

CITY OF RANCHO MIRAGE

**69825 HIGHWAY 111
RANCHO MIRAGE, CA 92270
(760) 324-4511**

**REQUEST FOR PROPOSALS
FOR
LIBRARY SPACE PLANNING COLLECTION & AV BOOTH
DESIGN AND CONSTRUCTION SERVICES**

**ISSUED:
MAY 21, 2015**

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CITY OF RANCHO MIRAGE
REQUEST FOR PROPOSALS
FOR
LIBRARY SPACE PLANNING COLLECTION & AV BOOTH
DESIGN AND CONSTRUCTION SERVICES

ANNOUNCEMENT:

The City of Rancho Mirage ("City") invites proposals from qualified, competent, knowledgeable, and experienced design and construction companies that will provide full-service design and construction services and administer the duties and responsibilities set forth in this Request for Proposals ("RFP") at the City of Rancho Mirage Public Library, located at 71-100 Highway 111 in Rancho Mirage, California, the Design Build Plans for which are attached hereto and incorporated herein by this reference as **Exhibit "A,"** in compliance with all applicable laws, regulations, policies and procedures. Firms submitting proposals will be asked to perform design/build services in accordance with the Design Build Plans and must be prepared to immediately enter into a contract ("Agreement") for the design and construction services and duties as set forth in this RFP.

PROPOSALS/OFFER SUBMITTAL:

Proposals will be accepted until **5 p.m. on June 12, 2015**, and each must be submitted in a sealed envelope plainly marked on the outside "**SEALED BID FOR LIBRARY SPACE PLANNING COLLECTION & AV BOOTH DESIGN AND CONSTRUCTION SERVICES - DO NOT OPEN WITH REGULAR MAIL**" to:

City of Rancho Mirage Public Library
Attn: David Bryant, Library Director
71-100 Highway 111
Rancho Mirage, California 92270

SCOPE OF SERVICES:

The selected firm shall provide to the City all the necessary design/build services in accordance with the Design Build Plans to fulfill its duties and obligations under the Agreement which duties and obligations include but are not limited to, the following:

Special Collections Room

- **Scope of Work for North Wall Units (rare books)**
- **Scope of Work for South Wall Units (minerals display)**
- **Scope of Work for Lighting Upgrades**

North Wall Unit (Special Book Collections):

- Using existing Library sketches from a donor, design and create drawings for custom shelving, a long bookcase with easily adjustable shelves to store and showcase various special collections [see **Exhibit "C"** Photo 1 for depiction of location of bookcase], including the President and Mrs. Ford Collection centered with a large bronze bust of President Ford (presently displayed outdoors) [see **Exhibit "C"** Photos 2 and 3 for depiction of location of Gerald Ford bookcase and for illustration of Gerald Ford bust].
- Work with cabinet/furniture maker and electrician to oversee the construction, delivery and installation of this unit in the Library's Special Collections Room.
- Needs to be the same size as Mineral Collection bookcase (24'x8'x3')
- Backing needs to be wood finish (laminated or stain) as it will be seen from Quiet Study Room
- Needs to have internal lighting, LED lights hid behind a fascia
 - Spot light on Ford bust
- Electricity will need to be run to bookcase
- No glass is required
- President Ford bust will need to be cleaned and moved into new bookcase

South Wall Unit (Mineralogical Collection):

- Using existing sketches from the mineral donor, design and create drawings for custom display shelving contained inside a 24'L X 8'H X 3'D showcase with lighting to safeguard and exhibit an outstanding collection of large mineral examples from the global collection of Joe and Gigi Roberson, a gift to be made to the Rancho Mirage Public Library in 2015 [see **Exhibit "C"** Photos 4 and 5 for depiction of sample mineral bookcase to be built and location of bookcase].
- Work with cabinet/furniture maker and electrician to oversee the construction, delivery and installation of this unit in the Library's Special Collections Room.
- Granite for whole floor of bookcase, can be one long piece or three (3) 8 foot sections
- Back needs to be 3/4"(2)
- Laminate needs to match oak wood in Special Collections Room
- Would like to have Steel Pilasters Strip, every 1 foot (painted black mat) that holds at least 50 lbs. each
- Lockable access panels on each side (depicted in drawings) to allow for movement, maintenance and cleaning
- Three 8 foot panels of glass to ensure no seams in the middle of the bookcase
- LED lighting throughout to emphasize mineral collection

Ceiling lighting in the space:

- Based on lighting incorporated in bookcases, minimal lighting construction will be needed

Community Room

Audio Visual Production and Operations Booth with Piano Storage Closet

Audio Visual Production and Operations Booth & Piano Storage Closet in the Library's existing Community Room [see **Exhibit "C"** Photo 6 for depiction of A/V equipment around which the A/V Booth is to be built]. The design/build would accomplish the following:

- Audio Visual Booth shall be built to accommodate two (2) AV stations and two (2) persons
- House the piano between two double-door entrances to the Community Room.
 - a. Piano measures (w/cover):
 - i. 9' L (hence, 9 ft grand)
 - ii. 63" W
 - iii. 41" H
 - b. Surround, storage area should be at least:
 - i. 11' L
 - ii. 6' Deep
 - iii. 4' High
- Designers to suggest door options
 - a. One thought is a garage door as it limits the floor space needed to remove and store piano
- Designers need to suggest methods of removal and storage of Steinway piano
 - a. Goal is to have 2 staff members be able to remove or store piano
 - b. Use of a sliding floor and/or a modified pallet jack
- Lighting in the piano closet. Add power receptacles to the piano closet, outside and inside, standard wall height.
- Above this piano storage closet, an Audio/Visual production and operations Booth
- The design/build would appear to be built into the original building structure, meaning that it does not look like a separate component.
 - a. The building was constructed in 2004 under the 2001 California building code.
 - b. Constructed under Type II guidelines due to a mixed occupancy of A 2.1 and A
 - c. Constructed as Non-combustible construction
 - d. To maintain consistency of aesthetics and materials depending on the requirements of the building code. Also, any new construction shall be non-combustible: I.E. Metal Stud Framing.
 - e. See **Exhibit "B"** of this RFP-Building Code Section 603 Type II Buildings is the code section that was in effect when the building was constructed.
- The design/build requires angled glass windows that are able to slide open to allow operators in the booth to both see and hear the live production.

- a. Front window needs to be large enough to be used as fire exit if necessary
- Space for two people to comfortably operate audio visual equipment in the booth is required.
- Main entrance must be accessible during programming
- RGB controlled/dimmable LED lighting would be required in the AV booth and controlled from the AV booth.
- House lighting controls and stage lighting controls will need to be added to the booth.
- Ethernet/data and fiber drops will need to run to the booth from the Library main server room and to the existing A/V server room.
- The interior of the Audio Visual Production Booth will need to provide either built-in storage racks, desktop spaces or areas that are easily accessible for making signal flow changes, or sufficient space to bring in standard audio visual racks, and desks.
- The design/build of the Audio Visual Production and Operations Booth and Piano Closet require secure, lockable entry ways and storage areas.
- Designers create storage/cabinet space with sliding doors
- In the near future there will be fiber cabling coming from the wall (want them to have advance notice)
- Will need electrical outlets (2 20 amp circuits) minimum, would prefer multiple power receptacles on all four walls
- Interior Paint to be flat black
- Exterior paint to match Community Room walls
- Fire alarm box will need to be relocated from back wall to somewhere on the booth

BUILDING PLANS:

Building plans for the Special Collections Room and the Community Room may be viewed in the Records Department. Notes may be taken; however, copies of the building plans will not be distributed. Comments and questions regarding the Building Plans must be submitted in writing in accordance with this RFP.

GENERAL INSTRUCTIONS FOR SUBMITTAL:

A. Proposal Submittal

The proposer shall submit one (1) original and five (5) copies by **5:00 p.m. (Pacific Standard Time), June 12, 2015**, to:

City of Rancho Mirage
Attn: David Bryant
71-100 Highway 111
Rancho Mirage, California 92270

B. Due Date and Time

Proposals submitted after **5:00 p.m. on June 12, 2015**, may, at the sole discretion of the City, be rejected as non-responsive and returned without review. For a proposal to be considered on time, it must be date stamped by City staff upon receipt. At the discretion of the City, a "late" proposal may be considered only if a selection cannot be determined from among proposals received on time. The City shall not be responsible for, nor accept any as a valid excuse, any delay in mail service, or any other method of delivery used by the proposer. All proposals shall be enclosed in a sealed envelope with the words clearly written on the front, "**SEALED BID FOR LIBRARY SPACE PLANNING COLLECTION & AV BOOTH DESIGN AND CONSTRUCTION SERVICES- DO NOT OPEN WITH REGULAR MAIL.**" Failure of the proposer to properly identify the sealed envelope proposal as described may result in the proposal being considered non-responsive. All proposals shall be firm offers subject to acceptance by the City and may not be withdrawn for a period of 180 calendar days following the last day to accept proposals. Proposals may not be amended after the due date except by consent of the City. All proposals must clearly address all of the requirements outlined in this RFP. Each proposal shall be limited to twenty (20) pages and must include a minimum of three (3) references, which include the address, telephone number, and email address of each reference. Resumes and brochures may be added to the proposal, provided they are located in an appendix at the back of the proposal. Should the proposer have concerns about meeting any noted requirements, the proposer shall include a clearly labeled subsection with individual statements specifically identifying the concerns and exceptions.

C. RFP Addenda and Clarifications in Written Comments

All comments or questions from proposers to the City must be submitted in writing and received by no later than end of business day on **June 4, 2015** ("Addenda Due Date"), and must be submitted via the following approved written methods addressed to David Bryant, Library Director:

1. At dbryant@ranchomiragelibrary.org, or
2. Via fax to (760) 341-5213, or
3. Via mail, as long as the correspondence is received and date stamped by the City on or prior to the Addenda Due Date.

Any questions raised verbally shall not be addressed by the City. Submittal of written comments or questions shall not be considered by the City unless submitted in an approved method on or before the Addenda Due Date. Written comments or questions received via approved method within the time prescribed herein will be addressed by the City's issuance of an addendum. Notwithstanding anything else herein, if it becomes necessary for the City to revise any part of this RFP, or to provide clarification or additional information after this RFP has been issued, a written addendum will be sent to each recipient of record. Recipients of record shall consist of proposers on the original "bidders"

mailing list, or proposers that have requested RFPs and have provided pertinent contact information in writing to the City. Addenda will also be posted and published on the City's website, www.ranchomirageca.gov, as well as everywhere else the RFP was originally posted and published. Though the City shall mail out any addenda to RFP recipients of record, and in addition will post any addenda information on the City website and publish and post in accordance with the above, as soon as it becomes available, it shall be the responsibility of the proposers to maintain current, up to date contact information with the City if any addenda are to be mailed. All addenda shall become part of the RFP.

D. Pre-contractual Expenses

The City shall not be responsible for, under any circumstances, any claims of expenses necessary for the proposer to receive, evaluate, complete and deliver the proposal. The proposer should also not include any pre-contractual expenses or fees in the proposal.

E. Conflicts of Interest

The proposer affirms that to the best of his or her knowledge, there exists no actual or potential conflict between the firm's business or financial interests, and either the services to be provided under the Agreement, or any commissioner, officer, employee, or agent of the City. For the duration of the Agreement, the proposer shall refrain from undertaking any work for any individual, business, or legal entity, in which direct conflicts of interest regarding the services to be provided thereunder or herein may arise.

F. Proposed Contract

The proposer selected through this RFP shall be required to enter into the Agreement with the City, in substantially the same form as the form attached hereto as **Exhibit "D."**

G. Security

The selected firm shall furnish a payment bond and a performance bond at no expense to the City, as security for the payment of all persons performing labor and furnishing materials in connection with the Agreement, and as security for the faithful performance of the Agreement. To be acceptable, the surety company must be authorized to do business and have an agent for service of process in California, be on the accredited list of the United States Treasury Department, and have an "A" policyholder's rating and a financial rating of Class V, or better, in accordance with the current Best's Rating.

I. Prevailing Wages

The selected firm shall be required to pay prevailing wages in accordance with the State Labor Code. Compliance with the prevailing rates of wages and apprenticeship employment standards established by the State Department of Industrial Relations will be

required. Copies of the prevailing rate of per diem wages are on file at City Hall, which shall be made available to any interested party on request. Moreover, the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. No proposer shall be qualified to bid on or engage in the performance of the Agreement unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code.

J. Insurance and Acknowledgement

Each proposal shall include a breakdown of all costs associated with issuance of the insurance endorsements described in and pertaining to Section 8 of the Agreement ("Insurance Provisions"). Each proposal shall also include signed acknowledgement(s) in substantially the same form as the form attached hereto as **Exhibit "E,"** through which each insurance carrier that will issue any policy required in the Insurance Provisions, shall acknowledge, warrant and represent that it possesses the ability to and shall furnish all the insurance endorsements prescribed in the Insurance Provisions.

PROPOSAL FORMAT AND CONTENT:

A. Presentation

Proposals shall be submitted in an 8 ½" x 11" format, fastened with an effective method.

B. Proposal Content

1. Transmittal Letter

- a. Contact information, identification of firm, name and email address and telephone number
- b. A statement to the effect that the proposal will remain valid for 180 days from the due date for the proposals
- c. Acknowledgement of receipt of addenda, if any
- d. Signature of the person authorized to bind the terms of the proposal

2. Table of Contents

Following the transmittal, provide a table of contents for the proposal

C. Qualifications, Related Experience and References

1. This section shall establish the ability of the proposer to satisfy all aspects of the required work with current or recently completed design and construction services work, similar to the work required in this RFP.
2. Background information of the proposer, including the date of founding, legal form, number and location of offices, number of employees, days and hours of operation and any other pertinent information.
3. Disclose any conditions (e.g., bankruptcy, pending litigation, planned office closures, mergers) and organizational conflicts of interest that may affect the ability of the proposer to perform the required duties.
4. Certify that the proposer is not debarred, suspended or otherwise declared ineligible to contract with any other federal, state or local public agency.
5. Provide a list of business clients to which you or your company is currently providing, or has recently provided, design and construction services similar to those required in this RFP. Include company names, beginning/end dates of contracts, and names, titles and telephone numbers the City can contact as references for you or your company.

D. Proposed Staffing and Project Organization

1. Discuss the personnel who would be assigned to work on the City's project.
2. Identify the key personnel that would be assigned to the project, and anticipated hours worked per week. Include a brief description of their qualifications and experience in performing the type of work being assigned.
3. Designate an administrator who would serve as a day-to-day contact for the City.
4. Provide necessary organizational chart, if any, of the company as it relates to this RFP.

E. Work Plan / Technical Approach

1. Establish the proposer's understanding of the City's objectives and requirements, demonstrate the proper ability to meet those objectives and requirements, and clearly identify the method (plan) of accomplishing the described work.

2. Describe what information, documentation or staff assistance from the City you or your company would request from the City in order to complete the work described.

F. Cost and Price

1. This section shall disclose all charges to be assessed the City for the required services and declare the proposer's preferences for method and timing of payment.
2. Quote a total price for completing all services; include all costs associated with the operating budget, including all design and construction service fees.

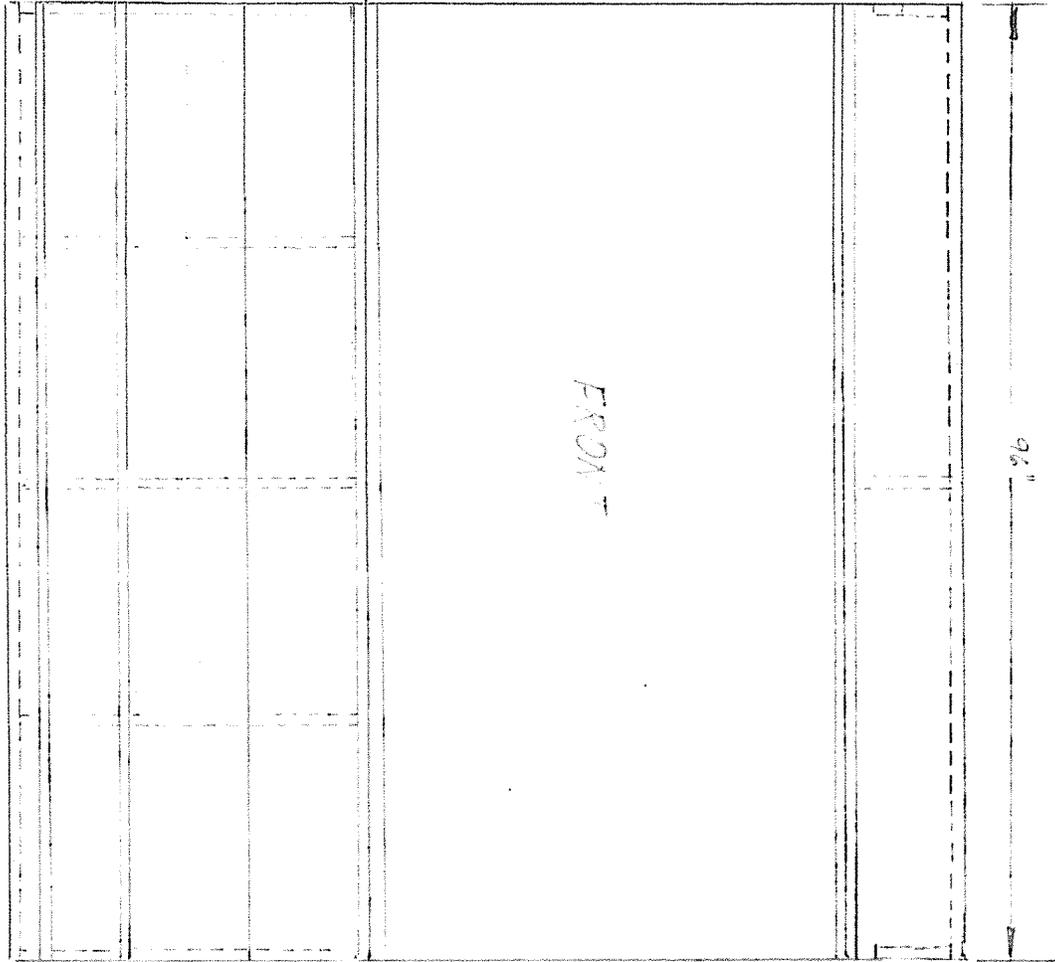
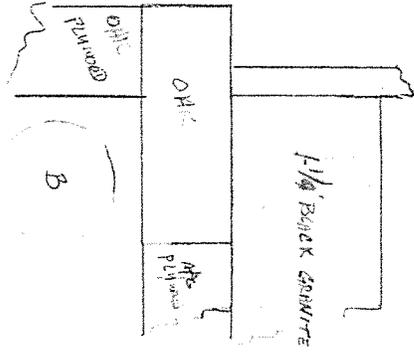
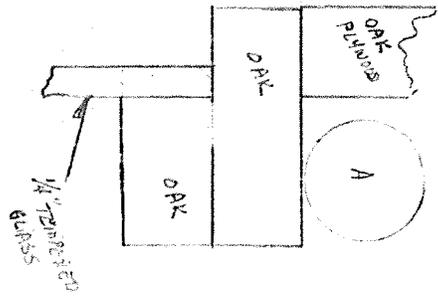
G. Appendices

Furnish as appendices, supporting documentation as requested, such as staff resumes.

AWARD OF CONTRACT:

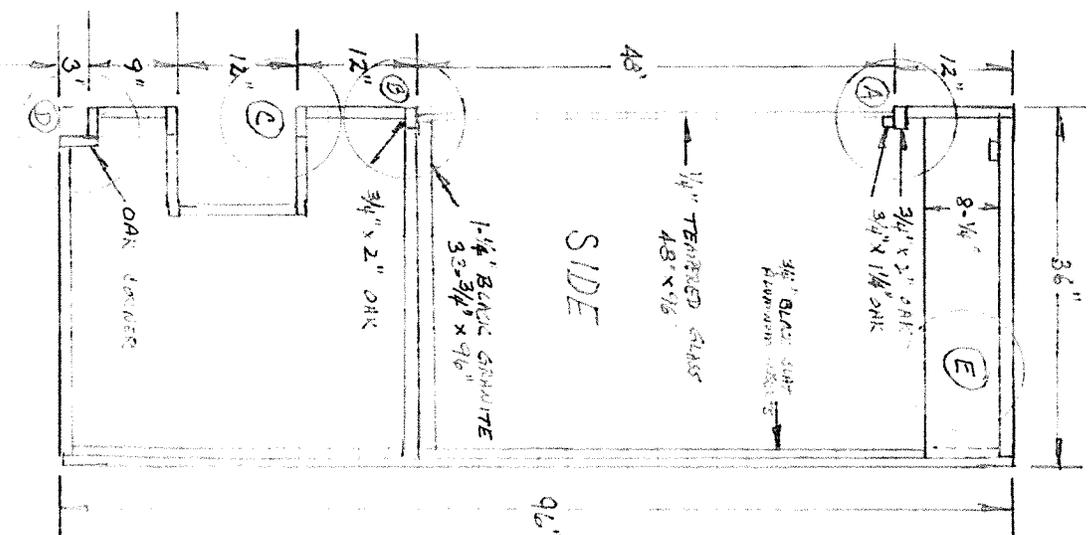
Following a review of the proposals, the City shall determine whether to award the contract to a particular bidder, to two separate bidders or to reject all proposals. The award of contract, if made, shall be to the lowest responsible and responsive bidder(s) as determined solely by the City. At the time of contract award, the successful bidder(s) shall hold a current and active Class B Contractor's License issued by the State of California, as required to perform the work. Additionally, the City reserves the right to reject any or all proposals, and to accept any bid or portion thereof, to waive any irregularity in the offers received, all as may be required to provide for the best interests of the City. In the event of any such rejection, or in the event a proposer's offer is not rejected but does not result in contract award, the City shall not be liable for any costs incurred by the proposer in connection with the preparation and submittal of the proposal. In no event will an award be made until all necessary investigations are made as to the responsibility and qualifications of the bidder(s) to whom the award is contemplated.

EXHIBIT "A"
DESIGN BUILD PLANS
SEE ATTACHED

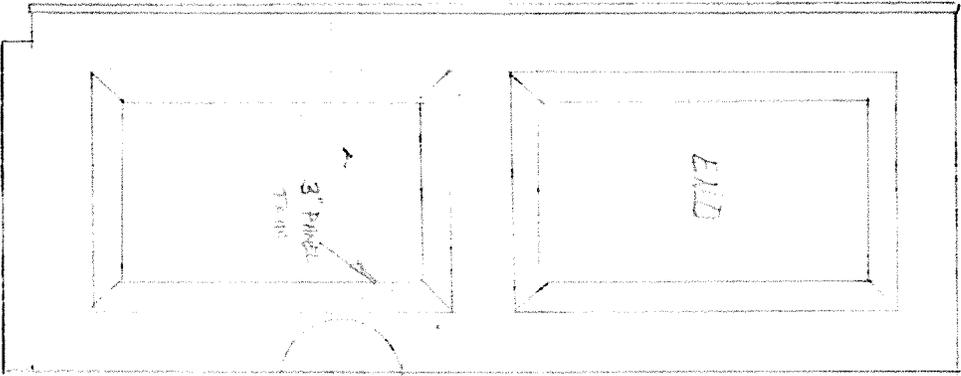


SCALE: 1" = 1'

① →



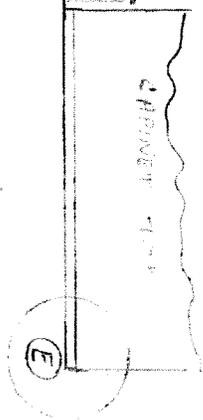
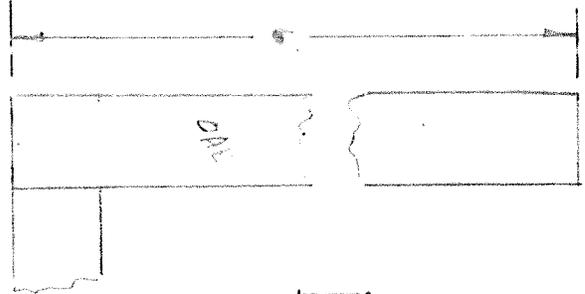
← ②



3" PANEL
TRIM



3) →



- NOTES:
- ① ADD 9/8" x 6" DARK TRIM ON TOP OF DOOR ENDS
 - ② ELEVATION OVERLAP USE DETAIL

1" ROUND MOLDING X 8'

4)



EXHIBIT "B"

CALIFORNIA BUILDING CODE

SECTION 603

TYPE II BUILDINGS

SEE ATTACHED

When every part of the structural framework of the roof of a Group A or E Occupancy or of an atrium is not less than 25 feet (7620 mm) above any floor, balcony or gallery, fire protection of all members of the roof construction, including those of the structural frame, may be omitted. Heavy-timber members in accordance with Section 605.6 may be used for such unprotected members in one-story buildings.

Roofs of unprotected noncombustible or heavy-timber construction conforming to Section 605.6.4 may be less than 25 feet (7620 mm) above any floor, balcony or gallery of a Group A, Division 2.1 Occupancy having an occupant load of 10,000 or more when all of the following conditions are met:

1. The building is not more than one story in height, except for multilevel areas located under the roof and used for locker rooms, exiting, concession stands, mechanical rooms and others accessory to the assembly room.
2. The area in which the roof clearance is less than 25 feet (7620 mm) does not exceed 35 percent of the area encompassed by the exterior walls.
3. An approved supervised automatic sprinkler system shall be installed throughout.

Where every part of the structural steel framework of the roof of a Group A or E Occupancy is more than 18 feet (5486 mm) and less than 25 feet (7620 mm) above any floor, balcony or gallery, the roof construction shall be protected by a ceiling of not less than one-hour fire-resistive construction.

Roof coverings shall be as specified in Chapter 15.

SECTION 603 — TYPE II BUILDINGS

603.1 Definition. The structural elements in Type II-F.R. buildings shall be of steel, iron, concrete or masonry.

The structural elements of Type II One-hour or Type II-N buildings shall be of noncombustible materials.

Floor construction of Type II One-hour and Type II-N buildings shall be of noncombustible material, provided, however, that a wood surface or finish may be applied over such noncombustible material.

Walls and permanent partitions of Type II-F.R. buildings shall be of noncombustible fire-resistive construction, except that permanent nonbearing partitions of one-hour or two-hour fire-resistive construction, which are not part of a shaft enclosure, may have fire-retardant-treated wood (see Section 207) within the assembly.

Type II One-hour buildings shall be of noncombustible construction and one-hour fire resistive throughout, except that permanent nonbearing partitions may use fire-retardant-treated wood (see Section 207) within the assembly, provided fire-resistive requirements are maintained.

Walls and permanent partitions of Type II-N buildings shall be of noncombustible materials.

Materials of construction and fire-resistive requirements shall be as specified in Section 601.

For requirements due to occupancy, see Chapter 3.

603.2 Structural Framework. Structural framework shall be as specified in Chapter 22 for iron and steel, Chapter 19 for concrete and Chapter 21 for masonry.

603.3 Exterior Walls and Openings.

603.3.1 Exterior walls. Exterior walls and all structural members shall comply with the requirements specified in Section 503 and Table 5-A and the fire-resistive provisions set forth in Table 6-A.

603.3.2 Openings in walls. All openings in exterior walls shall conform to the requirements of Section 503.2 and Table 5-A.

603.4 Stairway Construction. Stairways of Type II-F.R. buildings shall be constructed of reinforced concrete, iron or steel with treads and risers of concrete, iron or steel. Brick, marble, tile or other hard noncombustible materials may be used for the finish of such treads and risers. Stairways of Type II, One-hour and Type II-N buildings shall be of noncombustible construction.

EXCEPTION: On stairs not required to be enclosed by Section 1005.3.3, the finish material of treads and risers may be of any material permitted by the code.

Stairways shall comply with the requirements of Chapter 10.

603.5 Roofs. Roofs shall be of noncombustible construction, except that in Type II-F.R. and Type II One-hour buildings, roofs may be as specified in Section 602.5.

Roof coverings shall be as specified in Chapter 15.

SECTION 604 — TYPE III BUILDINGS

604.1 Definition. Structural elements in Type III buildings may be of any materials permitted by this code.

Type III One-hour buildings shall be of one-hour fire-resistive construction throughout.

604.2 Structural Framework. Structural framework shall be of steel or iron as specified in Chapter 22, concrete as specified in Chapter 19, masonry as specified in Chapter 21, or wood as specified in Chapter 23 and this chapter.

604.3 Exterior Walls, Openings and Partitions.

604.3.1 Exterior walls. Exterior walls shall be constructed of noncombustible materials and shall comply with the fire-resistive requirements set forth in Section 503 and Tables 5-A and 6-A.

604.3.2 Openings in walls. Openings in exterior walls shall conform to the requirements of Section 503.2 and Table 5-A.

604.3.3 Partitions. Bearing partitions, when constructed of wood, shall comply with Section 2308.

604.4 Stairway Construction.

604.4.1 General. Stairways shall comply with the requirements of Chapter 10.

604.4.2 Interior. Interior stairways serving buildings not exceeding three stories in height may be constructed of any material permitted by this code.

In buildings more than three stories in height, interior stairways shall be constructed as required for Type I buildings.

604.4.3 Exterior. Exterior stairways shall be of noncombustible material except that on buildings not exceeding two stories in height, they may be of wood not less than 2 inches (51 mm) in nominal thickness.

604.5 Roofs. Roof coverings shall be as specified in Chapter 15.

Except in retail sales and storage areas classified as Group M or S, Division 1 Occupancies and in Group H Occupancies, roofs and their members other than the structural frame may be of unprotected noncombustible materials when every part of the roof fram-

**EXHIBIT "C"
PHOTOS**

PHOTO 1 – SPECIAL COLLECTIONS BOOKCASE

PHOTO 2 – GERALD FORD BOOKCASE (WALL)

PHOTO 3 – GERALD FORD BUST

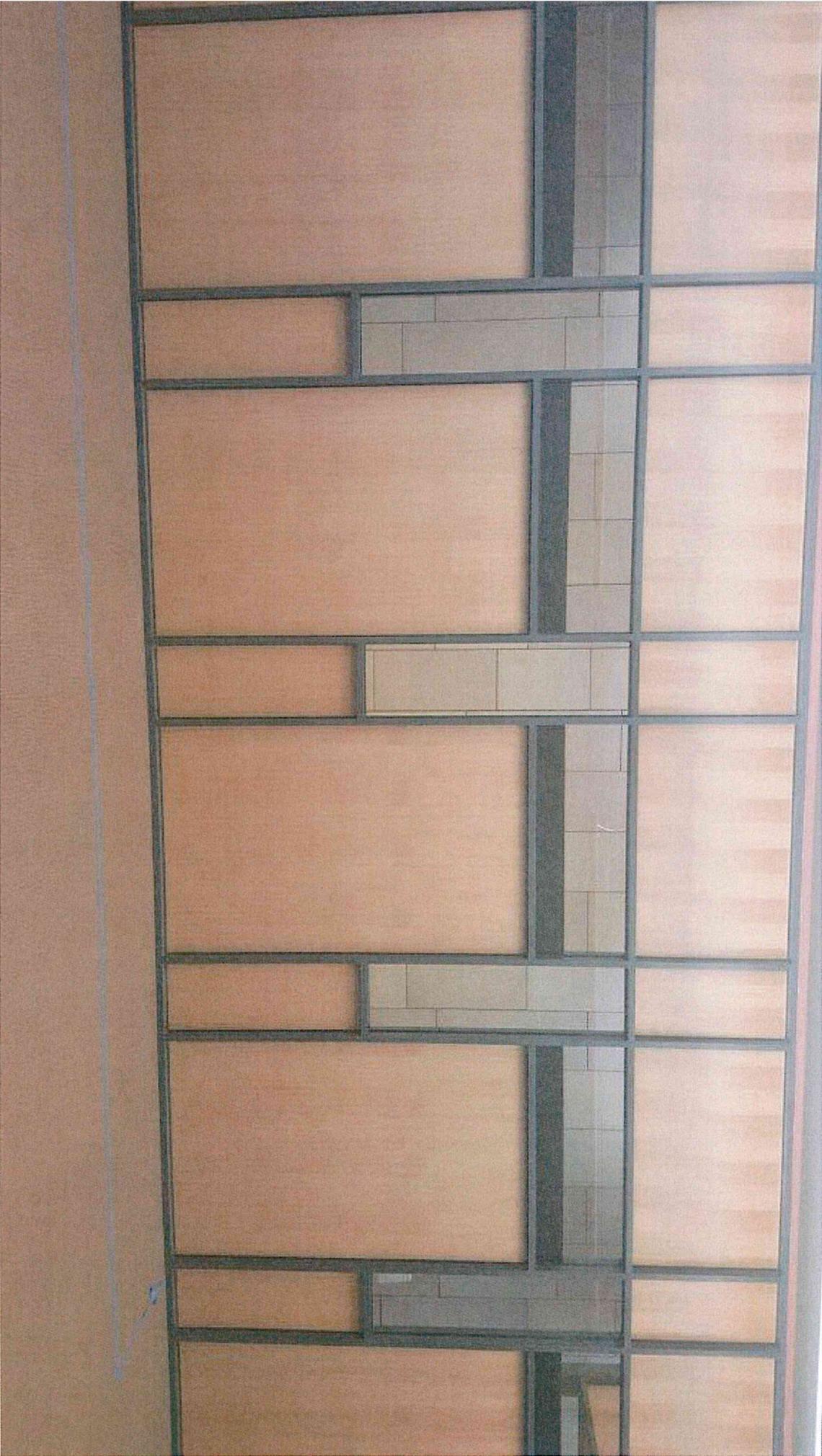
PHOTO 4 – MINERAL BOOKCASE (WALL)

PHOTO 5 – MINERAL BOOKCASE SHELVING

PHOTO 6 – A/V STATION

SEE ATTACHED







GERALD R. FORD

18th President of The United States of America
August 9, 1913 - January 20, 1973
Dedicated April 15, 2001
Grand Old Man of California - San Jose City Mayor

Donated By
George U. and Reva Graziano

Sculptor
Lewis Lee Millet, Jr.



JOE + GIGI ROBERSON

MIRACLES

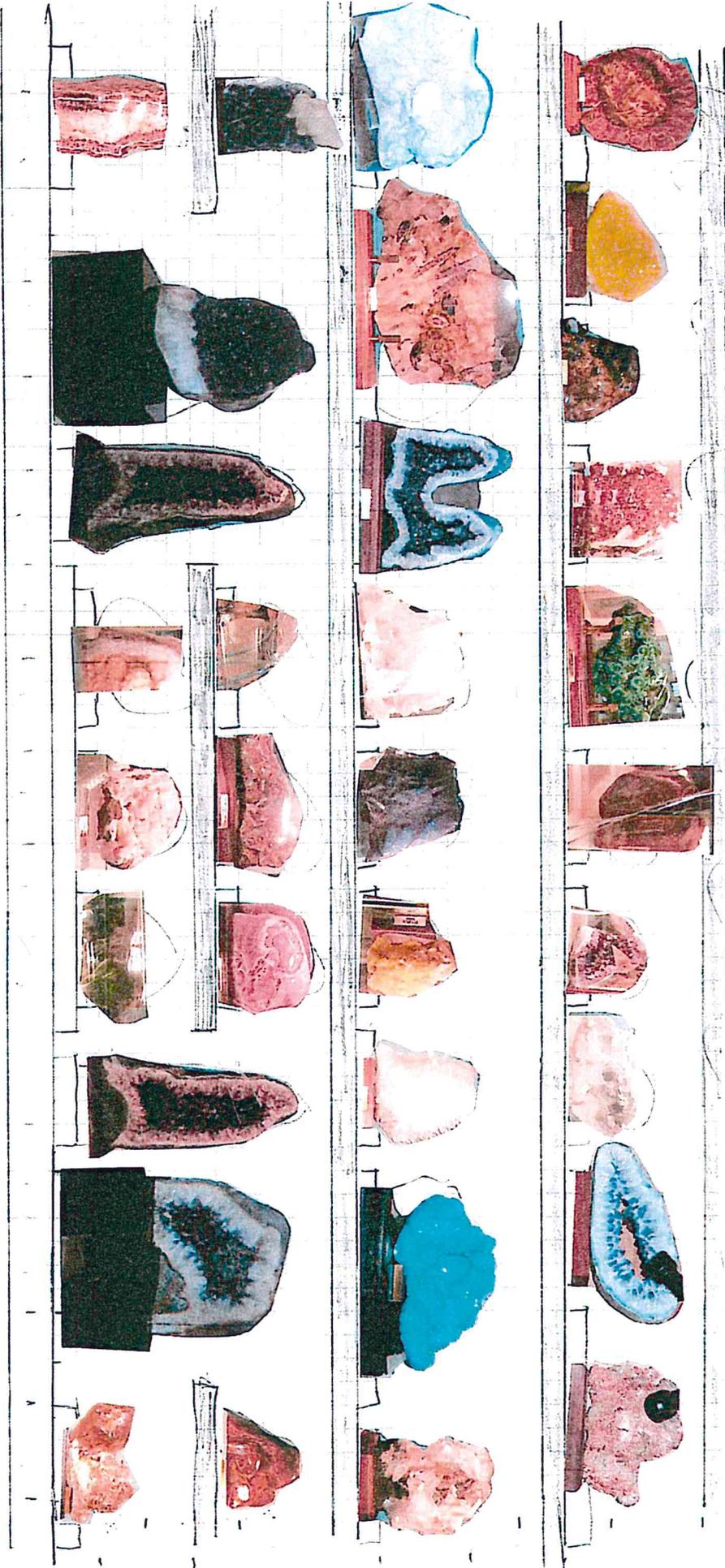
TOP SHELF - 4' 6"
WIDTH 18" ±

NOTE

① LIGHT BARS

② SHELVES 1 1/2" GLASS
SUPPORTED EVERY 12"

-81



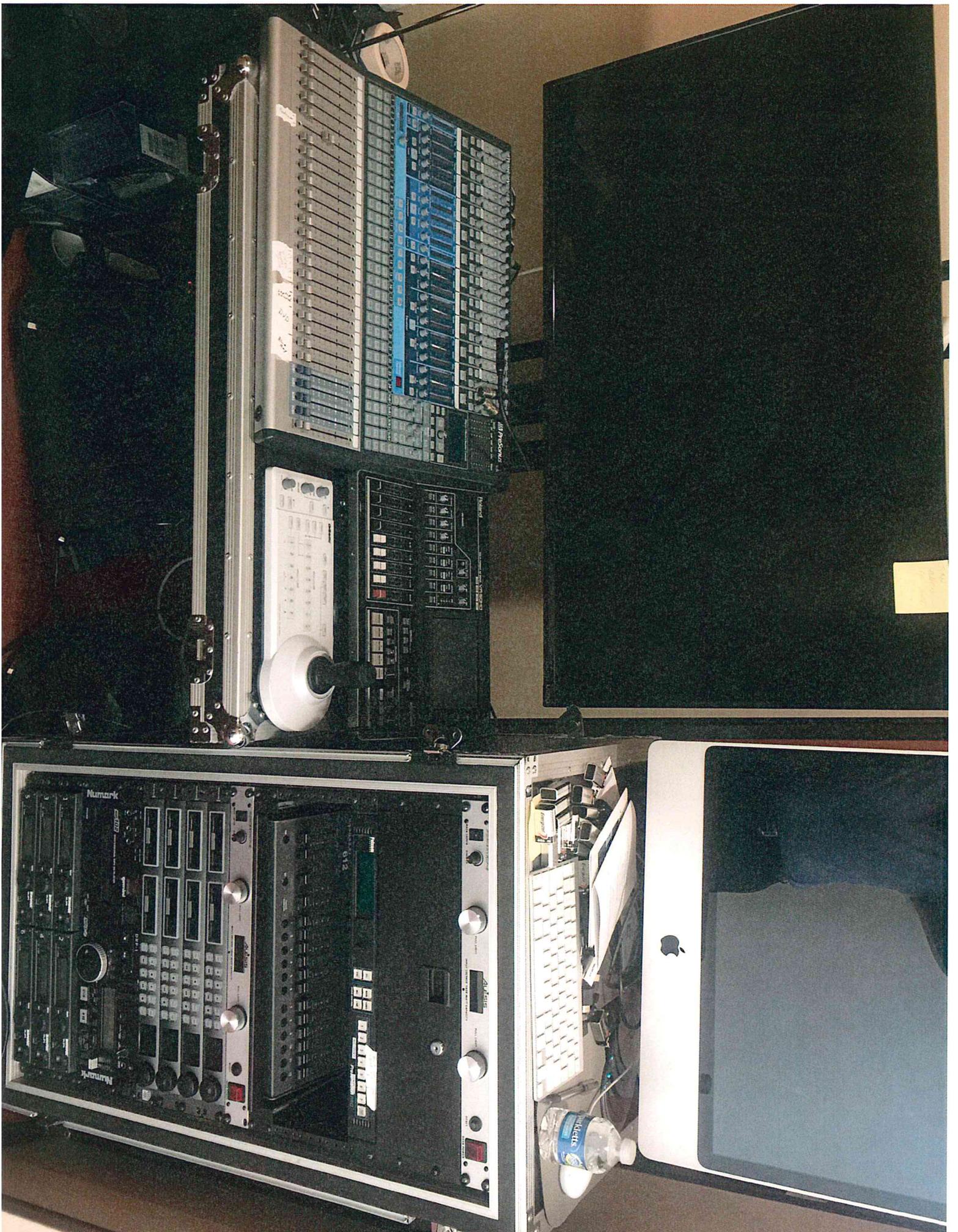


EXHIBIT "D"
AGREEMENT
SEE ATTACHED

DESIGN BUILD AGREEMENT

This Design Build Agreement ("Agreement") is made and entered into this _____ day of _____, 2015 ("Effective Date"), by and between the CITY OF RANCHO MIRAGE, a municipal corporation located in the County of Riverside, State of California ("CITY") and _____, a _____ ("CONTRACTOR"), as follows:

RECITALS:

WHEREAS, Section 3.34.110 of the CITY's Municipal Code authorizes the CITY to utilize design-build procurement methods for the design and construction of certain public works projects; and

WHEREAS, CITY desires to have CONTRACTOR design, install, and construct a library space planning collection and audio/visual booth ("Improvements") at the Rancho Mirage Public Library (sometimes, the "Project") which is located at 71-100 Highway 111, Rancho Mirage, California; and

WHEREAS, CONTRACTOR shall complete all its obligations under this Agreement either directly or through use of subcontractors; and

WHEREAS, CONTRACTOR shall complete the Project and fulfill all its obligations to CITY in accordance with this Agreement, which includes the Project Plans (as defined below) and the City of Rancho Mirage Request for Proposals for Library Space Planning Collection & AV Booth Design and Construction Services, dated April 20, 2015, which both are incorporated herein and made part hereof, all of which collectively are hereinafter referred to as the "Contract Documents."

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

1. **RECITALS:** The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth in full herein.
2. **DESIGN OF IMPROVEMENTS:** CONTRACTOR shall prepare complete designs, working drawings, specifications and shop drawings for the Project ("Project Plans"), all of which shall be reviewed and approved by CITY prior to commencement of construction of the Improvements in accordance with Section 3 hereof, and shall furnish the services of all supervisors, architects, engineers, designers, draftsmen, and other personnel, as necessary, for the preparation of those Project Plans required for the construction component of the Project.

3. **CONSTRUCTION OF IMPROVEMENTS:** CONTRACTOR shall install and construct the Improvements by the date specified in the Summary of Key Terms, attached hereto and incorporated herein by this reference as Exhibit "A," in accordance with the Contract Documents. CONTRACTOR warrants that all of the materials supplied and work to be done will be of good quality and workmanship. Said work shall be in strict conformity with the Project Plans. CONTRACTOR shall furnish or cause to be furnished all transportation, equipment, materials, tools, labor, services, permits, utilities and all other items necessary to complete the Project in accordance with all applicable provisions of the Contract Documents, including, but not limited to, the Project Plans. CONTRACTOR shall pay all claims, demands and liability arising out of, or resulting from or in connection with, the performance of the work. CONTRACTOR shall furnish accurate "as constructed" plans.

4. **TIME FOR COMMENCEMENT/COMPLETION:** CONTRACTOR shall complete the design component of the Project as required in Section 2 hereof with sufficient time to allow CITY to review and approve the Project Plans that will in turn allow construction to commence by no later than _____, 2015.

The construction component of the Project as required in Section 3 hereof shall commence no later than _____, 2015 and shall be completed within _____ calendar days from and after the commencement date ("Commencement Date"), or in other words, by no later than _____, 2015. It is expressly agreed that time shall be of the essence.

5. **COMPENSATION:** As payment for the design services provided by CONTRACTOR under Section 2 of this Agreement, CONTRACTOR shall receive compensation of up to _____.

As payment for the construction services provided by CONTRACTOR under Section 3 of this Agreement, CONTRACTOR shall receive compensation of an amount not to exceed _____.

Said compensation shall cover all expenses, losses, damage and consequences arising out of the nature of work during its progress or prior to its acceptance, including those for well and faithfully completing the work and the whole thereof in the manner and time specified herein; and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work and all other unknowns or risks of any description connected with the work.

6. **TERM:** The term of this Agreement shall commence upon the Effective Date and shall expire in accordance with the following: the date that is one (1) business day prior to the Commencement Date, with respect to CONTRACTOR's rights and obligations as they pertain to Section 2; and one (1) year following the CITY's acceptance of the Project in

accordance with Section 15 of this Agreement, with respect to CONTRACTOR's rights and obligations as they pertain to Section 3.

7. **METHOD OF PAYMENT:** CONTRACTOR shall invoice the CITY for the performance of the services under this Agreement in the amount agreed upon by the parties herein, and shall supply CITY with all documentation, including, but not limited to, certified payroll records required in Section 20 of this Agreement, in support of each invoice. CONTRACTOR shall be paid the amount specified in the invoice within thirty (30) days of receipt by the CITY. Pursuant to Section 9203 of the Public Contract Code, the CITY shall retain no less than five (5) percent of each progress payment to be paid to CONTRACTOR for work performed pursuant to Section 3 which payment shall be released to CONTRACTOR no later than thirty five (35) days from the date of CITY's acceptance of the Project.

8. **INSURANCE:** CONTRACTOR shall not commence or continue to perform any work unless CONTRACTOR has in full force and effect all insurance required hereunder with companies satisfactory to CITY. To be acceptable, insurers must be authorized to do business, and have an agent for service of process, in California, and have an "A" policyholder's rating and a financial rating of at least Class V, in accordance with the current Best's Ratings. All insurance policies shall be maintained until the work is accepted by CITY and provide for coverage of all causes of action or disputes arising out of acts in performance of the work herein, whether said causes or disputes are filed or brought to the attention of CITY before or after the expiration or sooner termination of this Agreement.

Concurrent with execution of this Agreement, CONTRACTOR shall provide certificate(s) of insurance and endorsements, satisfactory to CITY, or otherwise provide proof of insurance as approved by the City Attorney, certifying that CONTRACTOR has and will maintain for the Agreement period, full worker's compensation insurance coverage as required by State laws, for all persons who are or may be employed in carrying out the work.

Concurrent with execution of this Agreement, CONTRACTOR shall provide to CITY certificate(s) of insurance and endorsements, satisfactory to CITY, or otherwise provide proof of insurance as approved by the City Attorney, certifying that CONTRACTOR has general liability and commercial vehicle liability insurance coverage naming CITY, City Council members, CITY'S engineer, and their consultants, officials, directors, officers, agents and employees, as additional insureds for both bodily injury and property damage of not less than that specified in the Summary of Key Terms.

General liability and commercial vehicle liability insurance coverage shall include each of the following types of insurance as required by CITY to carry out this Agreement:

- | | |
|------------------------|----------------------|
| A. General Liability | B. Vehicle Liability |
| 1. Comprehensive Form | 1. Comprehensive |
| 2. Premises-Operations | Form, Including |

- | | | |
|---|----|-------------|
| 3. Explosion and Collapse Hazard | | Loading and |
| 4. Underground Hazard | | Unloading |
| 5. Products/Completed Operations Hazard | 2. | Owned |
| 6. Contractual Insurance | 3. | Hired |
| 7. Broad Form Property Damage
including Completed Operations | 4. | Non-owned |
| 8. Independent Contractors | | |
| 9. Personal Injury | | |

CONTRACTOR shall procure and maintain, at its own expense, professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from CONTRACTOR's services performed pursuant to Section 2, whether such services are performed by CONTRACTOR or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) per claim, and two million dollars (\$2,000,000) in the aggregate.

Concurrent with execution of any agreements between CONTRACTOR and any subcontractors retained by CONTRACTOR to perform any work required of CONTRACTOR hereunder, and in any event prior to CONTRACTOR authorizing any subcontractors to perform any such work or to even conduct any preliminary activities in preparation for or in anticipation of such work, CONTRACTOR shall collect certificates of insurance from all such subcontractors evidencing proof that all subcontractors have procured and will maintain all the insurance coverages required of CONTRACTOR under this Agreement.

In addition to naming the CITY, City Council members, CITY'S engineer, and their consultants, officials, directors, officers, agents and employees, as additional insureds, as set forth above, the certificates of insurance, including those provided by any subcontractor, provided either on forms required by the CITY or as otherwise approved by the City Attorney, shall bear the following endorsements: (1) each policy required herein must be endorsed to provide that the policy shall not be cancelled or non-renewed by or reduced in coverage or limits (except by paid claims) unless the insurer has provided the CITY with thirty (30) days prior written notice of cancellation; (2) the carriers of all required insurance policies must waive all rights of subrogation against the CITY and its officers, employees, servants, volunteers, agents and independent contractors; and (3) except for worker's compensation insurance, all insurance policies required to be provided by CONTRACTOR must be endorsed to provide that the policies shall apply on a primary and noncontributing basis in relation to any insurance or self-insurance, primary or excess, maintained or available to the CITY, and its officers, employees, servants, volunteers, agents and independent contractors.

Nothing contained in these insurance requirements shall limit the liability of CONTRACTOR or CONTRACTOR's sureties. Review and acceptance of insurance certificates shall not

constitute any representation by CITY or its representatives that any required insurance has been issued.

9. **CONTRACTOR'S LIABILITY:** CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, be solely and completely responsible for all matters affecting the design, prosecution, progress and completion of the work (both on and off the job site). CONTRACTOR shall be responsible for observing all laws. CONTRACTOR shall provide for public convenience and safety and safety of workers, including CONTRACTOR'S workers and those of CONTRACTOR'S subcontractors, suppliers and others contributing to the work. CONTRACTOR shall protect CITY property and property rights of others, including the location, maintenance and replacement of utilities, whether shown on the plans or not. CONTRACTOR shall give prior notification to utility owners. CONTRACTOR shall notify Underground Service Alert at 1-800-422-4133 at least 48 hours prior to start of construction. CONTRACTOR shall protect against, and prevent drainage from, storm runoff. CONTRACTOR shall not interfere with easements, rights-of-way and encroachment permits. Nothing in this Agreement, the specifications, or other contract documents, or CITY'S approval of the plans and specifications or inspection of the work is intended to include CITY'S review, inspection, acknowledgment of or responsibility for any such matters. CITY, CITY COUNCIL members, ENGINEER, and their consultants and each of their officials, directors, officers, employees and agents shall have no responsibility or liability for the above.

10. **CONTRACTOR'S INDEMNIFICATION:** CONTRACTOR shall indemnify and hold harmless CITY, CITY COUNCIL members, ENGINEER, and their consultants and each of their officials, directors, officers, agents and employees from and against all liability, claims, damages, losses, expenses and other costs, including costs of defense and attorneys' fees arising out of or resulting from or in connection with all matters affecting the design or construction of the work, both on and off the job site, and during and after completion and in connection with any maintenance work. This, provided any of the above is: (1) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself) including the loss of use resulting therefrom, and (2) caused in whole or in part by any act or omission of CONTRACTOR, CONTRACTOR'S engineer, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable. All of this regardless of whether or not it is caused in part by any act or omission (active, passive or comparative negligence included) of a party indemnified hereunder. Said indemnification and agreement to hold harmless shall extend to injuries to persons and damages to or taking of property resulting from all matters affecting the design or construction or maintenance of the Improvements. Acceptance of the Improvements by CITY shall not constitute an assumption by CITY of any responsibility for such damage or taking. As to any and all claims against the indemnified parties by any employee of CONTRACTOR, any contractor, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnity obligations hereunder shall not be limited in any way by any limitation on the amount or type of

damages, compensation or benefits payable by or for the CONTRACTOR, subcontractor, supplier or other person under workers' compensation acts, disability benefit acts or other employee acts.

CONTRACTOR shall also indemnify and hold harmless CITY, CITY COUNCIL members, ENGINEER, and their consultants, and each of their officials, directors, officers, employees and agents from and against all losses, expenses, damages (including damages to the work itself), attorneys' fees and other costs, including costs of defense, which any of them may incur both during and after completion with respect to any latent deficiency in all matters affecting the design, specifications, surveying, planning, supervision, observation or construction of the Improvements or any injury to a person or property, real or personal, as a result of any such latent portions of the work which CITY reasonably suspects may also be defective by reason of known defects in the work or other work performed by CONTRACTOR or CONTRACTOR'S subcontractors, or suppliers or designed by their representatives. Provisions of this paragraph shall remain in effect ten (10) years following acceptance of improvements by the CITY. Nothing contained herein shall limit CITY'S remedies pursuant to Code of Civil Procedure, Section 337.15.

11. SECURITY: Concurrent with or prior to the Effective Date, CONTRACTOR shall furnish and deliver to CITY a performance bond and a payment bond substantially in the forms attached hereto and incorporated herein by this reference as Exhibit "B" and Exhibit "C," in connection with CONTRACTOR'S work under Section 3 of this Agreement. Each shall be executed and in the amount of _____, and shall be furnished by surety companies satisfactory to CITY on the forms provided by CITY. No alterations or substitution of said forms shall be allowed. To be acceptable, surety companies must be authorized to do business and have an agent for service of process in California, be on the accredited list of the United States Treasury Department, and have an "A" policyholder's rating and a financial rating of Class V, or better, in accordance with the current Best's Rating. The bonds shall be limited to amounts acceptable to the Treasury Department.

12. TYPES/AMOUNT OF SECURITY: If permitted by CITY, in lieu of payment and performance bonds, CONTRACTOR may furnish CITY either cash, a Letter of Credit, or an Agreement of Deposit as security for performance. Said security shall be in an amount not less than 100% of the cost estimate and, in addition, for payment of those furnishing materials, labor or equipment in an amount not less than 100% of the cost estimate. Said security agreements shall be on forms furnished by CITY. No alterations or substitution of said forms shall be allowed. The obligations of CONTRACTOR shall not be limited by the amount of the security required. No interest shall be paid CONTRACTOR on any cash deposit made pursuant to this paragraph.

13. SUBSTITUTION OF SECURITIES: In conformance with the State of California Public Contract Code, Part 5, Section 22300, CONTRACTOR may substitute securities for any monies withheld by the CITY to ensure performance under this Agreement.

At the request and expense of CONTRACTOR, CONTRACTOR has the option of establishing an escrow account with a state or federally chartered bank which shall serve as an escrow agent, for CONTRACTOR'S direct deposit of securities as a substitute for retention earnings required to be withheld by the CITY. Upon CONTRACTOR'S completion of its obligations under Section 3, as evidenced by the CITY'S acceptance of the work pursuant to Section 15 hereof, the escrow agent shall return the securities to CONTRACTOR. The escrow agent shall notify the CITY within ten (10) days after deposit of the securities. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention. Securities shall be held in the name of the CITY and shall designate CONTRACTOR as the beneficial owner. Alternatively, on written request of CONTRACTOR, the CITY shall make payments of the retention earnings directly to the escrow account.

14. PARTIAL UTILIZATION: Until all work required of CONTRACTOR under Section 3 has been completed and accepted by CITY and all other public authorities having jurisdiction, CONTRACTOR shall be responsible for the care and maintenance of, or any damage to, the work.

When the work or any portion of it is sufficiently complete to be utilized or placed into service, CITY shall have the right, upon written notification to CONTRACTOR, to utilize such portions of the work and to place the operable portions into service. With this notice and commencement of utilization or operation by CITY, CONTRACTOR shall be relieved of the duty of maintaining the portions so utilized or placed into operation. However, such use and operation shall not relieve CONTRACTOR of the full responsibility for completing the work in its entirety, for making good any defective work or materials, for protecting the work from damage, and for being responsible for damage and for the work as set forth herein. Nor shall such action by CITY be deemed completion and acceptance. Further, such action shall not relieve CONTRACTOR or CONTRACTOR'S sureties and insurers of the provisions hereof relating to indemnity and guarantees.

15. ACCEPTANCE OF PROJECT - WARRANTY: Acceptance of the Project shall only be by action of the CITY COUNCIL. Neither the acceptance nor any prior inspections or failure to inspect shall constitute a waiver by CITY of any defects in the work. From and after acceptance, the work shall be owned and operated by CITY. As a condition to acceptance, CONTRACTOR shall certify to CITY in writing that all of the work has been performed in strict conformity with the Agreement and that all costs have been paid or supplied to CITY for security required herein, satisfactory to CITY, guaranteeing such performance. In addition to CONTRACTOR'S other obligations under the Agreement CONTRACTOR warrants all work and materials to be of good quality and fit for the purpose and intended use. CONTRACTOR shall also repair, replace and restore any other work which is displaced in correcting defective work as well as other portions of the work which CITY by reason of such defects reasonably suspects may also be defective.

In the event of a failure to commence with the compliance of above-mentioned conditions within seven (7) calendar days after being notified in writing or failure to diligently pursue such compliance to completion, CITY is hereby authorized to proceed to have the defects repaired and made good at the expense of CONTRACTOR who hereby agrees to pay the cost and charges therefor immediately on demand.

If, in the opinion of CITY, nonconforming work creates a dangerous condition or requires immediate correction or repair to prevent further loss to CITY or to prevent interruption of operations, CITY shall attempt to give the CONTRACTOR notice. If CONTRACTOR cannot be contacted or does not comply with CITY'S request for correction within a reasonable time as determined by CITY, CITY may proceed to make such correction or provide such repair. The costs of such correction or repair shall be charged against CONTRACTOR, who agrees to make payment for said costs upon demand.

Corrective action by CITY will not relieve CONTRACTOR or CONTRACTOR'S sureties or insurers of the guarantees and indemnities of this Agreement.

This paragraph does not in any way limit CITY'S remedies pursuant to Code of Civil Procedure, Section 337 and 337.15, or the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer or supplier gives a longer guarantee period. CONTRACTOR agrees to act as a co-guarantor with such manufacturer or supplier and shall furnish CITY all appropriate guarantees or warranty certificates upon completion of the Project. No manufacturer's guarantee period shall in any way limit the liability of CONTRACTOR or CONTRACTOR'S sureties and insurers under the indemnity or insurance provisions of this Agreement.

16. CONTRACTORS AND AGENTS: CONTRACTOR shall be as fully responsible to CITY for the acts and omissions of CONTRACTOR'S subcontractor and of the persons directly or indirectly employed by CONTRACTOR'S subcontractor as CONTRACTOR is for the acts and omissions of persons directly or indirectly employed by CONTRACTOR. Nothing contained in the Agreement shall create any contractual relationship between any subcontractor or others and CITY. CONTRACTOR shall bind every contractor to be bound by the terms of this Agreement.

17. DEFAULT BY CONTRACTOR: CONTRACTOR shall be in default of this Agreement if: CONTRACTOR refuses or fails to prosecute the work or any separable part thereof with such diligence as will ensure its completion within the time specified in the paragraph above, or any written extension thereof, or fails to complete such work within such time, or if CONTRACTOR should be adjudged a bankrupt, make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of CONTRACTOR'S insolvency, or if CONTRACTOR or any of their subcontractors violate any of the provisions of this Agreement or fail to do what is required under this Agreement, or if CONTRACTOR fails to make prompt payment for materials or labor, or if CONTRACTOR disregards laws, ordinances, or instructions of CITY.

CITY may thereafter serve written notice upon the CONTRACTOR and CONTRACTOR'S surety of its intention to declare this Agreement in default. Said notice shall contain the reasons for such intention to declare a default. Unless, within ten (10) days after the service of such notice, such violations shall cease and satisfactory arrangements for the corrections thereof be made, this Agreement shall upon the expiration of said time be in default.

Upon such default, with respect to CONTRACTOR's failure to perform its duties under Section 3 of this Agreement, CITY shall serve written notice thereof upon the surety and CONTRACTOR, and the surety shall have the right to take over and perform this Agreement. If the surety does not, within fifteen (15) days after the serving upon it of a notice of a default, give CITY written notice of its intention to take over and perform this Agreement or does not commence performance thereof within thirty (30) days from the date of CITY'S notice, CITY may take over the work and prosecute the same to the extent of completion it deems necessary by contract or by any other method it may deem advisable for the account and at the expense of CONTRACTOR, and the surety shall be liable to CITY for any cost or other damage occasioned CITY thereby. In such event CITY may, without liability for so doing, take possession of, and utilize in completing such work, such materials, appliances, plants, and other property belonging to CONTRACTOR that may be on the site of the work and be necessary therefor. Should surety fail to take over and diligently perform the Agreement upon CONTRACTOR'S default, surety agrees to promptly on demand deposit with CITY such amount as CITY may reasonably estimate as the cost of completing all of CONTRACTOR'S obligations. For any such work the CITY elects to complete by furnishing its own employees, materials, tools, and equipment, CITY shall receive reasonable compensation therefor including costs of supervision and overhead.

CITY may, at its option, elect not to complete any or all of the work and may elect not to accept any of the work already completed. If CITY elects not to accept any of the work, then all CITY'S obligations to CONTRACTOR shall terminate. CITY'S obligations to CONTRACTOR shall continue to the extent of any acceptance, subject to CITY'S right to offset any sums due the CITY.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to CITY.

18. DELAY BY CONTRACTOR: If the work required under Section 3 is suspended or otherwise not continuously prosecuted for any cause whatsoever, within or without the time for completion, CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, remove and replace all or any portion of the work already completed and inspected which CITY, in its sole discretion, determines is or can be damaged.

19. ATTORNEYS' FEES AND COSTS: Should CITY or CONTRACTOR engage an attorney to enforce any provision of this Agreement or to defend any claim brought by

anyone arising out of the failure of the other party to perform any of that party's obligations under this Agreement, the prevailing party shall pay the other party's attorneys' fees incurred in connection therewith, with or without suit, whether or not said attorney is in the regular employ of the prevailing party.

20. PREVAILING WAGES: All work or services performed within the State of California pursuant to this Agreement by CONTRACTOR, CONTRACTOR's employees and independent contractors, or CONTRACTOR's subcontractors and its subcontractors' employees and independent contractors shall be performed by individuals lawfully permitted to perform such work or services in the State of California and/or the United States of America pursuant to all applicable State and/or Federal labor laws, rules and regulations including, but not limited to, any State or Federal law, rule or regulation prohibiting the employment of undocumented workers or any other person not lawfully permitted to perform said work or services in the State of California or the United States of America.

CONTRACTOR represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant ("person") for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Unless otherwise permitted under the law, CONTRACTOR shall not refuse to hire or employ any such person or refuse to select any such person for a training program leading to employment, or bar or discharge any such person from employment or from a training program leading to employment, or otherwise discriminate against any such person in compensation or in terms, conditions, or privileges of employment.

CONTRACTOR and all of CONTRACTOR's subcontractors, if any, shall pay each employee engaged in all applicable trades or occupation not less than the prevailing hourly wage rate for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. In accordance with the provisions of Section 1770 of the California Labor Code ("Labor Code"), the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code Section 1773.8, apprenticeship or other training programs authorized by Labor Code Section 3093 and similar purposes applicable to the work to be done. Said wages are available through the California Department of Industrial Relations' Internet website at <http://www.dir.ca.gov/dlsr/PWD/index.htm> and are on file at City Hall, as provided in Section 1773.2 of the Labor Code. Said rates shall be posted at the project site where work is to be performed, in accordance with Labor Code Section 1773.2. CONTRACTOR shall access a copy of the wage rate determination and shall make all subcontractors, if any, aware of the determination. As the wage determination for each craft reflects an expiration date, it shall be the CONTRACTOR's responsibility to ensure that the prevailing wage rates of concern are current and paid. Subject to the safe harbor provisions of Labor

Code Section 1775, CONTRACTOR shall forfeit to the CITY an amount not to exceed two hundred dollars (\$200) for each calendar day or portion thereof, as set by the Labor Commissioner in accordance with the terms of Labor Code section 1775, for each laborer, workmen or mechanics employed that is paid less than the general prevailing rate of wages herein referred to and stipulated for any work done under the proposed contract, by him, or by any subcontractor under him, in violation of the provisions of the Labor Code, and in particular, Sections 1770 to 1781 inclusive. CONTRACTOR and any and all or its subcontractors shall forfeit to the CITY twenty-five dollars (\$25) for each worker employed in the performance of this Agreement for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Section 1813 of the Labor Code.

CONTRACTOR and all subcontractors hired to perform any work for the subject project shall keep accurate payroll records, including the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each worker, in accordance with Section 1776 of the Labor Code. Payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") or in a manner containing the same information as the forms provided by the DLSE. Failure to comply with the above may result in monetary penalties to the CONTRACTOR or affected subcontractor. Payroll records shall be verified by written declaration made under penalty of perjury, that the information contained in the records is true and correct. CONTRACTOR and any and all subcontractors shall make a certified copy of all payroll records available for inspection by DLSE, the CITY or any member of the public and otherwise provide certified copies of such records to any of the foregoing within ten (10) days of CONTRACTOR's and subcontractor's receipt of written request therefor. Failure to comply with the above may result in monetary penalties, in accordance with Labor Code Section 1776(d) and (h).

Notwithstanding anything else to the contrary, CONTRACTOR hereby acknowledges that all contractors must be registered with the Department of Industrial Relations ("Department") pursuant to Labor Code Section 1725.5 in order to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract, including this Agreement, that is subject to the payment of prevailing wages. CONTRACTOR represents and warrants that CONTRACTOR is registered with the Department in the manner prescribed by the Department and has paid the requisite application fee, as required by Labor Code Section 1725.5. Moreover, prior to CONTRACTOR entering into any contracts with any subcontractor, CONTRACTOR shall obtain proof that all such subcontractors have also registered with the Department in accordance with Section 1725.5.

21. ASSIGNMENT AND SUBCONTRACTING: The performance of the Agreement may not be assigned or subcontracted except upon the written consent of CITY. Consent will not be given to any proposed assignment which would relieve CONTRACTOR or

CONTRACTOR'S sureties of their responsibilities under the Agreement unless CITY finds that assignee can perform this Agreement and provide security comparable to that provided by CONTRACTOR.

22. NOTICE: All notices required hereunder shall be deemed served or given upon the earlier of actual receipt or deposit in the U.S. Postal Service, first class postage prepaid, addressed to CONTRACTOR at the address set forth below, to the surety at the address in the security instrument, and to CITY at 69-825 Highway 111, Rancho Mirage, California 92270.

23. INDEPENDENT CONTRACTOR: CONTRACTOR shall at all times during the term of this Agreement perform the services described in this Agreement as an independent contractor, and hereby waives any claims for any compensation or benefits afforded to CITY employees and not to independent contractors.

24. CIVIL CODE SECTION 1542 WAIVER: CONTRACTOR expressly waives any and all rights and benefits conferred upon it by the provisions of Section 1542 of the California Civil Code which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

This waiver shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind that are known or unknown, or suspected or unsuspected, including, without limitation, claims of entitlements under the California Public Employees' Retirement System (CalPERS) that are only afforded to employees and not independent contractors. CONTRACTOR further represents and warrants that it understands this waiver and that if it does not understand this waiver, it shall seek the advice of a qualified attorney before executing this Agreement.

Initials

25. FAMILIARITY WITH WORK: By executing this Agreement, CONTRACTOR warrants that (1) it has thoroughly investigated and considered the work to be performed, (2) it has investigated the issues, regarding the scope of services to be provided, (3) it has carefully considered how the work should be performed, and (4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement. Should CONTRACTOR discover any latent or unknown conditions materially differing from those inherent in the work or as represented by the CITY, it shall immediately inform the CITY of such fact and shall not proceed except at CONTRACTOR's risk until written instructions are received from the City Manager or his or her designee.

26. COMPLIANCE WITH LAWS; LICENSING AND PERMITS: CONTRACTOR shall comply with all local, state and federal laws and regulations applicable to the services required hereunder, including any rule, regulation or bylaw governing the conduct or performance of CONTRACTOR and/or its employees, officers, or board members. CONTRACTOR shall ensure that all contractors and subcontractors, shall obtain and maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement, including a CITY business license.

27. TERMINATION OR SUSPENSION: This Agreement may be terminated or suspended without cause by CITY at any time provided that the CITY provides CONTRACTOR at least thirty (30) calendar days written notice of such termination or suspension. This Agreement may be terminated or suspended with cause by either party at any time provided that the respective party provides the other party at least ten (10) business days' written notice of such termination or suspension. In the event of a termination of this Agreement under this section, CONTRACTOR shall provide all documents, reports, data or other work product developed in performance of this Agreement to CITY, within ten (10) calendar days of such termination and without additional charge to CITY.

28. TIME OF THE ESSENCE: Time is of the essence in the performance of this Agreement.

29. BOOKS AND RECORDS: CONTRACTOR shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the CITY for a minimum period of three years, or for any longer period required by law, from the date of final payment to CONTRACTOR pursuant to this Agreement. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, CITY auditor or a designated representative of these officers. Copies of such documents shall be provided to the CITY for inspection at City Hall, when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONTRACTOR's address indicated for receipt of notices in this Agreement. Where the CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONTRACTOR's business, the CITY may, by written request of any of the above-named officers, require that custody of the records be given to the CITY and that the records and documents be maintained at City Hall. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest.

30. OWNERSHIP OF DOCUMENTS: All plans, studies, documents and other writings prepared by and for CONTRACTOR, its officers, employees and agents and

subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the CITY upon payment to CONTRACTOR for such work, and the CITY shall have the sole right to use such materials in its discretion without further compensation to CONTRACTOR or to any other party. CONTRACTOR shall, at its expense, provide such reports, plans, studies, documents and other writings to the CITY upon written request.

31. CONFIDENTIALITY: All ideas, memoranda, specifications, plans, procedures, drawings, photographs, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to CONTRACTOR in connection with the performance of this Agreement shall be held confidential by CONTRACTOR. Such materials shall not, without prior written consent of the CITY, be used by CONTRACTOR for any purposes other than the performance of the services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to CONTRACTOR which is otherwise known to CONTRACTOR or is generally known, or has become known, to the related industry shall be deemed confidential. CONTRACTOR shall not use the CITY's insignia or photographs relating to the project for which CONTRACTOR's services are rendered, or any publicity pertaining to the CONTRACTOR's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the CITY.

32. ENTIRE AGREEMENT: This Agreement supersedes any and all other agreements, either oral or written, between the CITY and CONTRACTOR with respect to the subject matter of this Agreement. This Agreement contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement. No agreement, statement, or promise not contained in this Agreement shall be valid or binding. Notwithstanding anything else to the contrary, the parties shall be bound by a side letter agreement of even date herewith signed by the parties hereto.

33. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES: No officer or employee of the CITY shall be personally liable to CONTRACTOR, or any successor in interest, in the event of any default or breach by the CITY or for any amount which may become due to CONTRACTOR or to its successor, or for any breach of any obligation of the terms of this Agreement.

34. WAIVER: No waiver shall be binding, unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party

to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

35. **GOVERNING LAW:** The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, shall be construed pursuant to and in accordance with California law.

36. **VENUE:** All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

37. **THIRD PARTY BENEFICIARIES:** CONTRACTOR shall ensure that the CITY shall be made an intended third party beneficiary of all contracts between CONTRACTOR and all its subcontractors, if any.

38. **COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

39. **EXTRA WORK AND CHANGE ORDERS:** There shall be no extra work or change orders allowed as part of this Agreement even considering that the parties may later learn of some unforeseen or unforeseeable circumstances, including, but not limited to, any force majeure events.

**CITY OF RANCHO MIRAGE
STANDARD AGREEMENT FOR PUBLIC WORKS CONSTRUCTION
SIGNATURE REQUIREMENTS
(Limited Partnership/General Partnership/Corporation)**

1 WHERE PRINCIPAL IS A LIMITED PARTNERSHIP

- A. General Partner shall execute on behalf of the limited partnership.
- B. General Partner shall furnish City of Rancho Mirage a copy of the recorded Certificate of Limited Partnership to authenticate the authority of the General Partner to sign on behalf of the limited partnership.

2 WHERE PRINCIPAL IS A GENERAL PARTNERSHIP

- A. General Partner shall execute on behalf of general partnership.
- B. General Partner shall furnish City of Rancho Mirage a copy of the General Partnership Agreement authenticating that the General Partner who signs the document has authority to do so.

3 WHERE PRINCIPAL IS A CORPORATION

- A. Officers shall execute on behalf of corporation.
- B. Officers shall furnish City of Rancho Mirage a copy of a corporate resolution indicating that the officers who sign the document are the officers of the corporation and authorized to bind the corporation to contract. Corporation requires two signatures.

In each of the foregoing situations (a limited partnership, a general partnership or a corporation) the CITY requires an individual obligor in addition to the partnership or corporate entity.

For example, John Doe may sign on behalf of either partnership or the corporation as the General Partner and/or president thereof, but then, in addition, John Doe is required to sign the document individually as an individual obligor.

By _____
(Authorized Representative of CITY)Date
G. Dana Hobart, Mayor

Title: Mayor

APPROVED AS TO FORM:

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

(SEAL IF CORPORATION)

By _____
(Authorized Representative of Corporation)Date

Title _____

Address: _____

Telephone: _____

By _____
Individual Guarantor

Address _____

Telephone No. _____

By _____
Individual Guarantor

Address _____

Telephone No. _____

(SIGNATURES MUST BE NOTARIZED)

(Seal: Partnership/Corporation)

EXHIBIT "A"

SUMMARY OF KEY TERMS

This schedule is attached to and made a part of the Design Build Agreement between CITY and CONTRACTOR for the above-referenced property.

1. Compensation: \$ _____ (total)
\$ _____ (construction component)

2. Completion Date (For Section 3 only): _____

3. Liability Insurance Limits:

General Liability

\$2,000,000	Each Occurrence (Includes Bodily Injury and Property Damage)
\$1,000	Medical Expense
\$1,000,000	Personal & Advertising Injury
\$2,000,000	General Aggregate
\$2,000,000	Products-Completed/Operations Aggregate

Vehicle Liability

Combined Single Limit \$1,000,000 each accident, and \$2,000,000 in the aggregate

Professional Liability

Combined Single Limit \$1,000,000 per claim, and \$2,000,000 in the aggregate

Workers Compensation Statutory

4. Approved Security Amounts:

a. Performance

\$ _____

b. Payment

\$ _____

5. Bond Substitute Acceptable: Yes No (Cross out one)

6. Contractor(s):

Name and Address	License No.	Phase of Work
_____	_____	_____
_____	_____	_____

() Initial of CITY REPRESENTATIVE () Initials of CONTRACTOR REPRESENTATIVE

EXHIBIT "B"
PERFORMANCE BOND
SEE ATTACHED

PERFORMANCE BOND

We, _____, as
Principal, and _____, as
Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Rancho Mirage ("CITY") for payment of the penal sum of: _____ . CITY and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference ("Agreement"), for the construction of public improvements for property referenced in said Agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by CITY and Principal.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall in all things stand to and abide by, and well and truly keep and perform all of the covenants, conditions, and provisions in said agreement, and any alteration thereof made as therein provided, on Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify and save harmless the CITY, CITY'S engineer, and their consultants, and each of their officials, directors, officers, employees and agents, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Upon default of the Principal and notice to the Surety, the Surety shall take over and diligently arrange for the completion of the work required by the Agreement within the time specified in the Agreement, or deposit with CITY an amount mutually agreed upon between CITY and the Surety for the cost of completing all of Principal's obligations. Surety's agreement for payment herein shall extend, notwithstanding any controversy between Principal and CITY regarding Principal's failure under the Agreement and should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligations herein and shall be deemed proper payment as between Principal and Surety.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, or the work to be performed thereunder or the plans and specifications, or any matters unknown to Surety which may affect Surety's risk shall in any wise affect its obligation on this bond, and it does thereby waive notice thereof.

Principal and Surety agree that if the CITY is required to engage the services of an attorney in connection with the enforcement of this bond, each shall pay CITY'S reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

Executed this ____ day of _____, 20__.

Seal of Corporation

By _____
Authorized Representative of Principal

Title _____

By _____
Authorized Representative of Principal

Title _____

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVES)

Any claims under this bond may be addressed to: (check one)

Surety's agent for service
of process in California:

() _____
Surety Company

Name

Street Number

Street Number

City and State

City and State

Telephone Number

Telephone Number

By _____
Attorney in Fact or other Representative

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)

() _____
Company Agent

APPROVED AS TO FORM:

Street Number

City Attorney

City and State

Telephone Number

Furnish the name, address and phone number of the company agent as well as the surety company. Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of Section 11 of the agreement.

(NOTICE: No substitution or revision of this bond form shall be accepted.)

EXHIBIT "C"
PAYMENT BOND
SEE ATTACHED

PAYMENT BOND

We, _____, as Principal, and _____, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the CITY OF RANCHO MIRAGE ("CITY") and those for whose benefit this bond insures in the sum of: _____. CITY and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference ("Agreement"), for the construction of public improvements for the property referenced in said Agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by CITY and Principal. If Principal or any of Principal's contractors or subcontractors, fails to pay any of the persons named in Section 9000 *et seq.* of the California Civil Code employed in the performance of the Agreement for materials furnished or for labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, then Surety shall pay the same in an amount not exceeding the sum specified above, and also shall pay, in case suit is brought upon this bond, such reasonable attorneys' fees as shall be fixed by the court.

Surety agrees that it shall pay the amounts due the persons above named and upon default of the Principal and notice to the Surety, the Surety shall take over and diligently arrange for the completion of the Agreement requirements within the time specified in the Agreement, or deposit with City an amount mutually agreed upon between CITY and the Surety for the cost of completing all of Principal's obligations. Surety's agreement for payment herein shall extend, notwithstanding any controversy between Principal and CITY regarding Principal's failure under the Agreement and should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligations herein and shall be deemed proper payment as between Principal and Surety.

This bond shall insure to the benefit of any and all of the persons named in Section 9000 *et seq.* of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, or the work to be performed thereunder, or the plans and specifications, or any matters unknown to Surety which might affect Surety's risk, shall in any way affect its obligation on this bond, and it does hereby waive notice thereof.

Principal and Surety agree that should CITY become a party to any action on this bond, that each will also pay CITY'S reasonable attorneys' fees incurred therein in addition to the above sums.

Executed this _____ day of _____, 20__.

Seal of Corporation

By _____
Authorized Representative of Principal

Title _____

(ATTACH ACKNOWLEDGEMENT)

By _____
Authorized Representative of Principal

Title _____

Any claims under this bond may be addressed to: (check one)

Surety's agent for service
of process in California:

() _____
Surety Company

Name

Street Number

Street Number

City and State

City and State

Telephone Number

Telephone Number

By _____
Attorney in Fact or other Representative

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)

() _____
Company Agent

APPROVED AS TO FORM:

Street Number

CITY Attorney

City and State

Telephone Number

Furnish the name, address and phone number of the company agent as well as the surety company.

Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of Section 11 of the agreement.

(NOTICE: No substitution or revision of this bond form shall be accepted.)

EXHIBIT "E"

ACKNOWLEDGEMENT OF INSURANCE ENDORSEMENTS

In recognition of _____ ("Company") having submitted a proposal to the City of Rancho Mirage Request for Proposals for Library Space Planning Collection & AV Booth Design and Construction Services, dated May 21, 2015 ("RFP"), issued by the City of Rancho Mirage ("City"), and in further recognition that the City requires Company to comply with certain insurance requirements as set forth in Section 8 ("Insurance Provisions") of the Agreement (which Agreement is defined in and made part of the RFP), I represent that I am authorized to sign on behalf of the insurance company listed below ("Insurer"), and by signing below, I acknowledge, warrant and represent that Insurer possesses the ability to, and if requested by Company, shall furnish all the insurance endorsements prescribed in the Insurance Provisions as respecting worker's compensation and/or commercial general liability and/or commercial vehicle liability insurance and/or professional liability [PLEASE CHECK ALL THAT APPLY].

Name of Insurer [Print]

Name, Title [Print]

Signature

Date: _____