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AGREEMENT FOR THE OPERATION OF THE SHARED USE COMMUNITY LIBRARY
LOCATED ON THE SOUTH MOUNTAIN COMMUNITY COLLEGE CAMPUS AT 7050 S
24th STREET, PHOENIX, ARIZONA

Between

CITY OF PHOENIX, for and on behalf of the Phoenix Public
Library Department

and

MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT,
for and on behalf of South Mountain Community College

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Contract No. - _____

OPERATING AGREEMENT FOR THE SHARED USE LIBRARY LOCATED ON
THE SOUTH MOUNTAIN COMMUNITY COLLEGE CAMPUS AT 7050 S. 24th
STREET, PHOENIX, ARIZONA

(“AGREEMENT”)

THIS OPERATING AGREEMENT (“Agreement”) is entered into between the City of Phoenix, a municipal corporation (“City”) on behalf of the Phoenix Public Library Department (“PPL”), and the Maricopa County Community College District (“MCCCD”) on behalf of South Mountain Community College (“SMCC”).

RECITALS

WHEREAS the City is authorized to enter into this agreement pursuant to Phoenix City Charter Chapter II §2(i) and A.R.S. §§11-951 - 11-954; and

WHEREAS MCCCD is authorized to enter into this agreement pursuant to A.R.S. §§11-95-11-954 and 15-1444B-4; and

WHEREAS, the voters of the City of Phoenix approved bonds for a 2006 Libraries, Youth, Senior and Cultural Facilities Bond Program for the improvement, construction and operation of community use libraries within the City of Phoenix; and

WHEREAS, the voters of the County of Maricopa approved general obligation bonds in 2004; and

WHEREAS, on March 6, 2008, the City and MCCCD entered into an Inter-governmental Agreement to jointly plan, design and construct a shared use library (the “Library Project”) to be located on the SMCC campus at 7050 South 24th Street, Phoenix, Arizona to provide cost-effective, enhanced services for both the general public and community college students; and

WHEREAS, MCCCD will own and maintain the shared use library (“Community Library”) upon completion and the City will have a non-exclusive right to use the Community Library as well as shared space in the exterior of the Community Library including parking for a term specified in this Agreement; and

WHEREAS, the Parties desire to enter into an agreement to define their respective duties and responsibilities regarding the use and operation of the Community Library upon completion.

NOW, THEREFORE, in consideration of the mutual promises herein, the Parties agree as follows:

ARTICLE 1

GENERAL PROVISIONS

1.1 Effective Date

This Agreement is contingent upon approval of the governing board of each Party. This Agreement will become effective upon substantial completion of the Library Project. MCCCCD shall be responsible for recording this Agreement with the Maricopa County Recorder.

1.2 Effect of Headings

The headings or titles of the several articles and paragraphs in this Agreement are solely for the convenience of reference. They shall not control, affect, modify, amend or change the meaning or construction of any term or provision contained in this Agreement.

1.3 Term

The term of this Agreement shall commence upon the Effective Date and expire 40 years after the date that the Community Library first begins to provide library services to the public (“Initial Term”). The parties may extend it for optional 5-year terms (“Renewal Terms”) through a written amendment signed by authorized representatives of both parties under Paragraph 8.10. On the expiration of this Agreement, or voluntary termination of it by the City, the Community Library will cease to be a public library, and MCCCCD shall not be obligated to operate it as one.

1.4 Limitations of Use

Both Parties agree and promise that the Community Library and the land it will occupy will be used only for public library purposes or purposes consistent with the mission of the City, PPL, MCCCCD or SMCC for as long as indebtedness remains outstanding on any bonds sold pursuant to the Parties’ respective bond elections. Neither Party shall allow any use of the Community Library for any purpose or action that may compromise the tax-exempt status of those bonds. This promise shall be enforceable by injunctive, declaratory or other relief.

1.5 Title to Improvements

Subject to the terms to this Agreement, title to and ownership of the Community Library and improvements to it shall be and remain the sole property of MCCCCD.

1.6 Grant of Right to Use

1.6.1 MCCCCD grants to the City the non-exclusive irrevocable right to use the Community Library and adjacent parking spaces sufficient to meet the City’s requirements, provided that the City complies with the terms and conditions of this Agreement including and

not limited to the obligation to pay its share for the Community Library construction, maintenance and operations.

1.6.2 MCCCCD shall permit City to allocate some of the space in the Community Library attributable to the City under Paragraph 3.3 to The Friends of the Phoenix Library, a not-for-profit organization that conducts fundraising for the PPL. The space is not expected to exceed 400 square feet. The Friends of the Phoenix Library will use that space to sell items and books and all proceeds will be distributed solely to the PPL.

1.7 Library Name

If the Parties' respective governing boards approve of this Operating Agreement, the name of the Community Library is "South Mountain Community Library."

1.8 Specific Definitions

As used in this Agreement, the following terms have the following meaning:

1.8.1 "Collection" means all materials such as books, magazines, microfilm, electronic resources, and other such materials, acquired, through contribution by a Party or by joint purchase, for the Community Library for educational or recreation purposes ("Collection").

1.8.2 "Community Library" means the library operated in the library building by the City and MCCCCD pursuant to the terms of this Agreement.

1.8.3 "Contents" means all property within the Community Library which is not permanently fixed to the building's structure, such as carpeting, furniture, and computers, but excludes the Collection and Special Contents.

1.8.4 "Cost Sharing Percentage" means that ratio of a Party's total financial contribution to the total cost to design and construct the Library building. Prior to construction, the City's estimated cost sharing percentage is 31% and MCCCCD's estimated cost sharing percentage is 69%. The actual cost sharing percentage will be determined upon completion of the Community Library building. The Cost Sharing Percentage shall determine the Parties' respective financial contribution to all of the Community Library's expenses as specified in Article 5 and Article 7 unless specifically stated otherwise in this Agreement.

1.8.4 "Parties" means the City and any division, department or function of it including the PPL, MCCCCD and any division, department or function of it including SMCC.

1.8.5 "Special Contents" means special exhibits, fine arts, and any other special item identified and agreed upon by the Executive Committee that are exclusively owned and insured by the City or on loan to the library.

1.9 Authority

As required by the laws and policies that govern each Party, the City Council of the City is the governing board relating to the City's decisions, budgeting and expenditures, and the MCCCCD Governing Board is the governing board relating to MCCCCD's and SMCC's decisions, budgeting and expenditures under this Agreement, notwithstanding the creation under this Agreement of a

joint management structure. The authority of each Party to budget annually is preserved, as specified in Paragraph 8.7.

ARTICLE 2

MISSION STATEMENT

The Community Library will serve the library service needs of the greater Phoenix community and MCCCDCD community college students and faculty by providing an accessible community resource to support the cultural, educational and informational needs of the greater Phoenix community. The Community Library will provide these services to support individual and group improvement, enrichment, increased opportunity, knowledge and recreation.

ARTICLE 3

GOVERNANCE AND USE OF THE COMMUNITY LIBRARY BUILDING

3.1 Integrated Use

3.1.1 The Library will serve as an integrated use community library. Both parties will jointly operate the Community Library subject to the terms and conditions of this Agreement. The Parties fully commit to the philosophy of a shared use Community Library. It is the intent of each Party to hire or assign employees to staff the Community Library who understand and share such a commitment and who will serve the clientele of the Community Library without any outward appearance of serving separate employers.

3.1.2 At all times during this Agreement, individuals assigned to staff the Community Library will be employees of the Party that hired them, and those employees will be subject solely to the pay scales and employee benefits of the employing Party. To ensure compliance by each Party with laws and regulations relating to employment, the Parties may at their discretion each conduct an annual employment audit of their staff working in the Community Library. Each Party agrees to ensure that its supervisors working in the Community Library have been trained on and are knowledgeable about issues relating to joint employees, and are aware that they must avoid, where possible, creating a situation in which a joint employment issue may arise.

3.1.3 Each Party will provide professional staff trained and knowledgeable about the learning resources, information, media materials and services required for the clientele of the respective Parties.

3.1.4 The Parties will provide cross-training of their respective staff to work in all parts of the Community Library as needed for seamless service, including, but not limited to, coverage on weekends and nights when the Community Library is open regardless of whether other public libraries or community college libraries are closed.

3.1.5 Because minors will be using the Community Library, each Party must require a background check on each of its employees who provides services within or immediately around the Community Library and who may have direct access to minors.

3.2 Library Building

3.2.1 During the Initial Term of this Agreement and any Renewal Term, MCCCDC will own the Community Library, and the land on which it sits as well as the infrastructure and facilities that support it, the Collections that it has purchased or will purchase with its own funds and the Contents. Likewise, the City shall own the Collections that it has purchased or will purchase and houses in the Community Library along with any Special Contents. Upon expiration of the Term or a Renewal Term under Paragraph 3.1, the City shall be entitled to remove the Collections it purchased or contributed and its Special Contents..

3.2.2 Each Party's Collections in the Community Library will generally be available to all library patrons.

3.3 Space Designation and Allocation

The Parties, through the Operational Steering Committee described in Paragraph 3.10, shall work with the design consultant during design of the Community Library to designate the functions of specific spaces within the interior of the library, and needed infrastructure. The Operational Steering Committee shall also be responsible for reviewing functional space allocation on an on-going basis, and recommending to the Executive Committee renovations or other changes to achieve effective use of the Community Library.

3.4 Interior and Exterior Space

3.4.1 The interior of the Community Library shall generally be shared space to be used freely by both Parties.

3.4.2 Regarding the exterior of the Community Library and for purposes of computing costs, the immediate 15 foot radius around the exterior of the Community Library building is shared space as well as the number of parking spaces required by law for the Community Library.

3.5 Use of the Roof

Either party may request through the Operational Steering Committee that it be permitted to purchase telecommunications antennas, microwave or satellite dishes or other communications equipment for installation on the Community Library roof for the benefit of library clientele. Placement of the equipment on the roof is subject to required government approvals at the cost and expense of both Parties, such expense subject to the Parties' respective Cost Sharing Percentages. The Parties will bear the cost of routine maintenance of the equipment based on their Cost Sharing Percentages. Before any equipment is installed, MCCCDC and its property insurer or other consultants shall approve the plans and methods for any aesthetic, structural, safety or technological concerns. It shall not unreasonably withhold its approval.

3.6 Separate Jurisdiction and Identity

3.6.1 Each Party shall maintain sole authority over those non-library specific activities that are related to the overall management and administration of their operations of which the Community Library is a part, such as budgeting, human resources, and procurement, subject to the terms and conditions of this Agreement. Additionally, each Party shall follow its own processes for those activities, subject to the terms and conditions of this Agreement. The Parties agree to provide notice to each other promptly of any of those activities that might materially

affect or impair the operation of the Community Library as described in this Agreement or as a full-service library for the public and College.

3.6.2 The Co-Managers, as defined in Section 3.7, shall determine those functions within the Community Library that the Parties will jointly operate, such as circulation, security and technology support.

3.6.3 Each Party shall coordinate any use by third parties of the Community Library through the Operational Steering Committee, which will develop a third-party use policy that is consistent with those of MCCCCD and SMCC for its buildings. The Parties shall jointly agree to the third party use in advance. Fundraising or social events sponsored by MCCCCD, the City or by entities related to either MCCCCD or the City, such as the Maricopa County Community College District Foundation or Friends of the Phoenix Public Library, will not be subject to the payment of rental fees so long as the use is not continuous for those types of activities during any year. For all other uses by third parties, SMCC shall charge rental fees in compliance with MCCCCD's administrative regulation on facilities use. SMCC will, if feasible, post those fees on-line. The fees will cover, in whole or in part, security services, utilities and cleanup. SMCC shall place the fees collected in an account and distribute to the City a share of the income consistent with the City's Cost Sharing Percentage.

3.6.4 Under MCCCCD's administrative regulation on alcoholic beverages, the City or the Friends of the Phoenix Public Library may serve wine and beer at events they sponsor at the Community Library so long as they comply with the requirements of that regulation. SMCC shall notify the City if MCCCCD considers any change to the regulation that may eliminate the ability of the City or the Friends of the Phoenix Public Library to serve beer and wine at their events.

3.6.5 Since the Community Library is a building owned by MCCCCD, MCCCCD's policies and administrative regulations that relate to its property, such as restrictions on smoking, solicitation and the prohibition against the presence of weapons, apply to the use of the Community Library.

3.6.6 Any and all monies provided to the City by or through the Phoenix Library Foundation or any third party shall be for the sole use and benefit of the City and are not subject to this Agreement. Likewise, any and all monies provided to MCCCCD or SMCC by or through the Maricopa County Community College District Foundation or any third party shall be for the sole use and benefit of the MCCCCD and are not subject to this Agreement.

3.7 Designated Co-Managers

SMCC and PPL shall each select a person to serve on its behalf as a co-manager of the Community Library ("Co-Managers"). The Co-Managers will establish and communicate library operational procedures and protocols as well as manage the operations of the Community Library. In the event of a permanent vacancy in the position of one of the Co-Managers, a representative of the other Party or his or her designee shall serve on a selection committee as a resource for the Party filling the vacancy. Both Parties recognize that any hiring decision is the sole and exclusive decision of the Party employing that Co-Manager. The responsibilities of the Co-Managers or their designees include the following, in addition to other responsibilities as may be specified in this Agreement:

3.7.1 Jointly develop a coordinated plan for publicizing scheduled events, programs and services to be adopted and followed by both Parties;

3.7.2 Provide, at the request of the other Party, a staff member to serve on any selection committee of the other Party to select new or replacement staff for librarians and other professional staff, recognizing that the hiring decision is solely that of the hiring Party;

3.7.3 Supervise their respective staff and agree on supervisory and communication procedures, including delegation procedures, in the event of one Co-Manager's absence;

3.7.4 Jointly schedule staff to ensure adequate service coverage in the Community Library based on the hours that the Community Library is open, including a staffing plan for all library functions for each fiscal year (July 1 through June 30);

3.7.5 Periodically update the staffing plan to reflect the changes in position assignments between and within programs and functions, and to ensure that the work schedules of employees in all positions are maintained on a current basis and provided to the appropriate employees and supervisors as necessary;

3.7.6 Discuss and identify factors that are important to the mission of the Community Library for evaluating the performance of the individuals assigned to work at the Community Library, recognizing that each Party will evaluate its employees using its own required forms and procedures, and that decisions relating to evaluation and discipline are the sole responsibility of the Party that employs the individual;

3.7.7 Identify the library functions that the Parties will jointly perform and establish benchmarks, procedures and guidelines for those functions;

3.7.8 Jointly assess and recommend Deferred Maintenance, Capital Improvements and Capital Repairs (as defined in Paragraph 5.1) program for the Community Library and make recommendations to the Operational Steering Committee as deemed necessary;

3.7.9 Jointly recommend to the Operational Steering Committee a process for coordinating the purchase or replacement of Content items;

3.7.10 Develop any remodeling ideas and recommend them to the Operational Steering Committee;

3.7.11 Serve on an Operational Steering Committee to oversee management and operations of the Community Library;

3.7.12 Act as the lead point of contact for each Party and the public, and assume day-to-day responsibility to the leadership of both Parties concerning the operation and management of the Community Library;

3.7.13 Resolve disagreements and disputes referred to them by the Operational Steering Committee; and

3.7.14 Ensure that the staff of the Community Library is cross-trained and trained in the policies and procedures of the Community Library, and that the staff attends appropriate meetings and training sessions.

3.8 Operational Steering Committee

An Operational Steering Committee shall be established and comprised of the Co-Managers, the PPL Deputy Director of Branch Libraries and the SMCC Vice President of Academic Affairs. The responsibilities of the Operational Steering Committee shall be as follows:

3.8.1 Meet monthly during the first year of the Community Library operations, at least quarterly thereafter and at such other times deemed necessary by the committee;

3.8.2 Discuss the mutual needs and goals of SMCC, MCCCDC, PPL and the City as they relate to the Community Library;

3.8.3 Foster and develop an integrated library operation;

3.8.4 Recommend the days and hours of operation for the Community Library to the appropriate entity or entities within each Party that are responsible for approving those operational issues, if applicable;

3.8.5 Recommend lending procedures appropriate to the operation of the Community Library;

3.8.6 Attempt to resolve disputes and disagreements that may arise under this Agreement or due to inconsistencies between the policies of MCCCDC, SMCC, PPL and the City as to book and material loans, returns and renewals, staffing, and access to Community Library Collections, computers, the internet and other services, for members of the general public and the college community;

3.8.7 Recommend, by dates that permit each Party to comply with its budgeting process, an annual operating and capital budget for the Community Library to the Executive Committee;

3.8.8 Develop an immediate communications plan for routine and non-routine events that integrates with that of SMCC and MCCCDC, including developing procedures for compliance with MCCCDC's Emergency Operations Plan and Business Continuity Plan; and

3.8.9 Review remodeling recommendations of the Co-Managers and forward any approved recommendations through each Party's process for funding and final approval of such recommendations.

3.9 Executive Committee

3.9.1 The SMCC College Vice President for Administrative Services and the Assistant Phoenix City Librarian shall serve on, and comprise, the Executive Committee.

3.9.2 The Executive Committee shall meet quarterly and may meet at other times to discuss other issues as determined by MCCCDC or the City.

3.9.3 The Executive Committee shall meet as needed to resolve disputes and disagreements referred to it by the Operational Steering Committee in the event the members of that committee are unable to reach a consensus.

ARTICLE 4

LIBRARY OPERATIONS

4.1 The Collection

4.1.1 The members of the general public and users connected to MCCCDC shall have the right to the on-site use of the Collection. The Collection shall be of sufficient scope and currency to serve the greater Phoenix area as well as support specific needs of SMCC.

4.1.2 Each Party shall own that part of the Collection that it purchases using its own funds. If the Parties determine that it is necessary to purchase any Collection materials jointly, they shall confer, before making the purchase, with their property accounting and insurance staff to ensure that any jointly-owned property will be properly inventoried and valued. The value of the materials that each Party initially supplies to the Collection, and all additional materials that a Party acquires and contributes to the Collection, will be identified as having been credited to the acquiring Party under this Agreement.

4.1.3 Each Party shall retain the right to select materials for the Collection appropriate to its specific clientele who use the Community Library, and shall be responsible for selecting the Collection materials that best meet the needs of its constituency within the dollars that each Party has separately budgeted and available. The Parties' separate budgets shall constitute the annual Collection budget each fiscal year. The Parties, through the Co-Managers, shall cooperate and coordinate with each other in the selection of materials to avoid duplication except as necessary to support the needs of both Parties' clientele.

4.1.4 Each Party will have a written collections development policy. The policy will establish clear guidelines for the types of materials to be acquired, acquisition priorities, procedures, processing for leasing and rental of materials, challenge and withdrawal as well as disposition of materials and the processes and procedures, if any, for the imposition and enforcement of penalties, fees or fines for the delinquent return of materials or loss of or damage to materials.

4.1.5 Each Party, through its Co-Manager, shall each retain the right to establish rules and procedures regarding the on-site use of that part of the Collection that it owns, subject to the approval of the other Party. Additionally, each Party, through its Co-Manager, shall be allowed to set its own off-site lending policies for certain materials in the Collection.

4.1.6 Regarding its materials, each Party, through its Co-Manager, shall retain the right to discontinue any periodicals, reduce that portion of the Collection that it owns, repair its books, discontinue lending certain types of its materials (for example, videos) and reclassify or catalog them.

4.1.7 The Collection will be cataloged using an automated cataloging system. SMCC's materials will be cataloged by MCCCDC Library Technical Services. Bibliographic records, borrower records, and item records will be electronically exported from the MCCCDC integrated library system ("ILS") into the PPL ILS.

4.2 Lending Policy

To the extent possible and excluding the lending of certain materials as provided in Paragraph 4.5, MCCCDC and the City shall adhere to a uniform lending policy for the Collection. The term “lending policy” shall mean all policies, rules and regulations promulgated by either Party regarding the off-site use of any materials within the Collection. Such lending policy shall include, without limitation, the time period for such off-site use, early return policies, reserve policies, the amount of any late fines, and the number of materials that can be borrowed at one time by a single borrower.

4.3 Collection of Fines

The Co-Managers will establish a procedure for the collection of fines and for the distribution or use of any monies collected.

4.4 Electronic Materials

When negotiating license or other use agreements for electronically-available materials, both Parties shall attempt to negotiate for the benefit of all libraries within each Party’s library network as long as such negotiations do not result in that Party’s incurring additional costs. Under circumstances where a Party is not able to negotiate use beyond its own clientele without incurring additional costs, that Party shall have the right to restrict access to those materials so as not to violate the license or use agreement.

4.5 Intellectual Freedom

It is the intent of the MCCCDC and the City to continue to honor the current policy of both the MCCCDC and the City to provide for access to all services and all materials. If laws or ordinances are passed that restrict one or both of the Parties’ ability to provide services, or if a Party imposes rules, policies or regulations that restrict access for certain groups of users to material within the Collection or either Party’s sponsored services or programs, each Party through its Co-Manager agrees to promptly notify the other Party. Upon notification, the Parties, through their Co-Managers, will meet and mutually establish a policy to address the issue.

4.6 Integrated Library Systems

The City’s ILS will be used as the primary web-based catalog and circulation system. The MCCCDC ILS will be used as a secondary web-based catalog and for interlibrary loan among the MCCCDC libraries.

4.7 Library Privileges

Members of the public and students shall have access to the Community Library during all hours that the Community Library is open. MCCCDC may suspend or revoke student library privileges for cause, and City may suspend or revoke library privileges of the general public for cause, as determined in their sole discretion.

4.8 Computer Use

All computers will be coded to the cards of the respective Parties’ clientele. Co-Managers shall establish procedures for access to computers based on the management of access that, to the

extent feasible, provides the same access to each Party's clientele as they have at each Party's separately-operated locations.

4.9 Library Programs

MCCCD and the City shall each retain the right to create, sponsor and operate separate library programs for their clientele within the Community Library. Each Party shall be solely responsible for funding its separate programs. The Parties agree to cooperate in good faith with each other in facilitating all the library programs operated within the Community Library. However, neither Party shall have the right to sponsor a library program that imposes an unreasonable burden on shared costs of the Parties or Community Library facilities, or that disrupts the normal library functions of the Community Library.

4.10 Service Marks and Trademarks

Neither Party shall use any service marks, trademarks, logos or other marks of the other Party without the express written approval of the other Party. The use of any marks must comply with the owner's requirements, including using the "circle R" indication of a registered trademark.

4.11 Ancillary Functions

The Parties shall have the right to provide separate services to their clientele that are ancillary to the core library services, so long as they do not burden Community Library resources or costs as specified in Paragraph 4.9.

4.12 Concessions

It is the intent of the Parties to have a coffee bar on-site operated by the contractor that provides the food service at SMCC. MCCCD and SMCC shall not be required to obtain the City's consent for any concession rights given by MCCCD. SMCC shall maintain the proceeds for use for expenses relating to the concession. The City shall have no right, title, claim or interest in such proceeds.

ARTICLE 5

RESPECTIVE DUTIES AND RESPONSIBILITIES

5.1 Definitions

For the purposes of this Article, the following definitions shall apply:

5.1.1 "Capital" means that dollar amount at which each Party considers an expense to be capitalized and depreciable for accounting purposes.

5.1.2 "Capital Improvement" means a planned Capital expenditure to renovate or expand the Site or the Site's infrastructure, including major building systems.

5.1.3 "Capital Repair" means a planned periodic Capital expenditure that corrects a defect or degradation of major building systems, site improvements, components, assemblies or capital equipment. It is a subset of regular or normal facility maintenance that refers to costly repairs or the replacement/rebuilding of major facility components. For instance, roof

replacement at the end of its anticipated useful life is typically a Capital Repair item, while replacing a roof several years after its normal useful life is considered a Deferred Maintenance item. Capital Repair does not include expansion or renovation of facilities.

5.1.4 “Deferred Maintenance” means expenditures for repairs not accomplished as a part of routine maintenance or Capital Repair that have accumulated to the point where facility deterioration is imminent and could impair the proper functioning of the Community Library. Deferred Maintenance will generally involve a Capital expense.

5.1.5 “Emergency Maintenance or Repair” means a sudden and unanticipated event that causes an imminent or actual significant property loss, damage or deterioration to the Site and that requires an immediate response and expenditure, generally a Capital expense, to avoid danger to persons or property, or hindrance of the proper functioning of the Community Library.

5.1.6 “Routine Maintenance” means the day-to-day efforts to control deterioration of facilities (up keep expenses) through scheduled repetitive activities (such as cleaning), periodic scheduled work (such as inspections and equipment adjustments) and minor repairs made on an as-needed basis. Routine Maintenance may or may not involve a Capital expense.

5.1.7 “Site” means the Community Library, the 15 foot radius around the exterior wall of the Community Library, and the parking spaces necessary to meet the City’s requirements.

5.2 General Statement of Site Responsibility; Cost Sharing and Reimbursement

5.2.1 As the owner of the Site, MCCCCD shall be solely responsible and authorized to contract for and undertake Capital Improvements, Capital Repairs, Deferred Maintenance, Emergency Maintenance or Repairs or Routine Maintenance to the Site, except as specified in this Paragraph. Any of those activities that MCCCCD undertakes on the recommendation of the Executive Committee or as part of MCCCCD standards for maintaining its facilities shall be funded by the Parties according to the Cost Sharing Percentage. MCCCCD agrees to use its best efforts to accommodate the City’s recommended schedule as reflected in Exhibit A or as such is modified from time to time.

5.2.2 MCCCCD shall undertake Emergency Maintenance or Repairs either unilaterally or on the recommendation of the Co-Managers and will request the Executive Committee to ratify any such actions. Upon ratification by the Executive Committee, the City will contribute according to its Cost Sharing Percentage for the cost of any such Emergency Maintenance or Repairs. The City shall obtain any required approvals for funding and payment of its share of the cost of the Emergency Maintenance or Repairs so that it may make payments to MCCCCD while the work is ongoing. In no case shall MCCCCD be required to bear the entire cost of the Emergency Maintenance or Repairs more than 60 days after substantial completion of the work.

5.2.3 For any Capital Improvements, Capital Repairs, Deferred Maintenance, or Routine Maintenance, MCCCCD shall select a contractor using its competitive procurement process. For Emergency Maintenance or Repairs, MCCCCD shall obtain competition to the extent it is practicable under the circumstances. For instances in which it is appropriate to obtain the services of a contractor through an existing job order contract, either awarded by either Party or by another Arizona public entity and available through cooperative purchasing, MCCCCD may use that contract instead of obtaining its own competition.

5.2.4 For Capital Improvements requested by the Executive Committee, or Capital Repairs or Deferred Maintenance recommended by the Executive Committee, the Parties will seek funding and approval through their normal processes in a timely manner so as not to delay the work. In no case shall MCCCCD be required to bear the entire cost for more than 60 days after substantial completion of the work.

5.2.5 For Routine Maintenance, MCCCCD shall bill the City quarterly, as specified in Paragraph 5.4.2.

5.2.6 Each Party will pay its Cost Sharing Percentage to maintain and repair the number of legally required parking spaces for the Community Library based upon the building's size at completion.

5.3 Appearance of the Site

During the term of this Agreement and unless the Parties agree otherwise, MCCCCD shall keep the Site in good repair, operating condition, working order, and appearance, including without limitation:

5.3.1 maintain and keep the interior and exterior of the Site clean, painted and in good condition and repair, reasonable wear and tear excepted; and

5.3.2 operate and maintain (and replace as applicable) all parts of the Site, including but not without limitation, air conditioning, heating, plumbing, bathrooms, electrical distribution systems, elevators, concrete foundation floors, roofs, building structure systems, fire alarm systems and parking; keeping them in clean and good condition, reasonable wear and tear excepted.

5.4 Routine Services and Maintenance; Reimbursement and Cost Sharing

5.4.1 Unless the Parties determine otherwise, MCCCCD shall be responsible through SMCC to provide or secure the services as needed to maintain and service the Site including, but not limited to, telecommunications, janitorial, utilities, trash removal, landscape, electrical and heating and air conditioning services.

5.4.2 Each Party incurring a joint expense shall itemize the expenses by category and bill the other Party quarterly, based on the Party's Cost Sharing Percentage unless this Agreement specifies otherwise, for its share of the expenses relating to the Site. For purposes of this Subparagraph, "expenses" shall mean those items specified under this Paragraph 5.4, expenses for Routine Maintenance, and any additional routine expenses for which the Operational Steering Committee determines that the Parties are jointly responsible.

5.4.3 Throughout the Term or any Renewal Term, MCCCCD shall be responsible for paying before the assessment of any delinquency all charges for utility services furnished to the Site, including but not limited to light, heat, electricity, gas, water, telephone and telecommunication service, sewage service, garbage disposal, hazardous waste disposal and other public or private utilities of every kind furnished to the Site. Utilities supplied to the Site such as water, electric, air conditioning, shall be in the name of MCCCCD. The City shall be responsible for paying its share of the expenses under this Subparagraph based on its Cost Sharing Percentage.

5.4.4 MCCCCD shall secure other services that the Parties mutually agree are desired or become necessary to promote or maintain optimal use of the Community Library, each Party to pay its Cost Sharing Percentage. Such services include those that are provided in the interest of the health or safety of the patrons, such as pest control or emergency medical services equipment.

5.5 Liens and Encumbrances

5.5.1 Both Parties agree that the Site shall be kept free and clear from any and all mechanics' and materialmen's liens, claims and charges. Each Party shall indemnify and hold the other Party harmless from any and all cost, expenses, claims, liens or demands, including reasonable attorney's fees, (collectively "costs") arising out of or by virtue of any nonpayment of any obligations incurred by the indemnifying Party relating to the Community Library.

5.5.2 Both Parties agree that this Agreement and their respective interests shall not be subordinated or subject to any encumbrances except for the bonds that fund design, construction and capital infrastructure for the Site.

5.6 Storage of Hazardous Materials

Neither Party shall use or store hazardous materials except for required cleaning supplies or other necessary substances kept in reasonably necessary quantities for normal library functions, provided such substances shall be stored in accordance with all applicable laws and regulations.

5.7 Contents

5.7.1 As specified in Paragraph 5.7.2, the Co-Manager will identify the Contents that need to be purchased for the Community Library, with oversight from the Executive Committee. Except for the City's Collection and Special Contents, MCCCCD shall own and insure the Contents within the Community Library. SMCC shall ensure that all any Contents placed into the library that does not already have an MCCCCD inventory tag is tagged as MCCCCD property before SMCC places it within the library for use. SMCC shall provide a list of all Contents that it tags under this Paragraph to MCCCCD's Capital Asset Accounting Office before the Contents are placed in the library for use to ensure that MCCCCD's insurance covers those Contents.

5.7.2 Before the Community Library opens, the Parties, through the Co-Managers, shall prepare an itemized list of the Contents that each will purchase to house in the Community Library. Thereafter, the Parties, through the Co-Manager, shall prepare annually a schedule of replacement for the Contents. Except for the Contents that are specific to a Party's clientele, such as those that the City requires for its children's library, the itemized list or replacement schedule that the Parties prepared shall fairly allocate the costs between them of purchasing or replacing the Contents. Each party shall have an obligation to ensure that, in their budgeting processes, funds are readily available to pay for their portion of the Contents according to the agreed itemized list or replacement schedule.

5.8 Naming Rights

The name of the Community Library is jointly owned by MCCCCD and the City and the Steering Committee shall jointly agree when it will be used. Both Parties can propose names for the common spaces. Both Parties must agree and approve of the name and conditions of use or the name shall not be used. The PPL understands that SMCC may be required to send any naming proposal through its own or an MCCCCD approval process.

5.9 Advertising

Except for routine announcements regarding programs and services, no form of publicity, advertising, or promotion concerning the Community Library shall be issued by any Party without the prior written consent of the other Party, except as such release or announcement may be required by law, in which case the Party required to make the release or announcement shall, to the extent possible, allow the other Party reasonable time to comment on such release or announcement in advance of such issuance.

5.10 Use of Technology

The City shall not remove Contents from the Community Library in any manner without the prior consent of MCCCCD. The City shall be solely responsible for damage to or loss of the Contents while using them outside of the Community Library.

5.11 Security

MCCCCD, at its sole expense, shall be responsible for security services outside of the Community Library. The City, at its sole expense, shall be responsible for security services within the Community Library. Each Party shall ensure that the provider acknowledges and agrees to comply with MCCCCD's Emergency Operations Plan and Business Continuity Plan, and coordinates delivery of its services with SMCC's Public Safety Office. If the City provides security services other than through its employees, it shall require that the provider be properly licensed, insured and bonded.

ARTICLE 6

DISPUTES AND DEFAULTS

6.1 Dispute Resolution

In the event that the Executive Committee is unable to reach a consensus regarding a dispute, the Executive Committee may refer the dispute to the President of SMCC or his or her designee and the PPL City Librarian or his or her designee for resolution. Disputes relating to matters of City or MCCCCD policies or procedures, or to the laws that govern each Party, may require that the dispute be referred to each Party's governing board, which may agree to submit the dispute to some alternative dispute resolution process. If a Party believes that a dispute involves a default by the other Party of this Agreement or a disagreement involving the interpretation of a material provision of this Agreement, the procedures and remedies specified in Article 6 apply. In all cases of disputes or defaults under this Agreement, the Parties will first attempt to resolve differences, in good faith, between themselves.

6.2 Withdrawal from Agreement

6.2.1 The Parties recognize that this Agreement requires cooperation between the Parties and a long term financial commitment by each Party. Accordingly, withdrawal from this Agreement is a default as specified in Paragraph 6.3.5.

6.2.2 Notwithstanding Section 6.2.1, if a Party's withdrawal is due to budget reductions or program elimination during the Term, or any other reason mutually agreed to by the

parties, the withdrawing Party shall give written notice as specified in this Agreement immediately on knowing that withdrawal is necessary but in any event no later than 180 calendar days before July 1 of the following fiscal year. The non-withdrawing Party agrees to use its best efforts to return to the withdrawing Party such pro-rata share of the funds that the withdrawing party provided for the Library Project, including increasing the pro-rata amount by the Consumer Price Index for the years the Library is jointly operated. The baseline year shall be the first year of joint operation.

6.2.3 The withdrawing Party shall be entitled to remove its Collection and Special Contents.

6.2.4 If MCCCCD is the withdrawing Party, the Parties shall enter into a lease for the Community Library under which the City may continue to operate the Community Library as a public library. While the City shall not pay rent, the lease will address issues such as the terms under which the City continues to use the Contents, insuring those Contents, and the City's reimbursement of costs related to maintaining and operating the Community Library.

6.3 Default

A default occurs under this Agreement as follows:

6.3.1 A Party fails to pay any required share of a cost or expense when due under this Agreement;

6.3.2 MCCCCD fails to perform maintenance or repairs required under this Agreement;

6.3.3 A Party fails to comply with any other material provision of this Agreement;

6.3.4 A Party fails to pay its respective share of the funds as provided for in the Library Project Budget; or

6.3.5 A Party unilaterally withdraws from the Agreement during the Term.

6.4 Notice of Default; Cure

If a Party fails to cure its default within 30 days following written notice from the other Party, that Party shall be considered in default.

6.5 Remedies

Upon the occurrence of a default and until the defaulting Party cures it, the non defaulting party may exercise all, any or any combination of the following remedies, in any order and repetitively:

6.5.1 The non-defaulting Party may perform any of the defaulting Party's obligations under this Agreement without incurring any liability to the non-defaulting Party for any loss or damage that it may sustain as a result. The non-defaulting party shall be entitled to recover all of its costs and expenses incurred in connection with that performance, plus an administrative fee equal to the prime rate times the total costs and expenses, together with interest at the rate of 10% per year from the date that the non-defaulting Party paid or incurred it until the defaulting Party fully pays the cost or expense.

6.5.2 The non-defaulting Party may suspend certain privileges and services provided to the defaulting Party or to which it normally has access. In no event, however, shall any active student in good standing of SMCC or MCCCCD, or a City library patron in good standing be denied admittance to the Community Library or access to any library services as a result of the default.

6.5.3 The non-defaulting Party may pursue any and all other remedies to which it may be entitled at law, in equity or under the provisions of the agreement. These rights and remedies are intended to be and shall be cumulative, and the exercise or attempted exercise by the non-Defaulting party of a given remedy shall not preclude or limit the right or ability of the non-defaulting Party to exercise, at the same or at any different time, any other remedy or remedies.

6.6 Default Procedures

If a Party defaults under this Agreement, the Parties may, with the approval of the process by their governing boards, refer the matter to non-binding mediation. The initiation of non-binding mediation shall not in any way impair the right of the non-defaulting Party to file a claim under Arizona Revised Statutes §12-821.01 and that statute shall be tolled for the period from the date of the approval of the governing boards to mediate until the date that the mediation is complete. However, the non-defaulting Party may institute litigation without instituting mediation. Legal expenses in the event of any litigation instituted by either the City or MCCCCD against the other in any way connected with this Agreement, the successful party to any such action (whether or not prosecuted to judgment) shall recover from the other party reasonable attorney's fees and court costs as determined by the court.

ARTICLE 7

INDEMNIFICATION AND INSURANCE

7.1 Indemnification

Each party (as "Indemnitor") agrees to indemnify, defend and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to such extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

7.2 Self-Insurance and Pooled Risk

Any insurance required to be maintained by the City or MCCCCD pursuant to this Article may be maintained under a self-insurance or pooled risk program including risk retention groups and captives so long as such self-insurance or pooled risk program is maintained in the amounts specified in Paragraph 7.4.2.

7.3 Insurance Coverage

7.3.1 At all times during the Term or any Renewal Term, MCCCCD shall procure and maintain "all risk" property insurance on the Community Library in the amount equal to the full replacement cost of the Community Library building, additions, fixtures, appurtenant structures,

and contents, excluding the City Collection and the Special Contents. Such property insurance shall name the City as a Loss Payee as its interest may appear. Before placing any City Collection or Special Contents into the Community Library, the City shall provide MCCCCD's risk manager with a written list of those items. Such property insurance shall include coverage for flood and earth movement. Such property insurance shall name the City as Loss Payee as its interest may appear. The cost of such insurance shall be shared by the Parties according to the Cost Sharing Percentage. Additionally, the Parties agree that they will each bear the Cost Sharing Percentage of the cost under MCCCCD's self-insured retention dollar amount relating to the loss of any Contents except where the property claim is due solely to the negligence or intentional acts of a Party or its employees.

7.3.2 At all times during the Term or any Renewal Term, MCCCCD as owner shall maintain the insurance policies specified below, or self insurance/pooled risk in the amounts specified below. The insurance policies, except Workers' Compensation, shall be endorsed to name the other Party, its agents, officers, officials, employees, and volunteers as additional insureds. If the policies required by this provision are written on a "claims made" basis, coverage shall extend for two years past expiration of the Agreement and must be evidenced by annual certificates of insurance. The insurance policies shall be endorsed stating that they shall not expire, be cancelled, suspended, voided or materially changed without the insurer endeavoring to provide 30 days written notice by certified mail to the other Party's risk manager. This insurance must be primary, and any insurance or self-insurance maintained by the other Party shall not contribute to it. At the request of a Party, the other Party shall provide to it copy of its policies or a certificate of insurance, at the discretion of the requesting Party, evidencing the coverage required by this subparagraph. The following coverage is required:

7.3.2.1 Commercial General Liability insurance with a limit of not less than \$3,000,000 per occurrence for bodily injury, property damage, sexual molestation, employment practices liability or a commensurate type of separate coverage, personal injury, products and completed operations, and blanket contractual coverage, including but not limited to, the liability assumed under the indemnification provisions of this Agreement;

7.3.2.2 Workers' Compensation insurance with limits statutorily required by any Federal or state law and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit;

7.3.2.3 Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to each party's owned, hired, and non-owned vehicles; and

7.3.2.4 Crime insurance on an "occurrence basis" covering a Party's employee's dishonesty for each loss at a limit of not less than \$1 Million including direct losses of money, securities and other property of the other Party caused by theft or forgery by the employee acting alone or in collusion with others who may or may not be employees of a Party. In addition, the insurance shall include coverage for theft, disappearance and destruction at a limit of not less than \$1 Million for loss inside the Community Library and \$1 Million for loss outside of the Community Property. The minimum limits specified in this Agreement may be adjusted on the anniversary of the Effective Date based on the financial experience in the previous year. The insurance policy may include a maximum deductible of \$25,000.00.

7.4 Liability Claims

MCCCD through its risk management program shall handle all property and liability claims caused by, arising out of, or related to the operation, maintenance or use of the Community Library. MCCCD shall tender all liability claims for which the City may be responsible under Paragraph 7.1 to the City in a timely manner.

7.5 Insurance Proceeds

In the event of damage to or destruction of the Community Library caused by the perils covered by insurance, MCCCD shall use the proceeds to reconstruct, repair, or replace the damaged or destroyed portion of the Community Library. MCCCD shall begin reconstruction, repair or replacement promptly after such damage or destruction occurs. Under no circumstances will MCCCD be required to spend more funds on reconstruction, repair or replacement than the proceeds it receives from insurance, except as provided in Paragraph 7.6.

7.6 Additional Costs

In the event the insurance proceeds are not sufficient to complete reconstruction, repair or replacement of the Community Library, the Parties shall, through the Operational Steering Committee, meet and confer with representatives of each Party, such as facilities development staff, to devise a plan for accommodating their clientele through a building that is smaller in size or provides fewer services than original building, or to estimate the additional funding, based on the Cost Share Percentage, that each will need to contribute to fully complete the reconstruction, repair or replacement. The Parties shall submit their plan to the Executive Committee for approval. On approval of the Executive Committee, each Party agrees to pursue approvals, including funding if applicable, for the plan. Reconstruction, repair, or replacement may not begin until each Party has completed their processes for approving the plan and the plan each has approved is agreeable to both Parties.

7.7 Indemnification and Insurance Required of Contractors

Each Party shall require any independent contractors it hires to undertake the activities specified in Paragraphs 5.2 and 5.4 to: indemnify, hold harmless, and defend both Parties; maintain the insurance coverage identified in Paragraphs 7.3.2.1 through 7.3.2.3 and in Exhibit B along with the additional insurance requirements that MCCCD generally requires for construction contracts, as applicable; and add both Parties as additional insureds to the required insurance policies.

ARTICLE 8

STANDARD TERMS AND CONDITIONS

8.1 Successors, Assignment

This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. No party may assign any right or obligation under this Agreement without the consent of the other party, which consent shall not be unreasonably withheld.

8.2 Integration

This Agreement sets forth the entire agreement between the parties to the agreement with regard to the subject matter hereof and supersedes all prior written or oral agreements, covenants, arrangements, communications, representations or understanding by any party that are not fully expressed in this agreement. This agreement may not be modified, changed, supplemented or terminated, nor may any obligation under this agreement be waived, except by written instrument signed by the party to be charged or its agent, duly authorized in writing, or as otherwise expressly permitted in this agreement. This is a fully integrated agreement.

8.3 Voluntary Agreement

The Parties represent that they have carefully read this Agreement, have consulted with their own legal counsel, know and understand the contents of this Agreement, and that each Party signs this Agreement freely, voluntarily, and with a complete and full understanding of its terms. Both parties have cooperated in the drafting and preparation of this Agreement. If there is any construction to be made of this document, the same shall not be construed against either Party.

8.4 Public Agency Authority

Each governmental entity signing this Agreement represents and warrants that the Agreement is executed in compliance with a resolution of the governing entity of said Party, duly adopted by governing entity. Any individual signing this agreement on behalf of the public entity represents and warrants that he/she has full authority to do so.

8.5 Notices

Notices hereunder shall be in writing and shall be given by hand, by first class mail, or by certified mail, return receipt requested, to the following address, provided that any party may change its address for such notices upon written notice to the other party.

City of Phoenix

City Librarian
City of Phoenix
1221 N. Central Avenue
Phoenix, AZ 85004

MCCCD

General Counsel
Maricopa Community Colleges
2411 W. 14th Street
Tempe, Arizona 85281

SMCC

President
South Mountain Community College
7050 South 24th Street
Phoenix, Arizona 85042

8.6 Applicable Law

The validity, effect, intendment and construction of this Agreement shall be governed by the laws of the State of Arizona.

8.7 Approval of Budget into Next Fiscal Year

The Parties recognize that the continuation of this agreement after the close of any given Fiscal year of each Party, which ends on June 30th of each year, shall be subject to the approval of the budget of each Party providing an appropriation covering this item as expenditure. Neither the City nor MCCCCD represents that future budget items will actually be adopted, that determination being that of each Party's governing bodies at the time of the adoption of each Party's annual budget.

8.8 Cancellation

The Parties acknowledge that this Agreement is subject to cancellation by the parties pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

8.9 Nondiscrimination

The Parties agree to be bound by applicable city, state and federal laws, rules and regulations governing Equal Employment Opportunity and Nondiscrimination.

8.10 Amendments

The Parties may revise this Agreement only through a written amendment signed by authorized representatives of both Parties and, if required, approved by their governing boards.

8.11 Legal Worker Requirements

Each Party is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). This Paragraph provides each Party with notice of the requirements of and the penalties specified in those laws.

8.12 Confidentiality and Data Security

8.12.1 Subject to Arizona public records law, all data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to a Party in connection with this Agreement is confidential, proprietary information owned by the Party transmitting it, so long as it is identified as confidential or proprietary. Except as specifically provided in this Agreement, the Party receiving the data shall not disclose it without the prior written consent of an authorized representative of the transmitting Party.

8.12.2 A Party receiving personal identifying information, financial account information, or information identified by the transmitting Party as restricted, whether electronic format or hard copy ("Receiving Party"), shall secure and protect it at all times to avoid unauthorized access. At a minimum, the Receiving Party shall encrypt and/or password protect electronic files including data saved to laptop computers, computerized devices or removable storage devices. When a Receiving Party in possession of personal identifying information,

financial account information, or information identified by the transmitting Party as restricted no longer requires access to that information, the Receiving Party shall redact or destroy it through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

8.12.3 In the event that the Receiving Party believes that data it has collected or obtained from the other Party in connection with this Agreement is believed to have been compromised, the Receiving Party shall notify the appropriate representative of the other Party immediately. The Receiving Party agrees to reimburse the other Party for any costs incurred by that Party to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be affected by the breach.

8.12.4 The Parties agree that a violation of this Paragraph shall be deemed to cause irreparable harm that justifies injunctive relief in court and may result in immediate termination of this Agreement without notice.

8.12.5 The Receiving Party shall indemnify, defend, save and hold harmless the other Party and its officers, officials, agents, and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and cost of claims processing, investigation and litigation) for any loss caused, or alleged to be caused by any of the Receiving Party's officers', directors', agents' employees' or contractors' failure to comply with the requirements of this Paragraph. This indemnity includes any claim arising out of the failure of the Receiving Party to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree.

8.12.6 The obligations of the Receiving Party under this Paragraph shall survive the termination of this Agreement.

8.13 Certification

By its signature on this Agreement, each Party certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.

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MCCCD

By: _____
Margaret E. McConnell
Assistant General Counsel

Date: _____

APPROVED AS TO FORM:

Peter D. Kushibab
General Counsel

CITY OF PHOENIX, a municipal
corporation
FRANK FAIRBANKS, City Manager

By _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

799051v1

EXHIBIT A

Asphalt/Parking Lot/Reseal/Restripe	4yr. cycle
Asphalt Replacement	20 yr. cycle
Automatic Doors (500M cycles)	5 yr
Carpet	8 yrs
Painting interior	8 yrs
Painting exterior	10 yrs.
Electric Relamp (Interior)	3 yrs.
Electric Relamp (Exterior)	4 yrs.
Furniture Systems/Cubicles	10 yrs.
Furniture Public	8 yrs.
Landscape Plants/hardscape	10 yrs.
Millwork	15 yrs.

EXHIBIT B

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products – Completed operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each occurrence	\$1,000,000

a. The policy shall be endorsed to include the following additional insured language: “The City of Phoenix and MCCCCD shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor.”

2. Automobile liability

Bodily Injury and Property damage for any owned, hired, and non-owned vehicles used on the performance of this Agreement.

Combined Single Limit (CSL)	\$1,000,000
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a. The policy shall be endorsed to include the following additional insured language: “The City of Phoenix and MCCCCD shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor.”

3. Worker’s Compensation and Employers’ Liability

Worker’s Compensation	Statutory
Employers’ Liability	\$100,000
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:

1. On insurance policies where the City of Phoenix and MCCCCD and SMCC are named as an additional insured, the City of Phoenix and MCCCCD and SMCC shall be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by the Agreement.

2. The Contractors’ insurance coverage shall be primary insurance and non-contributory with respect to all other sources.

3. The Contractors' insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage is provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of the contract with MCCCCD and SMCC.

C. NOTICE OF CANCELLATION: each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to MCCCCD. Such notice shall be sent directly to MCCCCD and shall be sent by certified mail, return receipt requested.

D. ACCEPTIBILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than B+VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. VERIFICATION OF COVERAGE: Contractor shall furnish the Community Library with certificates of insurance (ACORD form or equivalent) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the Community Library before work commences, each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Agreement shall be sent directly to MCCCCD. The City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

F. SUBCONTRACTORS: Contractor's certificate(s) shall include all subcontractors as additional insureds under its policies to Contractor shall furnish to the City separate certificates for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.