messenger service; express mail, printing costs for distribution of plans and electronic submittal record copies.

We hope you find our scope and fee structure in line with project expectations. If so, please sign below in agreement.

Sincerely,

Joseph T. Dyer AIA
Associate Principal
joe.dyer@perkinswill.com

Approved and accepted this _____ day of _____, 2023.

City of Gilroy

By: _____ Title: _____

EXHIBIT “C”

MILESTONE SCHEDULE

Design Schedule Assumptions:

- | | |
|-----------------------|----------|
| a. Concept Design | 4 weeks |
| b. Schematic Design | 6 weeks |
| c. Design Development | 8 weeks |
| d. Transition Period | 4 weeks |
| e. Total Duration | 22 weeks |

DRAFT

EXHIBIT “D”

PAYMENT SCHEDULE

DRAFT

Perkins&Will

Appendix A – Perkins & Will 2023 Rates

Principal	\$350
Associate Principal	\$310
Technical Director	\$275
Sr. Project Manager	\$275
Sr. Project Designer	\$250
Sr. Project Architect	\$250
Sr. Technical Coordinator	\$240
Project Manager	\$240
Project Designer	\$220
Project Architect	\$220
Technical Coordinator	\$220
Sr. Visualization Artist	\$190
Visualization Artist	\$160
Arch III/Design III	\$175
Arch II/Design II	\$150
Arch I/Design I	\$140/\$210 OT
Administrative	\$110/\$165 OT
Intern	\$90/\$135 OT

City of Gilroy - Billing Schedule

Gilroy Twin Ice Facility -

Phases	100.00%	Fee	\$250,000
Program / Concept	20.00%	SD	\$50,000
Schematic Design	30.00%	DD	\$75,000
Design Development	40.00%	CD	\$100,000
Transition Coord	10.00%	BN	\$25,000
			\$250,000

DESIGN FEE INVOICES			
		2023	
Program / Concept	PC	September 30	\$50,000
Schematic Design	SD	October 31	\$50,000
SD / DD	SD/DD	November 30	\$50,000
Design Development	DD	December 31	\$50,000
		2024	
DD / Transition Coord	DD/T	January 31	\$37,500
CD's / Bid / Award	T	February 28	\$12,500
CD's / Bid / Award	na	March 31	\$0
CD's / Bid / Award	na	April 30	\$0
CD's / Bid / Award	na	May 31	\$0
CD's / Bid / Award	na	June 30	\$0
CD's / Bid / Award	na	July 31	\$0
CD's / Bid / Award	na	August 31	\$0
Construction Admin	na	September 30	\$0
Construction Admin	na	October 31	\$0
Construction Admin	na	November 30	\$0
Construction Admin	na	December 31	\$0
			2023 \$200,000
			2024 \$50,000
TOTAL			\$250,000