

AGREEMENT FOR ARCHITECTURAL SERVICES

This AGREEMENT made this 3rd day of August, 2009, between:

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

and ARCHITECT: Harley Ellis Devereaux, having a principal place of business at
601 S. Figueroa St. # 500, Los Angeles, CA 90017

ARTICLE 1. TERM OF AGREEMENT

This Agreement will become effective on August 3, 2009 and will continue in effect through April 30, 2013 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 ARCHITECT 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 ARCHITECT or any employee or agent of ARCHITECT. Both parties acknowledge that ARCHITECT is not an employee for state or federal tax purposes. ARCHITECT 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. ARCHITECT shall retain the right to perform services for others during the term of this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY ARCHITECT

A. Specific Services

ARCHITECT 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").

Method of Performing Services

ARCHITECT 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 ARCHITECT'S services.

B. Employment of Assistants

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

C. Place of Work

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

ARTICLE 4. COMPENSATION

A. Consideration

In consideration for the services to be performed by ARCHITECT, CITY agrees to pay ARCHITECT the amounts set forth in **Exhibit "D"**. In no event however shall the total compensation paid to ARCHITECT exceed One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000.00)

B. Invoices

ARCHITECT 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 ARCHITECT 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 ARCHITECT 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

ARCHITECT 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 ARCHITECT, all fees, fines, licenses, bonds or taxes required of or imposed against ARCHITECT and all other of ARCHITECT'S costs of doing business. CITY shall not be

responsible for any expenses incurred by ARCHITECT in performing services for CITY, except for those expenses constituting “direct expenses” referenced on **Exhibit “A”**.

ARTICLE 5. OBLIGATIONS OF ARCHITECT

A. Tools and Instrumentalities

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

B. Workers’ Compensation

ARCHITECT agrees to provide workers’ compensation insurance for ARCHITECT’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 ARCHITECT’S employees.

C. Indemnification of Liability, Duty to Defend

(1) Professional Liability

To the fullest extent permitted by law, ARCHITECT shall 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 reasonable attorneys’ fees, to the extent arising from any willful misconduct or negligent acts, errors or omissions of ARCHITECT or ARCHITECT’S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property, excluding, however, such liability, claims, losses, damages or expenses to the extent caused by any willful misconduct or negligent acts, errors or omissions of CITY.

(2) Other Liability

To the fullest extent permitted by law, ARCHITECT shall defend through counsel approved by CITY, indemnify and hold harmless CITY, its officers, representatives, agents and employees against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation reasonable attorneys’ fees, to the extent arising from any willful misconduct or negligent acts, errors or omissions of ARCHITECT or ARCHITECT’S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property, excluding, however such liability, claims, losses, damages or expenses to the extent caused by any willful misconduct or negligent acts, errors or omissions of CITY.

D. Insurance

In addition to any other obligations under this Agreement, ARCHITECT shall, at no cost to CITY, obtain and maintain throughout the term of this Agreement: (a) Commercial Liability Insurance, including coverage for owned and non-owned automobiles, with a minimum combined single limit coverage of \$1,000,000 per occurrence for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof; and (b) Professional Liability Insurance (Errors & Omissions) with a minimum coverage of \$1,000,000 per occurrence and aggregate. As a condition precedent to CITY'S obligations under this Agreement, ARCHITECT shall furnish evidence of such coverage (naming CITY, its officers and employees as additional insureds on the Comprehensive Liability insurance policy referred to in (a) immediately above) and requiring thirty (30) days written notice of policy lapse or cancellation, or of a material change in policy terms.

E. Assignment

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

F. State and Federal Taxes

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

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

ARTICLE 6. OBLIGATIONS OF CITY

A. Cooperation of City

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

ARTICLE 7. TERMINATION OF AGREEMENT

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

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

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

B. Termination by City for Default of Architect

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

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

ARCHITECT 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 "D"** which have been fully, competently and timely rendered by ARCHITECT. Notwithstanding the foregoing, if CITY terminates this Agreement due to ARCHITECT'S default in the performance of this Agreement or material breach by ARCHITECT of any of its provisions, then in addition to any other rights and remedies CITY may have, ARCHITECT 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 ARCHITECT for the performance of that task pursuant to this Agreement.

C. Termination for Failure to Make Agreed-Upon Payments

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

D. Transition after Termination

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

ARCHITECT 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 ARCHITECT and that no person associated with ARCHITECT 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 ARCHITECT 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

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

ARCHITECT 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.

ARCHITECT:

CITY:

HARLEY ELLIS DEVEREAUX

CITY OF GILROY

By: _____

By: _____

Name:

Name:

Its:

City Administrator:

Social Security or Taxpayer
Identification Number _____

Approved as to Form

ATTEST:

Name:
City Attorney

Name:
City Clerk

EXHIBIT "A"

SPECIFIC PROVISIONS

I. PROJECT MANAGER

ARCHITECT shall provide the services indicated on the attached **Exhibit "B"** ("Services"). (All exhibits referenced are incorporated herein by reference.) To accomplish that end, ARCHITECT agrees to assign Charles Alexander, 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, ARCHITECT 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

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

. Notice to Proceed shall be deemed to have been delivered upon actual receipt by Architect of such Notice or if otherwise delivered as provided in the **Section V.H** of this **Exhibit "A"**.

B. COMPLETION OF SERVICES

When CITY determines that ARCHITECT has satisfactorily completed all of the Services, CITY shall give ARCHITECT written Notice of Final Acceptance, and ARCHITECT shall not incur any further costs hereunder. ARCHITECT 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 ARCHITECT has not satisfactorily completed all of such Services, CITY shall so inform ARCHITECT 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 ARCHITECT 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. ARCHITECT 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

ARCHITECT represents that it has the qualifications and skills necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein. In addition, ARCHITECT represents and warrants that it has the licenses necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein. CITY expressly relies upon ARCHITECT'S representations and warranties (as applicable) regarding its skills, qualifications and licenses. ARCHITECT 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 ARCHITECT

ARCHITECT 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 ARCHITECT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by ARCHITECT'S negligent performance of any of the services furnished under this Agreement.

C. RIGHT OF CITY TO INSPECT RECORDS OF ARCHITECT

CITY, through its authorized employees, representatives and/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 ARCHITECT for the purpose of verifying any and all charges made by ARCHITECT in connection with this Agreement.

ARCHITECT shall maintain for a minimum period of three (3) years (from the date of final payment to ARCHITECT), 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 ARCHITECT, 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 ARCHITECT and all other written and oral information developed or received by or for ARCHITECT and all other written and oral information submitted to ARCHITECT in connection with the performance of this Agreement shall be held confidential by ARCHITECT and shall not, without the prior written consent of CITY, be used for any purposes other than performance of the Services, nor be disclosed to an entity not connected with the performance of the Services. Nothing furnished to ARCHITECT which is otherwise known to ARCHITECT or is or becomes generally known to the related industry (other than that which becomes generally known as the result of ARCHITECT'S disclosure thereof) shall be deemed confidential. ARCHITECT 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 ARCHITECT 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 ARCHITECT 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.

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

ARCHITECT: Charles Alexander, AIA
Harley Ellis Devereaux
601 S. Figueroa St, Suite 500
Los Angeles, California 90017

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

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

Design, Construction Documents, Permit, Bidding, Construction Administration and LEED Certification.

I. Purpose:

The Architect shall provide services to the City related to construction of the new City library building (the “**Project**”). The purpose of this scope of work is to modify the existing Library Bond Act Application drawings (dated March 14, 2003), including all sheets listed on the index to said drawings on Sheet A1.001 (a copy of which is attached hereto as **Exhibit “E”**) (collectively the “**Construction Documents**”), to meet current governing code requirements, as well as to provide design services needed to incorporate changes in the Construction Documents.

II. Tasks to be Completed by the Architect Pursuant to this Agreement:

Architect shall:

1. Complete the tasks set forth in the revised program plans and documents completion matrix approved and initialed by the City of Gilroy, Santa Clara County Library, and Harley Ellis Devereaux at their June 29, 2009 meeting, in which document is attached hereto as **Exhibit “F”**).
2. Submit the revised Construction Documents to the City for plan check and permitting and assist the City in putting the Project out to bid by general contractors for construction via a Construction Manager-led delivery process.
3. Assist the City in selecting the Construction Manager (“**CM**”) and the General Contractor (“**GC**”), including providing assistance in pre-qualifying the CM and GC as LEED Certified (which prequalification shall include determining that the CM and GC have completed no fewer than three (3) LEED Silver Certified projects of similar size and scope).
4. Attend a maximum of one hundred forty-five (145) Local Meetings. For purposes of this Agreement, “**Local Meetings**” shall be defined as attendance by one person at a level of Associate or above from Architect’s Los Angeles office at a meeting in Santa Clara County between the hours of 10AM and 4PM on the same day.
5. Attend a maximum of twelve (12) Extended Local Meetings if requested by the City. For purposes of this Agreement, “**Extended Local Meetings**” shall be defined as attendance by one person at a level of associate or above from Architect’s Los Angeles office at a meeting in Santa Clara County, which meeting might require an overnight stay.
6. As part of the aforementioned Local Meetings or Extended Local Meetings, at the discretion of the City Engineer, the Architect will attend: (i) all regularly scheduled meetings of the Library

Review Committee, which shall consist of three (3) members of the City of Gilroy City Council and representatives of the Santa Clara County Library; and (ii) the bi-weekly Project Team meetings, which shall be meetings between the City Engineer, the CM and the Architect (or others as determined necessary by the City Engineer).

7. Update the Opinion of Probable Cost dated June 22, 2009 a current copy of which is attached hereto as **Exhibit “G”** prior to CM’s “constructability, bidability review” and again at a point prior to submitting to bid, but no more than thirty (30) days prior thereto.

8. Incorporate the items set forth in the LEED Scorecard approved by City Council on June 8, 2009, attached hereto as **Exhibit “H”** into the Construction Documents.

9. Incorporate the items set forth in the Approved (June 29, 2009) revised program/furniture plans (Sheets A3.201 and A3.202), attached hereto as **Exhibit “I”**.

10. Incorporate the requirements of the Mitigation Monitoring Program set forth in Gilroy City Council Resolution 2002-39 (attached hereto as **Exhibit “J”**) into the Construction Documents.

11. Complete the Construction Documents to allow them to satisfy current governing legal standards as well as rewrite the existing specifications in the Construction Documents to include new sustainable products, materials and standards as well as LEED criteria.

12. Complete sustainable design modifications to the Construction Documents as required to pursue the LEED credits identified as attainable in the approved LEED Scorecard, including modification of the Construction documents to:

- target credits identified in the May 18, 2009 presentation to the City Council.
- require replacement of the pavement in the parking lot, courtyard, and walkways with permeable paving material and associated base. This modification will also include re-calculation and re-design of the drainage systems for these scope components.
- provide for maximum use of daylight, including: (i) the addition of skylights, overhangs and shades; and (ii) lighting, control systems and motorized interior shades with photocells/sensors redesigned for maximum use of daylight.
- add louvers and operable windows interconnected w/HVAC control system and occupancy sensors to provide maximum use of fresh air ventilation for thermal comfort.
- add two (2) staff showers and changing rooms.
- revise irrigation design to an underground system to reduce water consumption to 50% of baseline allowable (+/-750 gpd).
- supply revised irrigation system with gray water from building lavatories and showers.
- add approximately 5400 SF of photovoltaic panels at south roof and at south courtyard trellis to provide on-site renewable energy source.
- complete a computational Fluid Dynamics/Climate Responsive Systems Analyses.
- complete LEED documentation and administration for LEED certification.
- complete LEED Fundamental Commissioning.
- complete LEED Enhanced Commissioning.

- complete LEED Measurement & Verification.
13. Re-design and recalculate elements of the structural system including changes required by changes to the code (Current code is 2007 CBC) as well as those that will result in possible cost savings.
 14. Complete specific Client/User Scope Changes as listed in the Documents Completion Matrix (**Exhibit “F”**).
 15. Provide a signage consultant to develop library specific signage per Santa Clara County Library requirements.
 16. Provide design and specification of fixtures to replace various moveable furnishings included in the approved program plans.
 17. Provide full interior design services.
 18. Provide design, selection, specification of moveable furnishings (purchase and installation costs of these furnishings are not reflected in the Opinion of Probable Cost).
 19. Provide enhanced energy management systems (“EMS”), building wide WiFi and design and coordination of building wide cabling systems.
 20. Provide plan check/permit/bidding/construction administration services including:
 - providing assistance to the City of Gilroy Building Department with plan check review.
 - revising Construction Documents as required based on plan check comments.
 - assisting the City of Gilroy and the CM in the bidding of the Construction Documents including bid addenda, a pre-bid meeting, and a pre-construction meeting.
 - providing construction administration services (for a maximum duration of twenty-four (24) months from notice to proceed for construction) including, but not limited to, attendance at regularly scheduled meetings, review of submittals, requests for information, bulletins, and field reports.
 - assisting the City with architectural/site review.
 - assisting the City with the initial study and environmental (negative declaration)
 21. Assist the CM in the document constructability and coordination review process.

III. General Conditions

Hazardous Materials

Harley Ellis Devereaux does not have specialized expertise in the specifying of treatment and/or handling of new and/or existing asbestos-containing, asbestos-contaminated, or other hazardous materials, above or below surface, and our professional liability insurance policy does not include coverage of these services. Therefore, Harley Ellis Devereaux cannot provide these services. It is our understanding that City of Gilroy will retain, if necessary, a qualified

industrial hygienist and/or contractor to provide these services. Harley Ellis Devereaux will include the work of these consultants in their Construction Bid Documents for coordination.

LEED Certification

The LEED Green Building Rating System utilizes certain design, construction and usage criteria in order to promote environmentally friendly building. While it is understood that a goal of this Project is to achieve all of the credits highlighted in the attached LEED Scorecard (**Exhibit “H”**) the Owner acknowledges and understands that LEED is subject to interpretation, and achieving levels of compliance involves factors beyond the control of Harley Ellis Devereaux, including, but not limited to the Owner’s use, operation and maintenance of the completed project. In addressing LEED, Harley Ellis Devereaux shall perform its services in a manner consistent with that degree of skill and care ordinarily exercised by design professionals performing similar services in the State of California. Harley Ellis Devereaux will use reasonable care consistent with the foregoing standard in interpreting LEED and designing in accordance with LEED. However, Harley Ellis Devereaux does not warrant or represent that the Project will actually achieve LEED certification or realize any particular energy savings. Harley Ellis Devereaux shall not be responsible for costs incurred by City due to excessive use of energy resulting from the Owner’s use and maintenance of the Library building, if such use and maintenance is not in keeping with use of said building as a library or for similar purposes in terms of the impact of such uses on the building’s energy consumption.

Energy Consumption and Commissioning Services

In performing all services described in this proposal, Harley Ellis Devereaux will comply with usual and customary commissioning standards and practices using existing technology and relying upon available scientific knowledge and data at the time the services are rendered (Commissioning Standards and Practices are defined per LEED-NC version 2.2, Energy and Atmosphere Prerequisite 1 and Credit 3). While Harley Ellis Devereaux will provide commissioning services to maximize the energy efficiency measures targeted by the mechanical and electrical design provided by the project team, predicting annual energy consumption and cost for the Project, actual consumption and cost is not within the scope of commissioning services. Project energy efficiency and equipment performance may vary due to many factors which are beyond our control, including, but not limited to: contractor and sub-contractor performance and delivery; changes in building operations; variations and changes in building occupancy; the degree of adherence to required building maintenance procedures; and, variations in weather conditions are some of the factors which can impact actual energy consumption, annual energy cost and equipment performance. For these reasons, Harley Ellis Devereaux cannot warrant or guarantee that actual energy consumption, annual energy cost and equipment performance will correspond to the predictions of the commissioning reports produced in connection with the LEED related services described in this proposal.

EXHIBIT “C”

MILESTONE SCHEDULE

Exhibit “C” – Milestone Schedule

Preliminary Design Analysis to support Sustainable Space (4 weeks)	July 7 thru July 31, 2009
City’s Architectural and Site Review (15 weeks)	August 3, 2009 thru November 16, 2009
City’s Initial Study and Environmental (Neg. Dec.)	August 3, 2009 thru November 16, 2009
Schematic Design (5 weeks*)	August 3, 2009 thru September 4, 2009
Design Development (11 weeks*)	August 3, 2009 thru October 16, 2009
Construction Documents (28 weeks*)	August 3, 2009 thru February 12, 2010
Specifications (23 weeks)	September 7, 2009 thru February 12, 2010
Plan Check (13 weeks)	November 16, 2009 thru February 12, 2010
CM Constructability Review (13 weeks)	November 16, 2009 thru February 12, 2010
Bidding (8 weeks)	February 15, 2010 thru April 5, 2010
Construction (24 months)	April 12, 2010 thru April 20, 2012
Measurement and Verification (12 months)	April 2012 thru April 2013

*based on SD, DD, and CD running concurrently

EXHIBIT “D”

PAYMENT SCHEDULE

Total Compensation

Harley Ellis Devereaux' fee for providing the above outlined services will be **One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000.00)**, plus direct expenses (as defined below not to exceed **One Hundred Thousand Dollars (\$100,000.00)** unless authorized by the City of Gilroy in advance.

Invoicing

Invoicing for these services will occur monthly and will be based upon the percentage of work that has been completed as reasonably determined by the City Engineer. Payment is expected thirty (30) days within receipt of invoice.

Additional Services

Any approved additional services will be billed hourly based on the schedule shown below of our current hourly rates. The rate schedule will be revised yearly per standard company rates.

Harley Ellis Devereaux

**Job Cost Rates
2009**

Classification	Rate Range		
Principal-in-Charge	\$ 220.00	to	\$ 270.00
Project Management	\$ 145.00	to	\$ 215.00
Level 6: Principal	\$ 220.00	to	\$ 270.00
Level 5: Associate	\$ 110.00	to	\$ 230.00
Level 4: Salary	\$ 110.00	to	\$ 205.00
Level 3: Hourly	\$ 75.00	to	\$ 135.00
Level 2: Hourly	\$ 70.00	to	\$ 100.00
Level 1: Hourly	\$ 55.00	to	\$ 85.00

Direct Expenses

The following direct expenses will be reimbursed at the rate of One and Fifteen Hundredths (1.15) times the actual cost to Harley Ellis Devereaux (at a cost not to exceed \$100,000 without prior written authorization from the City Administrator):

- Travel expenses by Harley Ellis Devereaux and their Consultants for trips to Santa Clara County for purposes of investigation and attendance to meetings approved by the City of Gilroy.

- Reproduction and delivery-related expenses for documents. Note that documents for plan check, CM Coordination, and City Review (2 milestones) will be billed at cost without mark-up)
- Out-of-pocket expenses for the preparation of presentation graphics, renderings and models requested by the City of Gilroy.
- Expenses for consultants' services authorized by the City of Gilroy in connection with topographic survey, soils testing and geotechnical studies, other project specific consultants, etc.

