

ATTACHMENT D

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF NEWPORT BEACH AND THE NEWPORT BEACH PUBLIC LIBRARY FOUNDATION RELATED TO FUNDRAISING FOR THE LIBRARY LECTURE HALL PROJECT

This Memorandum of Understanding ("Agreement") is entered into as of the 30th day of November, 2021 ("Effective Date") by and between the City of Newport Beach, a California municipal corporation and charter city ("City") and The Newport Beach Public Library Foundation, a California nonprofit public benefit corporation ("Foundation"). City and Foundation are at times individually referred to as "Party" and collectively as "Parties" herein.

RECITALS

- A. The Foundation was incorporated in 1989 to raise funds for the construction of the City of Newport Beach Central Library ("Central Library") located at 1000 Avocado Avenue ("Property").
- B. The Central Library was first completed in 1994, and later expanded in 2013.
- C. After completion of the Central Library, the Foundation gradually began to produce programming at the Central Library as a way to bring people to the Central Library, raise funds to support the Central Library and otherwise encourage a rich cultural environment for the residents of the City.
- D. The Foundation has grown into an organization that employs three (3) full time employees, none of whom are City employees (i.e., no current or post-employment City obligations), whose primary function is to raise funds, and assist in the production of programming for, and otherwise support the Central Library and its branches.
- E. The Foundation has raised over Seven Million Dollars and 00/100 (\$7,000,000.00) over the ten (10) years prior to Covid-19 in furtherance of library programming or for valuable library enhancements and benefits, without cost to the City.
- F. The Friends Room at the Central Library hosts many Foundation funded programs including The Witte Lecture Series, Library Live speakers, It's Your Money and Medicine in your Backyard, in addition to programs sponsored by the City and by the Friends of the Library, the demand for many of which programs exceed the capacity of the Friends Room. The ability to attract/afford certain authors and prominent speakers to the Friends Room is limited by the size of the Friends Room, its portable plastic chair seating arrangement, flat floor with poor sightlines and rudimentary audio-visual equipment.
- G. There is a need for a modern facility at the Central Library (the "Library Lecture Hall") to accommodate Foundation programs as well as other library, cultural, educational, informational, entertainment, civic and community focused events to

serve Newport Beach residents and facilitate other City gatherings, including those of City employees for various purposes.

- H. The City is interested in encouraging the quality cultural activities being brought to the City's residents in a convenient location and in a comfortable state of the art facility, and anticipates that the cost of developing the Library Lecture Hall in a manner befitting Newport Beach will necessitate significant private financial support from the community.
- I. The Foundation is interested in helping to fund the Project (as defined in Section 1.1 below) by seeking donations from its existing supporters as well as from the community at large.
- J. The City believes that there is a need for the Project and that it is in the best interest of the City.
- K. In furtherance of the development of the Project with substantial private funding through the Foundation, in December 2019, the City entered into a Professional Services Agreement with Robert R. Coffee Architects + Associates ("RCA") for the conceptual design of the Library Lecture Hall, and thereafter the completion of all construction documents and other project elements.
- L. The conceptual design of the Library Lecture Hall is complete and the Foundation has agreed to fundraise for the design and construction of the Library Lecture Hall substantially consistent with RCA's conceptual design (the "Conceptual Design"), and other commitments as provided herein.
- M. Through this Agreement, the Parties wish to memorialize their intention to equally share in the cost of the Project subject to other terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises set forth herein, the City and Foundation do hereby agree as follows:

1. PROJECT DESCRIPTION AND BUILDING COST OF CONSTRUCTION.

1.1 Project Description. Subject to the Newport Beach City Council final approval of the Conceptual Design, the Library Lecture Hall and related above and underground improvements and other work generally depicted in the Conceptual Design and supporting slides attached hereto and incorporated herein as Exhibit "A" and more particularly further described as follows (collectively, the "Project"):

1. An approximately 9,533 square foot building with a stage, green room, seating to accommodate between 270 and 299 fixed and/or moveable seats, ADA compliant paths of travel and an interior lobby area.

2. Furniture, fixtures and equipment including but not limited to chairs, podiums, audio-visual equipment, tables and the like ("FF&E").

3. Outdoor improvements and landscaping including but not limited to an expanded and refurbished Bamboo Courtyard, sidewalks, covered walkways, restrooms, donor wall and the like.

4. Site improvements including but not limited to necessary demolition and removals/hauling/disposals, grading, compacting and other earthwork, upgrading/relocating water, sewer and storm drain lines and facilities, installing electrical, telephone and other underground utility services and lines, construction of site and retaining walls, hardscape, water quality and erosion related improvements, signage and adding parking areas and changing the circulation pattern of the parking lot including drop off areas (collectively, the "Site Work").

1.2 Pre-Construction Project Phasing. The Pre-Construction Project phases estimated completion date for each phase and projected costs are as follows:

Phase	Description	Projected Deadline	Projected Cost
I	Conceptual design for the Project	Completed	
II	Refinement of the conceptual design including FF&E layouts	December 2021	
III	Completion of environmental exemption	December 2021	
IV	Completion of all construction documents needed for Project bidding including but not limited to mechanical, electrical and plumbing plans	May 2022	\$672,670 Phases I-IV

1.3 Project Cost. The Parties agree that the total Project costs based upon the Conceptual Design prepared by RCA and approved by City Council, is estimated to be Twelve Million Eight Hundred Thousand Dollars and 00/100 (\$12,800,000.00) (the "Estimated Project Cost"). The Estimated Project Cost also includes all design related costs, including but not limited to the costs of Phases I-IV above, and all anticipated costs of obtaining permits, construction, management of construction, inspections, FF&E and a contingency. The Parties understand and agree that the Estimated Project Cost is an estimate based upon the best available information known to the Parties at the commencement of this Agreement and that the actual Project cost (the "Actual Project Cost") may vary based upon several contingencies, including but not limited to, change(s)

to the design and configuration of the Project and/or increase in the cost of materials and/or labor.

1.4 Construction Contingency. The Parties agree that for the purposes of their respective commitments under Section 2.1 and Section 3.1 of this Agreement, they will plan for a construction contingency (the "Contingency") of ten percent (10%) of the contract amount awarded to the successful bidder (the "Contract Amount"). If the Contract Amount plus the Contingency exceeds Thirteen Million Dollars and 00/100 (\$13,000,000.00), the Parties shall meet at the request of either Party and confer in good faith to discuss alternatives for funding such excess.

1.5 Change Orders. The City may unilaterally approve of change orders that are related to construction issues at the Project that occur during construction and that the City deems necessary (a "Necessary Change Order"). If the City or the Foundation desire change orders to the design of the Library Lecture Hall (an "Optional Change Order"), each shall notify the other of such desired change and the Parties shall meet and confer in good faith to discuss the proposed change order and the reasons therefor provided the meet and confer process does not delay completion of the Project pursuant to the construction agreement. To the extent Necessary and Optional Change Orders in the aggregate (collectively, "Change Orders") exceed the Contingency, and the Contract Amount, plus the Contingency plus the amount of the Change Orders over the Contingency exceed Thirteen Million Dollars (\$13,000,000), the Parties shall meet as requested by either Party and confer in good faith to discuss alternatives for funding such excess.

2. FOUNDATION OBLIGATIONS

2.1 Fundraising Commitment. The Foundation expressly agrees that it shall use best efforts to collect donations in the amount of fifty percent (50%) of the Estimated Project Cost, or Six Million Five Hundred Thousand Dollars and 00/100 (\$6,500,000.00), whichever is less (the "Foundation Commitment"), to pay towards costs of the Project.

2.2 Control Over Fundraising. City shall have no control over the manner or mechanism in which Foundation chooses to manage, hold or invest funds or the manner or mechanism in which Foundation solicits or receives funds. City shall not direct or authorize any specific fundraising activity; nor shall City prohibit or otherwise interfere with Foundation's fundraising activities. Foundation shall be solely responsible for soliciting donors, establishing partnerships with local businesses and organizations, and handling all administrative and other responsibilities related to fundraising. Until Foundation has released the Foundation Commitment to the City, Foundation shall be solely responsible for determining the use or distribution of all funds raised. Notwithstanding the foregoing, the Foundation represents that no part of any donation shall inure to the benefit of any director, officer, member or employee of the Foundation, except in payment of reasonable compensation for services rendered. Notwithstanding such limit, the Foundation shall have the right to deduct from funds raised reasonable fundraising costs, costs of preparation of the reports required pursuant to this Agreement and other expenses directly related to fundraising for the Project ("Reasonable Expenses"). This Section 2.2 shall not be construed as limiting Foundation's obligations in Section 5 (Reporting and Accounting Requirements). Nothing in this Agreement shall

limit the right of the Foundation to raise funds for other existing or proposed projects, including but not limited to existing and future programming.

2.3 Fundraising Reports. From and after the commencement of this Agreement, the Foundation shall provide a report to the City Manager every six (6) months setting forth the total amount of donations received/collected for funding the Project including any donations pledged for the Actual Project Costs. Such written progress report may be transmitted in, and by, any format, including delivery by electronic mail.

2.4 Payment of Donation. Upon completion of construction drawings and permitting (but prior to the City issuing a notice inviting bids), the City shall give notice to the Foundation providing evidence reasonably satisfactory to the Foundation of such completion. Within forty-five (45) calendar days of receipt of such notice, the Foundation shall place one hundred percent (100%) of the Foundation Commitment into an escrow account at First American Title Company in Santa Ana, CA ("Escrow Holder"). At such time as the City (i) demonstrates to the Foundation that the City has appropriated the City's Commitment set forth in Section 3.1 and (ii) has awarded the contract, finalized negotiations and entered into a construction agreement for the Project wherein the City is legally bound to pay for and construct the Project (the "Release of Funds Conditions"), the Escrowed Funds shall be disbursed to the City. Upon the occurrence of the Release of Funds Conditions, Foundation agrees to promptly execute instructions if requested by Escrow Holder as a condition to the disbursement of the Escrowed Funds to the City. In the event of the termination or expiration of this Agreement prior to City's execution of an agreement for construction of the Project, the Escrowed Funds shall be returned to Foundation. Upon such termination or expiration of this Agreement, the City agrees to promptly execute instructions if requested by Escrow Holder as a condition to the disbursement of the Escrowed Funds to the Foundation. Escrow fees of Escrow Holder shall be paid out of the Escrowed Funds.

2.5 Future Project Enhancements. In the event that the Foundation believes that certain enhancements or upgrades of the Lecture Hall or Bamboo Courtyard would be worthy of financial support of the Foundation in future years, the City will work with the Foundation to implement those enhancements or upgrades desired by the Foundation that are reasonably acceptable to the City.

3. CITY OBLIGATIONS

3.1 City Commitment. Provided the Foundation is able to provide the amount set forth in Section 2.1, the City has earmarked, and through this Agreement commits to pay up to a maximum of fifty percent (50%) of the Estimated Project Cost or Six Million Five Hundred Thousand Dollars and 00/100 (\$6,500,000.00) (the "City's Commitment"), whichever is less, towards costs of the Project.

3.2 Phase Completion. The City shall use its reasonable efforts to complete Phases I through IV identified above by May 31, 2022.

3.3 Reporting. The City shall provide to the Foundation electronic copies of the contractor's construction draw requests when received by City (but without backup unless specifically requested by the Foundation) as well as a final report to the Foundation

documenting use of the Foundation Commitment within six (6) months of completion of the Project.

3.4 Project Control and Property Ownership. Except as provided in Section 3.6 below, City shall have sole responsibility for and control over, completion of the plans and specification of the Project consistent with the Conceptual Design, obtaining all required permits for the Project, bidding the Project, selection of the contractor for the Project, and the construction, project management, inspection and completion of the Project, and thereafter for the operation and maintenance of the Project. The Parties anticipate that construction of the Project will take approximately fifteen (15) months. At all times during and after the Term of this Agreement, the Library Lecture Hall, Site Work, and all related improvements including FF&E and the real property upon which the Project and related improvements are located shall be the sole property of the City.

3.5 Use of Donations; Refund of Excess Foundation Project Funding. City shall ensure that donated funds received from the Foundation shall be used solely for payment of Actual Project Costs. In the event that an audit (with the audit period ending no sooner than issuance of the notice of completion for the Project) determines that all or any part of the Foundation Commitment have been paid and such payments in the aggregate exceed the Foundation's Commitment, the City shall refund such excess amount to the Foundation within thirty (30) days.

3.6 Use of Library Lecture Hall. To the extent the City controls the use of the Library Lecture Hall, the Foundation shall have the right to use the Library Lecture Hall in accordance with the Board of Library Trustees Policy NBPL 15 attached hereto and incorporated herein as Exhibit "B".

4. TERM

Subject to the provisions of Section 11 below, the term of this Agreement shall commence upon mutual execution of this Agreement and shall continue until the sooner to occur of (i) completion of the Project or (ii) five (5) years from the date of this Agreement (the "Term"). Provided, however, once construction of the Project has commenced and for so long as it is being continuously pursued, this Agreement shall remain in effect until construction is completed. If at the end of the Term, construction of the Project has not commenced, this Agreement shall terminate regardless of any design work already completed or any funds expended by either party. However, the Parties may extend the term of this Agreement by mutual written consent and an amendment to this Agreement. The provisions of Section 2.5, Section 3.6, Section 11.5 and Section 12 of this Agreement shall survive the expiration or earlier termination of this Agreement.

5. REPORTING AND ACCOUNTING REQUIREMENTS

5.1. Records. At all times during the term of this Agreement, Foundation shall maintain true, proper, and complete books, records, and accounts (collectively, "Books and Records") in which shall be entered fully and accurately all donations received for the Project as well as the expenditure of any funds donated for the Project or for Reasonable Expenses. Foundation shall maintain the Books and Records in accordance with

Generally Accepted Accounting Principles ("GAAP"). Foundation shall make available to City copies of such Books and Records upon City's request.

5.2 Inspection. City at City's expense shall have the right to designate its own employee representative(s) or designate a contracted representative(s) with an independent Certified Public Accounting firm who shall have the right to audit Foundation's accounting procedures and internal controls of Foundation's financial systems as they relate to this Agreement and to examine any cost, revenue, payment, claim, other records or supporting documentation resulting from any items set forth in this Agreement during the term of this Agreement and Record Retention period set forth in Section 5.3 of this Agreement. Any such audit(s) shall be undertaken by City or its representative(s) at mutually agreed upon reasonable times and in conformance with generally accepted auditing standards. Foundation agrees to fully cooperate with any such audit(s).

5.3 Record Retention. Foundation agrees to retain all necessary records/documentation for a period of three (3) years or longer, if required by law, following the termination of this Agreement. Foundation agrees to retain all necessary records/documentation for the entire length of the audit period set forth in Section 5.2.

5.4 Donation Oversight. Foundation agrees to exercise prudent financial management processes including proper oversight of all donations.

6. INDEPENDENT ENTITY

In the performance of this Agreement, the Foundation, and the volunteers, agents and employees of Foundation, shall act in an independent capacity and are not officers, employees or agents of the City. Nothing in this Agreement shall be deemed to constitute approval for Foundation or any of Foundation's directors, officers, volunteers, employees or agents, to be the agents or employees of City.

7. INDEMNIFICATION

7.1 To the fullest extent permitted by law, Foundation shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "City Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to the breach of this Agreement or the negligent and/or willful acts, errors and/or omissions of Foundation, its principals, officers, agents, employees vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them.

Likewise and to the fullest extent permitted by law, the City shall indemnify, defend and hold harmless Foundation, its boards and commissions, officers, agents, volunteers, and employees (collectively, the "Foundation Indemnified Parties") from and against any and all Claim or Claims, which may arise from or in any manner relate (directly or

indirectly) to the breach of this Agreement or the negligent and/or willful acts, errors and/or omissions of City, its principals, officers, agents, employees vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them.

8. INSURANCE

Without limiting Foundation's indemnification of City, Foundation shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit "C," and incorporated herein by reference.

9. PROHIBITION AGAINST TRANSFER

Neither Party shall assign, sublease, hypothecate, or transfer this Agreement directly or indirectly, by operation of law or otherwise without prior written consent the other Party. Any attempt to do so without prior written consent of the other Party shall be null and void.

10. NOTICES

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the third business day after the deposit thereof in the United States mail, postage prepaid, first class mail, addressed as hereinafter provided.

All notices, demands, requests or approvals from Foundation to City shall be addressed to the City at:

Attn: City Manager
City of Newport Beach
100 Civic Center Drive
P.O. Box 1768
Newport Beach, CA 92658-8915

All notices, demands, requests or approvals from City to Foundation shall be addressed to Foundation at:

Attn: Chief Executive Officer
Newport Beach Public Library Foundation
1000 Avocado Avenue
Newport Beach, CA 92660

11. TERMINATION

11.1. Termination. This Agreement shall terminate as provided in Section 4, except as otherwise provided in this Section 11.

11.2 Termination for Cause. Foundation shall be in default if Foundation fails or refuses to perform any duty required by this Agreement or performs in a manner

inconsistent with the terms, conditions and restrictions in this Agreement. In such event, City shall give Foundation thirty (30) calendar days' written notice to cure, if the default can be cured (the "Cure Period"). City shall be entitled to terminate this Agreement if Foundation has not cured the default within the Cure Period but only if the notice of termination has been given before the default has been cured. City shall be entitled to immediately terminate this Agreement if the default cannot be cured through corrective action.

11.3. Termination without Cause. Prior to the occurrence of the Release of Escrowed Funds Condition, City may terminate this Agreement at any time with or without cause upon seven (7) days written notice to Foundation.

11.4. Specific Performance. If the City enters into an agreement for construction of the Project and the Foundation and/or Escrow Holder has/have not released the Foundation's Commitment, the Foundation agrees that the City shall have the right to specifically enforce Foundation's obligations.

11.5. Treatment of Donations Following Termination. In the event that this Agreement is terminated by the City for cause after the satisfaction of the Release of Funds Conditions, the Foundation shall deliver or cause to be delivered the Escrowed Funds and all other donations collected by Foundation for Actual Project Costs to the City, and the City shall thereafter complete the Project as soon as reasonably practicable.

12. NAMING RIGHTS

12.1. Naming Rights. Subject to City Council absolute discretion and approval, the Foundation may offer the right to a donor to place the name of the donor, donor's spouse or donor's family on the exterior of the Library Lecture Hall (the "Named Donor"). The amount of the contribution of the Named Donor shall not be less than a minimum amount agreed to by the City and Foundation (the "Named Donor Contribution") and shall be memorialized by way of an agreement between the City and the Named Donor (the "Named Donor Agreement").

12.2. Named Donor Signage. The location, size and design details of the signage identifying the Named Donor shall be memorialized in the Named Donor Agreement. The Parties anticipate Named Donor signage will be on the East elevation of the Lecture Hall, as well as an appropriately scaled monument sign along Avocado Avenue as reasonably determined by the City and approved by the Irvine Company.

12.3. Other Naming Opportunities. In addition to the naming rights of the Named Donor, the City agrees that the Foundation may offer naming rights to the Bamboo Courtyard, the lobby, the green room, and a donor wall subject to prior review and approval of the City Council and execution of a Named Donor Agreement.

12.4. Rights of Donors upon Termination of Agreement. The rights of a Named Donor upon termination of this Agreement shall be memorialized in the Named Donor Agreement.

13. STANDARD PROVISIONS

13.1 Compliance With all Laws. Foundation shall at its own cost and expense comply with all applicable statutes, ordinances, regulations and requirements of all governmental entities related to its obligations under this Agreement, including federal, state, county or municipal, whether now in force or hereinafter enacted.

13.2. Waiver. A waiver by either Party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

13.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

13.4 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

13.5 Amendments. This Agreement may be modified or amended only by a written document executed by both Foundation and City and approved as to form by the City Attorney.

13.6 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

13.7 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

13.8 Equal Opportunity Employment. Foundation represents that it is an equal opportunity employer and it shall not discriminate against any contractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age or any other impermissible basis under law.

13.9 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

13.10 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/22/21

By: Aaron C. Harp
Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Brad Avery
Mayor

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

FOUNDATION:
Newport Beach Public Library
Foundation, a California Nonprofit
Corporation

Date: _____

By: _____
Jerold D. Kappel
Chief Executive Officer

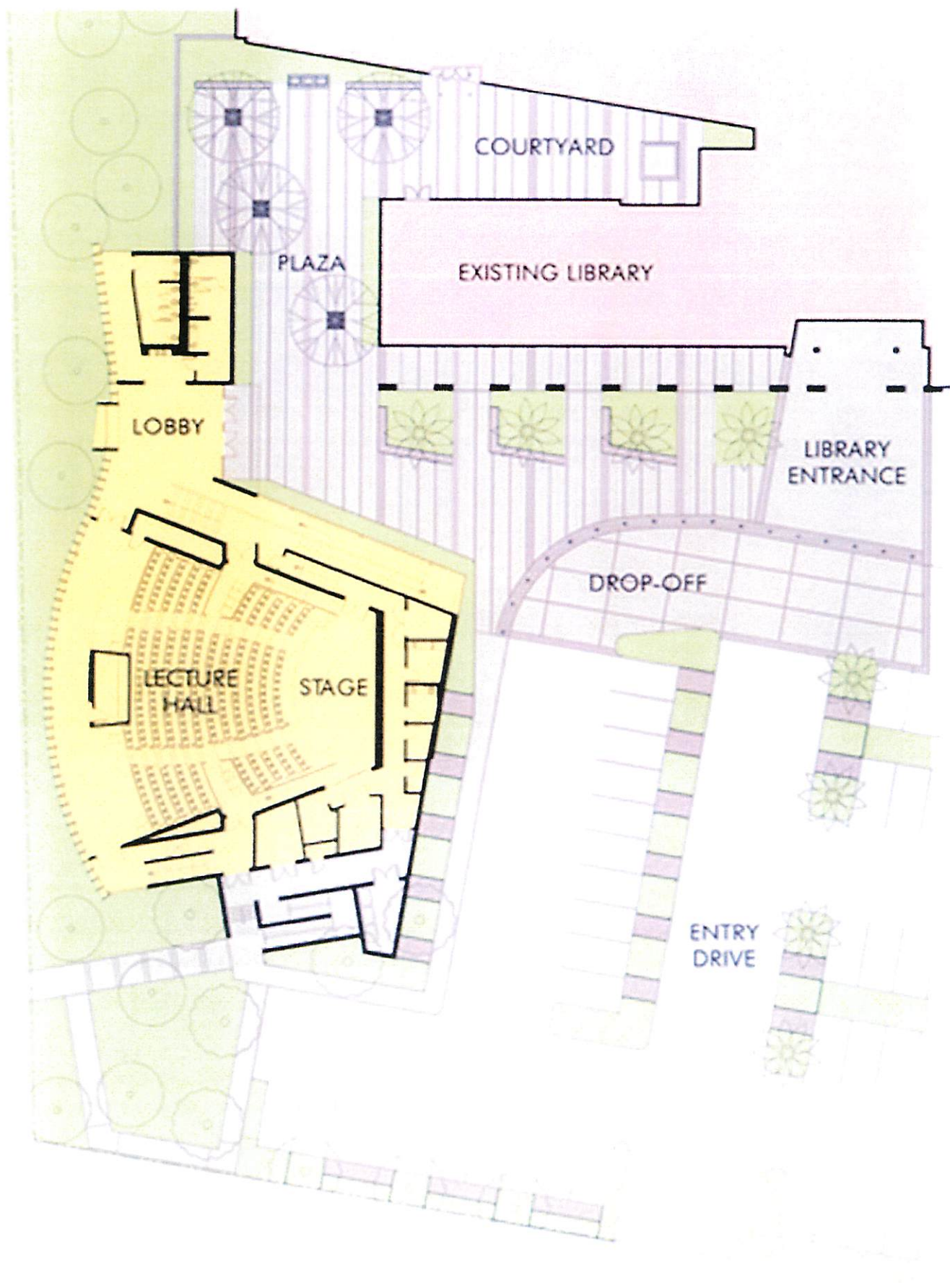
Date: _____

By: _____
Dorothy Larson
Secretary

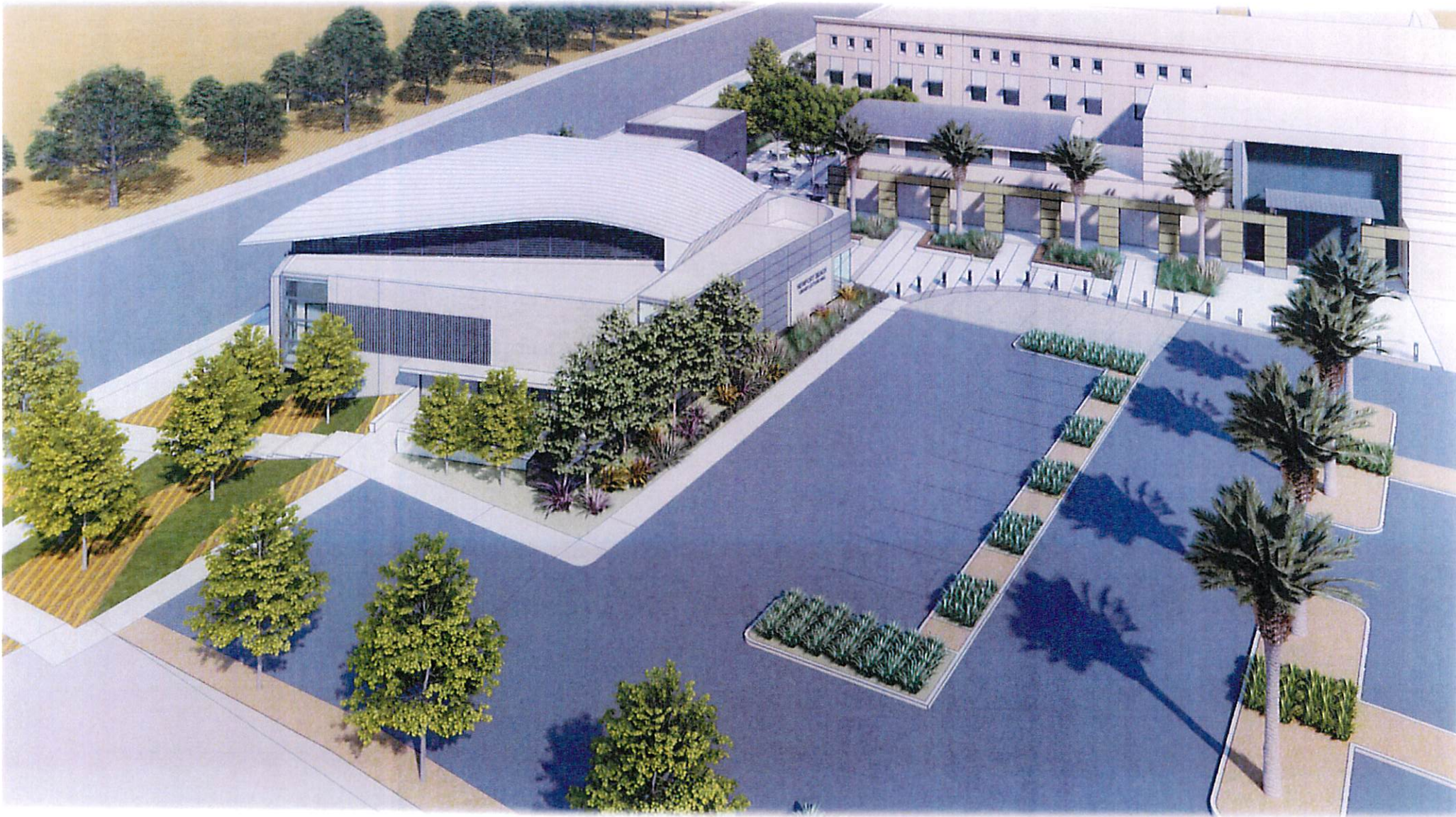
[END OF SIGNATURES]

Attachments: Exhibit A – Conceptual Plan
 Exhibit B – Board of Library Trustees Policy NBPL 15
 Exhibit C – Insurance Requirements

EXHIBIT A
CONCEPTUAL PLAN



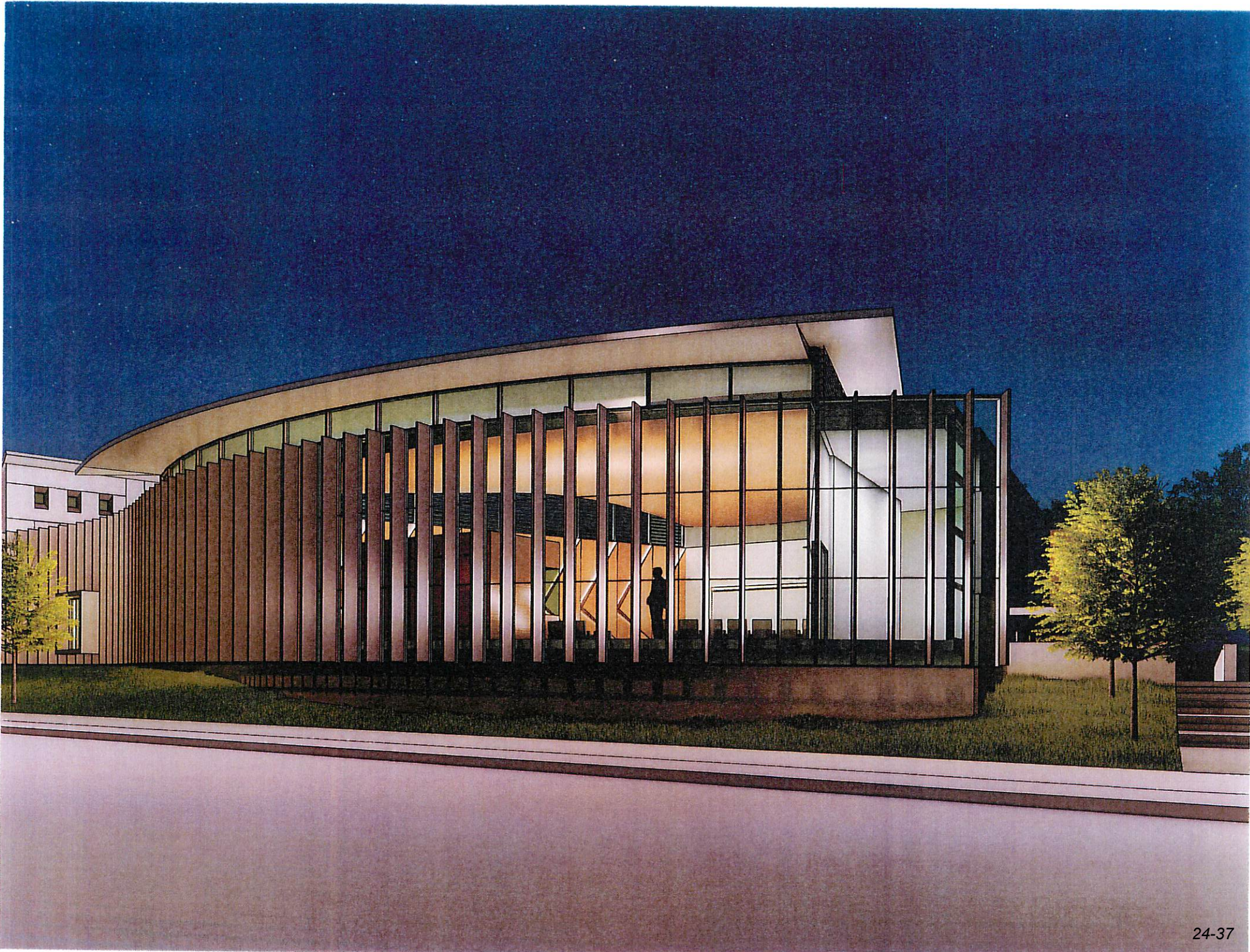
LLHDC Recommended Conceptual Design



LLHDC Recommended Conceptual Design

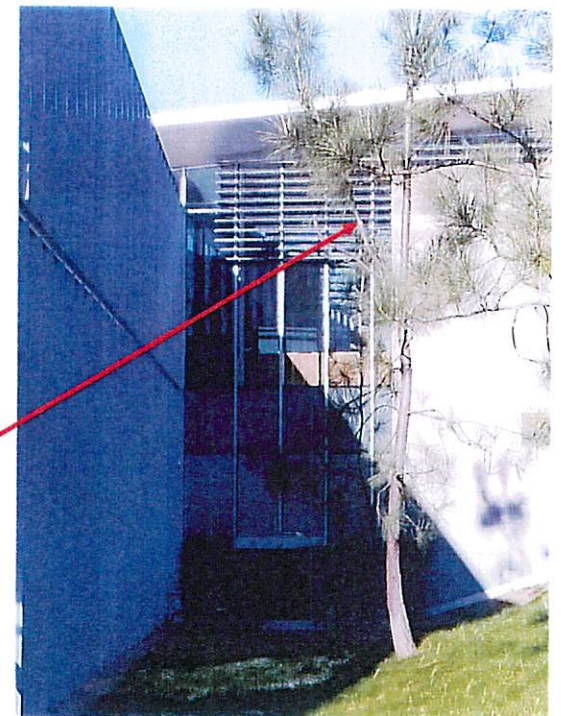
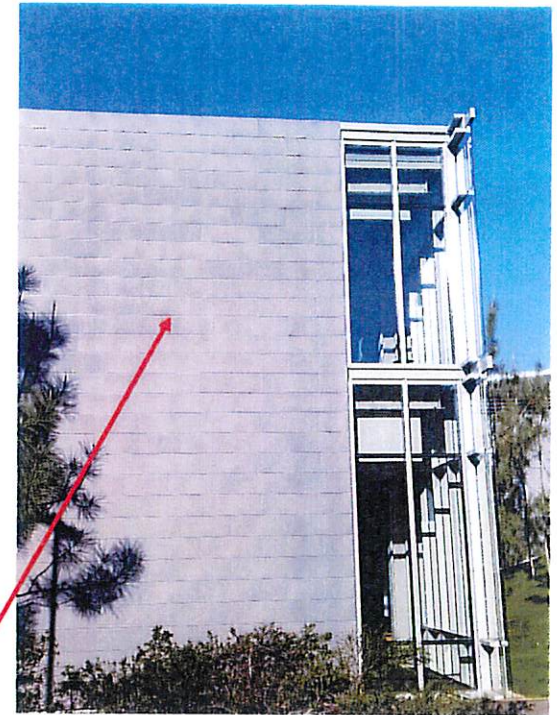






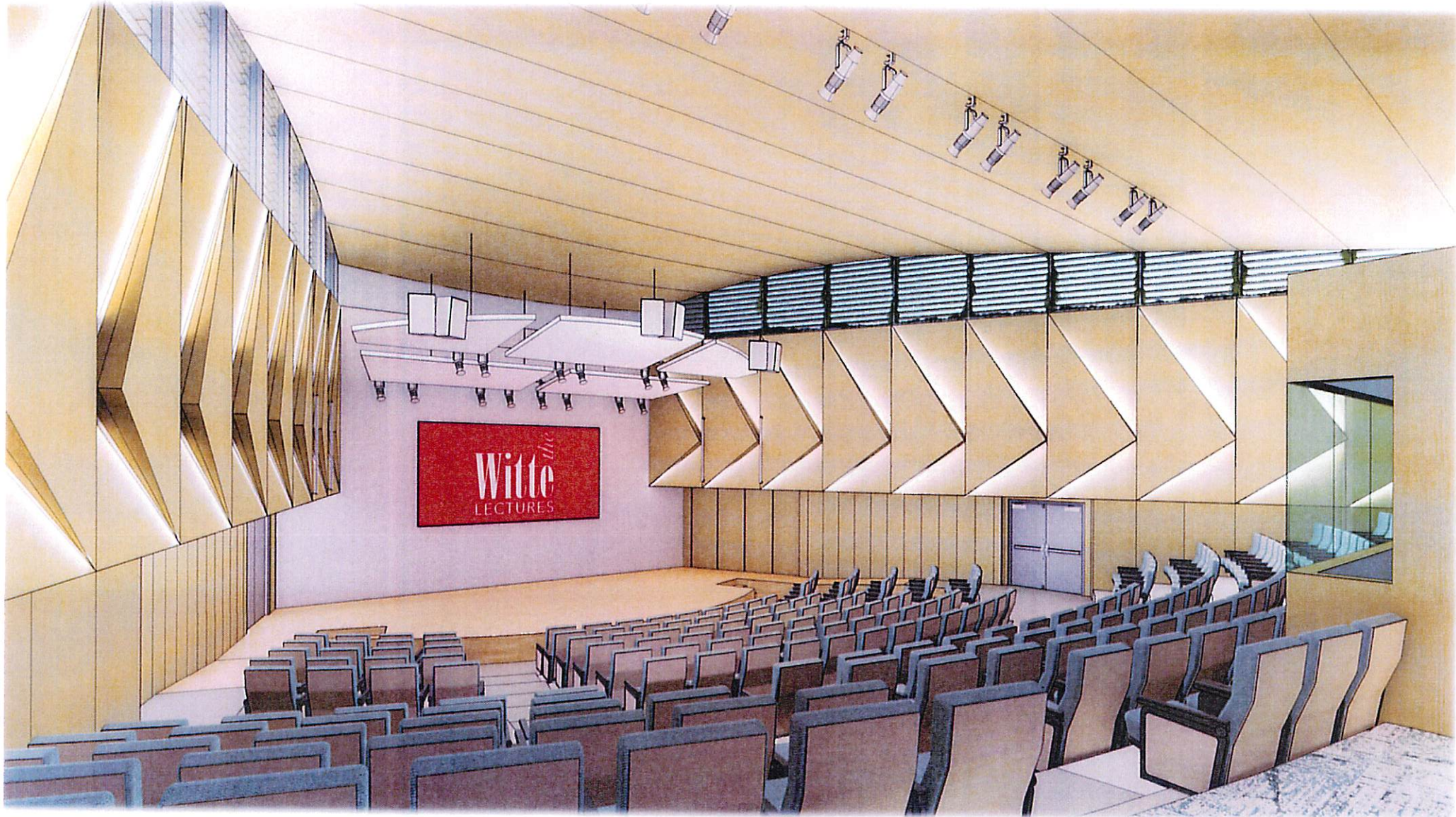


Primary Materials



Honed Stone
Aluminum Composite Panels
Lapped Metal Shingles
Sunshade Louvers

LLHDC Recommended Conceptual Design



LLHDC Recommended Conceptual Design



LLHDC Recommended Conceptual Design

KEYNOTE LEGEND

- 1 Space main circulation courtyard & plaza areas
- 2 Discontinuous Pattern Concrete Paving with Two Alternating Colors
- 3 Series of Trees along East building frontage
- 4 New Steps with a Ramping Plaza within Concrete Paving
- 5 Alternative Seating under Shaded Trees
- 6 Bollards and Awnings Entry Plaza Paving
- 7 Sculptural Fine Art Piece on Entry Feature
- 8 Alternative Awn Edge with Contemporary Glass Windows
- 9 Wood Deck Bench in Seating Ramping Plaza Entry and Existing Plaza
- 10 Street Curb and Edge Detail with a new finish



SCHEMATIC LANDSCAPE PLAN EXHIBIT
NEWPORT BEACH LIBRARY LECTURE HALL

Date: 12/04/2020



EXHIBIT B

Board of Library Trustees Policy NBPL 15

The Library Lecture Hall

Background

The auditorium at the Newport Beach Central Library is known as the Library Lecture Hall (“LLH”).

The Library Board of Trustees and the Library Services Department administer the Library and the LLH. The LLH is an important source of meeting space for Library, Library-related, Library-affiliated, City of Newport Beach (“City”) and outside lectures, programs, and activities. It is not unusual for Library and City officers and employees to have a need to use the LLH for Library and City business on short notice. Moreover, use of the LLH takes Library staff away from their normal duties and, if uncontrolled, can interfere with the public’s use and enjoyment of the Library.

Applicability

Except as otherwise specifically provided to the contrary herein, this Policy shall not apply to First Priority and Second Priority uses (as defined below) of the LLH as provided below, although the users of such Priorities are required to complete in advance an Application For Use form for such uses. So long as they complete and file in advance the Application For Use form, such users shall be entitled to use the LLH with the permission of and subject to confirming availability with the Library Services Director. Moreover, it shall be permissible for such users to place an advance hold on recurring regularly scheduled dates of use by such users, e.g., the first Thursday morning of each month at 7:30 AM.

Purpose

The purpose of this Policy is to establish:

- A. Procedures for processing and approving or disapproving requests from applicable groups or organizations for permission to use the LLH;
- B. Priorities as set forth below for the use of the LLH and to resolve any conflict related to requests for use; and
- C. Standards and criteria for the use of the LLH to insure there is no significant impact on the workload of staff.

Priorities of Use

The mission of the Library is to be the cultural, educational, and informational heart of Newport Beach (the “Library Mission”). Subject to the Library Mission, to this Policy, and to all related terms and conditions, the LLH is available for use as provided herein. The fact that a group or organization is granted permission to use the LLH in no way constitutes endorsement of the policies or beliefs of that organization by the Library or the City. Even following an advance reservation pursuant to a completed Application For Use, NBPL has a right to preempt any event for a Library or Library-related event; in such rare instances, Library will use its reasonable efforts to assist the group in reserving another date for use of the LLH. The numerical listing below a particular Priority (e.g.,

First Priority) shall indicate the preference or priority within the stated Priority, e.g., First Priority A.1. shall have preference over First Priority A.2.

A. FIRST PRIORITY

1. The Newport Beach Public Library Foundation (the "Foundation") and, thereafter, other NBPL support groups including but not limited to The Friends of the Library and Project Adult Literacy.
2. Any official Library sponsored, co-sponsored, and/or conducted programs and activities that are directly related to the Library Mission and the Library's functions and purposes.

B. SECOND PRIORITY

1. Any meeting or activity of (i) the Newport Beach Chamber of Commerce, (ii) the Corona Del Mar Chamber of Commerce, (iii) Speak Up Newport, or (iv) any other local non-profit organization or entity which organization or entity is based in or around the City and whose meeting or activity is primarily and substantively designed to educate and inform the local community on current issues. With respect to subsection (iv), the Director shall have the discretion to determine whether an organization or entity meets the qualifications set forth in subsection (iv) and whether a meeting or activity meets the qualifications set forth in subsection (iv).
2. Any meeting or activity by local non-profit organizations or entities which organizations or entities are based in or around the City. The Director shall determine whether an organization or entity qualifies as a local non-profit organization or entity for purposes of Second Priority status.

C. THIRD PRIORITY

Use of the LLH may be granted by the Library Services Director to those persons, organizations, or entities listed below on a first come, first serve basis:

1. Sponsored educational or informational programs and activities of state or local public agencies such as local public schools or public districts.
2. Recreational, social, or civic organizations and/or groups that are promoted and sponsored by City residents or City non-profit organizations that are open to the public and have fifty percent (50%) or more of their memberships held by Newport Beach residents.
3. Recreational, social, or civic organizations and/or groups that are non-resident and are promoted and sponsored by non-profit organizations that are open to the public but do not qualify under C.2. above.
4. Schools, colleges, hospitals, or other similar groups not qualifying under the definition of non-profit. Non-profit status is defined as an organization that is so defined by the Internal Revenue Code Section 501(c) and has a State of California Tax Identification Number.

D. FOURTH PRIORITY

All other outside organizations, municipal agencies, individuals, and groups have Fourth Priority on all dates, and may reserve events on a first come, first serve basis under the terms, provisions, and documents required hereunder. All Fourth Priority users shall enter into an Agreement Regarding Use Of Library Lecture Hall For Outside Events ("Outside Events Contract") in form and content as the Director may specify from time to time, which Outside Events Contract shall include the Rules and Regulations (First Addendum to Outside Events Contract) in form and content as the Director may specify from time to time.

Procedure

All persons, groups or entities seeking permission to use the LLH ("applicant") shall submit an Application For Use on the form provided by the Department. The applicant shall provide all information requested in the application and such additional information as may be required by the Library Services Director to enable the Director to determine if use by the applicant will comply with this Policy. Applications shall not be considered complete unless accompanied by required fees, proof of insurance, and any additional requested information to the extent applicable. No person, group or entity shall be entitled to use of the LLH unless their application has been approved by the Library Services Director or the Director's designee. If an applicant fails to comply with the standard conditions of use or any special conditions imposed by the Director, no additional application by that applicant shall be considered for a one-year period following such failure.

Standard Conditions of Use Applicable to Third Priority and Fourth Priority Users

These standard conditions of use shall be and are applicable to Third Priority and Fourth Priority users only; with the exception of standard conditions B, D, and F, the standard conditions are not applicable to First Priority and Second Priority users; provided, however, other than in the case of the Foundation, the Director shall have the discretion to impose one or more such other standard conditions on First Priority and Second Priority users. An Application For Use of the LLH may be approved subject to the Third Priority User's and the Fourth Priority User's compliance with the following standard conditions of use and other conditions of use as may be imposed by the Library Services Director:

- A. The use of alcoholic beverages is prohibited unless expressly approved in writing by the Library Services Director and subject to the approval of the Alcoholic Beverage Control Board.
- B. Smoking, vaping of any kind, and other use of tobacco or similar products is prohibited in the LLH and the entire Library campus, including restrooms and all common areas.
- C. At least one (1) adult shall be present in the LLH when minors are in attendance.
- D. No person shall interfere with the normal use and activities of the Library by way of noise, disturbance, or other activity.
- E. Meetings or activities conducted in the LLH may not be advertised or promoted as City or Library sponsored activities unless approved in advance by the Library Services Director. All materials used for advertising or announcing a meeting or activity to be conducted in the LLH shall be submitted to the Library Services Director at least ten (10) days prior to the use for the sole purpose of determining if the materials comply with this condition. The Library Services Director shall notify the permittee of the Director's determination that the materials comply or do not comply with the condition within three business days after submittal.
- F. Events or activities in the LLH shall not exceed [274? Actual Number Of Fixed Seats And Possible Additional Mobile/Temp Chairs At Rear To Be Determined By Architectural Plan/NBFD Requirements And Approved by Library Services Director] persons unless approved in advance by the Library Services Director.
- G. Use of the LLH is limited from 9 a.m. to 9 p.m. Monday through Thursday, 9 a.m. to 10 p.m. Friday through Saturday, and 12 p.m. to 5 p.m. on Sundays, unless expressly approved in writing in advance by the Library Services Director.

- H. The provision of insurance should be general liability, naming the Library and City and their officers, agents, officials, employees, and volunteers as additional insureds, providing coverage in the amount of not less than \$1,000,000 for any claim, loss, injury, damage, or other casualty that is in any way related to the use and/or occupancy of the LLH by the permittee authorized to use the LLH pursuant to this Policy.
- I. The permittee agrees to defend, indemnify, and hold harmless the Library and the City and their officers and employees with respect to any claim, loss, or injury that arises out of, or is in any way related to permittee's use and occupancy of the LLH.
- J. Applications for reservations must be made no more than 90 days in advance and not more than once every 90 days.

Fees, Deposits and Cancellation Procedures

Fees may be charged for the use of the LLH. Fees shall be established by Resolution of and periodically adjusted by the Board of Library Trustees subject to approval of the City Council. Fees shall include an amount necessary to defray the costs associated with the administration of this Policy and the maintenance and repair associated with the use of the LLH. Notwithstanding anything to the contrary herein, the Director may impose fees and other charges on the First Priority Users and the Second Priority Users; provided, however, in the case of the Foundation, such fees and other charges shall be agreed upon in advance in writing by the Director and the Foundation.

Use Subject to Recorded Declaration of Special Land Use Restrictions

Use of the LLH shall at all times be subject to that certain Declaration of Special Land Use Restrictions, Right of First Refusal, Mortgage Lien and Option to Repurchase recorded May 8, 1992 as Instrument No. 92-304757 in the Official Records of Orange County, California, as modified by that certain amendment recorded November 24, 2010 as Instrument No. 2010-634195 and as further amended by that certain amendment (the "Second Amendment") recorded December 5, 2019 as Instrument No. 2019000509265 (all such recorded documents are referred to collectively as the "Declaration"). The Second Amendment (which as indicated is a part of the Declaration) specifically provides as follows:

1.2 Use of the Lecture Hall

Declarant expressly agrees that the use of the Lecture Hall by Grantee [City of Newport Beach, a California municipal corporation] to conduct library, cultural, training, educational, informational, entertainment, civic and community focused programming as well as for programming of library support groups, such as the Friends of Newport Beach Public Library and the Newport Beach Public Library Foundation (collectively, the "Intended Use"), are uses commonly associated with public libraries, as described in Section 2.1(a) of the Declaration, and these uses do not compete with the retail and commercial facilities in the Center [Newport Center]. Grantee may from time to time allow, and charge reasonable fees for, such uses of the Lecture Hall, and such other uses of the Lecture Hall that Grantee determines in its reasonable discretion are complementary to the use of the Land as a free, public library and will not interfere with the use of the Land by Grantee's library patrons and available parking for such library patrons; provided such other uses, in Declarant's reasonable discretion, do not materially compete with the retail and commercial facilities in and

around the Center, and in no event shall the Lecture Hall be used as a commercial banquet hall or conference center.

1.3 Parking

The number of parking spaces on the Land and available for public use is currently 172. Such number of parking spaces available for public use shall not be reduced without the prior written consent of Declarant as described in Section 2.2(a) of the Declaration.

Adopted by the Board of Library Trustees on November 15, 2021

This Policy will be periodically reviewed by the Board of Library Trustees on the first to occur of (i) as circumstances may require or (ii) every two years from the date of adoption, last amendment, or last review. Adopted, last amended, or last reviewed on November 15, 2021.

EXHIBIT C

INSURANCE REQUIREMENTS

1. Provision of Insurance. Without limiting Foundation's indemnification of City, Foundation shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Foundation agrees to provide insurance in accordance with requirements set forth here. If Foundation uses existing coverage to comply and that coverage does not meet these requirements, Foundation agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Foundation shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code if the Foundation hires employees.

Foundation shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, and employees.

Foundation shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.
 - B. General Liability Insurance. Foundation shall maintain commercial general liability insurance, and if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

- C. Automobile Liability Insurance. Foundation shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Foundation arising out of or connected in any way with the Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.
4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, and employees or shall specifically allow Foundation or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Foundation hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.
 - B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers, and employees shall be included as insureds under such policies.
 - C. Primary and Non-Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
 - D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.
5. Additional Agreements Between the Parties. The Parties hereby agree to the following:
- A. Evidence of Insurance. Foundation shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each

insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Foundation shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Foundation sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Foundation, City and Foundation may renegotiate Foundation's compensation.
- C. Enforcement of Agreement Provisions. Foundation acknowledges and agrees that any actual or alleged failure on the part of City to inform Foundation of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- D. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Foundation maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Foundation. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- E. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- F. City Remedies for Non-Compliance. If Foundation or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Foundation's right to proceed

until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Foundation or reimbursed by Foundation upon demand.

- G. Timely Notice of Claims. Foundation shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Foundation's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- H. Foundation's Insurance. Foundation shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection.