



## City Council Staff Report

DATE: June 15, 2016

CONSENT CALENDAR

SUBJECT: AWARD A CONSTRUCTION CONTRACT TO NR DEVELOPMENT, INC., A CALIFORNIA CORPORATION, IN THE AMOUNT OF \$50,500 FOR THE PALM SPRINGS LIBRARY SHADE STRUCTURE, CITY PROJECT NO. 15-27

FROM: David H. Ready, City Manager

BY: Public Works & Engineering Department

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### SUMMARY

Award of this contract will allow the City to proceed with fabrication and installation of a new shade structure at the entrance to the Palm Springs Library.

### RECOMMENDATION:

1. Award a construction contract (Agreement No. \_\_\_\_ ) to NR Development, Inc., a California corporation, in the amount of \$50,500 for the Palm Springs Library Shade Structure, City Project No. 15-27; and
2. Authorize the City Manager to execute all necessary documents.

### STAFF ANALYSIS:

The 2013/2014 fiscal year budget included an allocation of \$10,192 from the Library Endowment Trust Fund for a public works project to fabricate and install a new shade structure at the entrance to the Palm Springs Library, located at 300 S. Sunrise Way. Additionally, in the 2014/2015 fiscal year, an additional budget allocation of \$7,000 was approved from the Library Endowment Trust Fund providing a total budget allocation of \$17,192 for the Project. The Library Board proposes to install a new shade structure at the front entrance of the Main Library to provide shading for the existing book return deposit screen. An aerial map of the site is identified in Figure 1, and a vicinity map is included as **Attachment 1**.

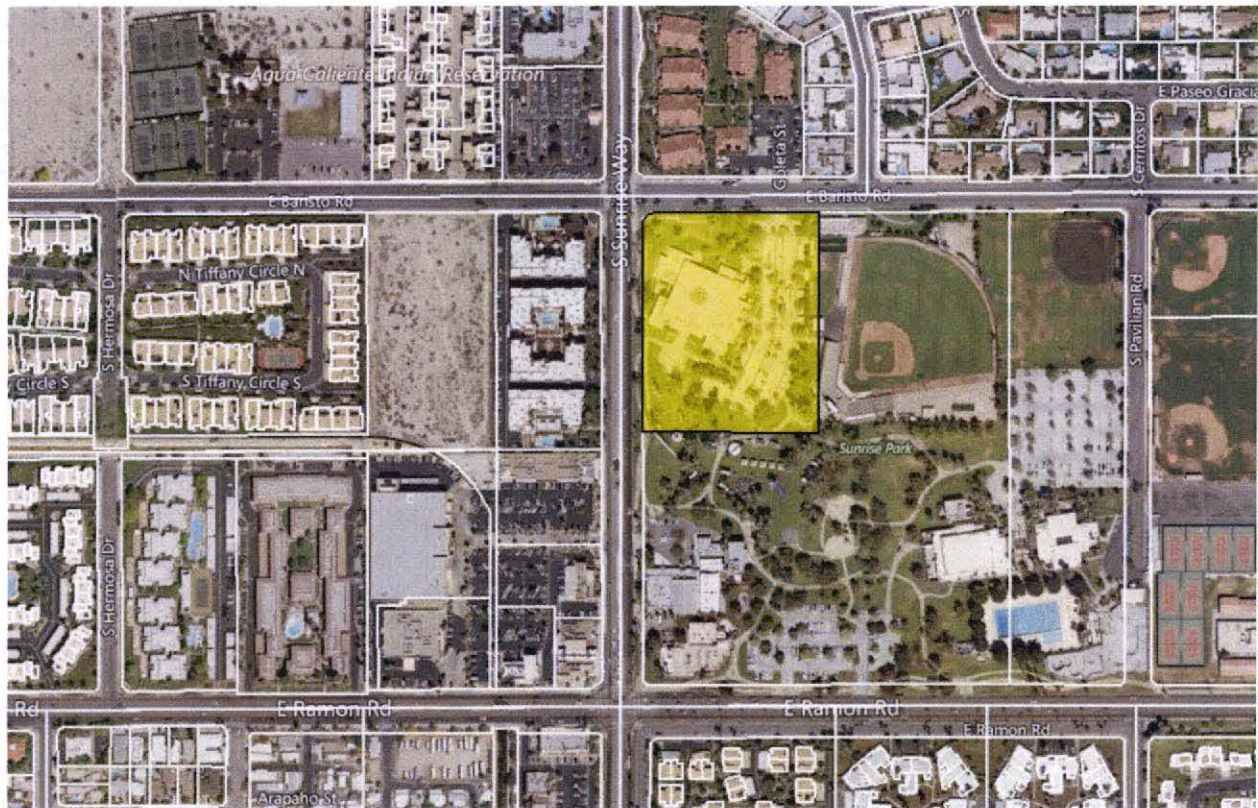


Figure 1

The scope of this public works improvement comprises the fabrication and installation of a new shade structure; a 10 feet wide by 36 feet long by 9 feet-6 inch high cantilevered steel framing structure including footings and foundations, metal perforated panels, powder coating, modification to existing irrigation and landscaping, and all other appurtenant work necessary for the new shade structure at the front entrance of the Library.

In mid-2014, the Department of Maintenance and Facilities solicited a request to obtain proposals for the fabrication and installation of a new fabric material shade structure at the Library. Staff prepared an informal letter request containing a brief description of the scope of work, and minimum specifications requirements. On August 4, 2014, staff received three informal bids from the following manufacturers:

- |                                   |          |
|-----------------------------------|----------|
| 1. Academy Inc.; Los Angeles, CA  | \$16,392 |
| 2. Shade Comforts; Benicia, CA    | \$22,000 |
| 3. FabriTec Structures; Tusin, CA | \$45,000 |

Staff reported these costs to the Library Board, and discussed the project with the City Council Subcommittee at which point two revisions were suggested: 1) include perforated metal panels in lieu of the fabric material originally specified, and 2) perform a sun study at the front entrance to the Library to determine the appropriate shading for the existing book return deposit screen.

In January 2015, staff retained the professional consulting services from MSA Consulting to perform the necessary sun study analysis at the front entrance of the Library based on the new metal perforated shade structure design. The sun study analysis determined the shade structure would provide appropriate shading for the existing book return deposit screen except for early mornings (until around 10:30am) from September 21 to March 21 annually. On those specific dates, the sun rises in the southeast and not until 10:30am does the sun rise high enough to shade the existing book return deposit screen. Since the Library does not open until 10:00am there would only be a 30 minute window of insufficient shading. Staff discussed the results with the Library Board and obtained their concurrence to proceed with the Project.

State prevailing wage laws were into effect January 1, 2015, and changes to the proposed shade structure design required the City to prepare formal plans and bid specifications for a new bid solicitation. The City's Municipal Code Chapter 7.03.030 regulates public bidding for a public works project estimated at less than \$100,000 which identifies "informal bidding" procedures where the City Council is not required to review and approve the release for bids. Accordingly, staff prepared the contract documents for the Project and on March 31, 2016, the Notice Inviting Bids was released to the general contracting community and was published in the Desert Sun on April 2 and 9, 2016, in accordance with the City's bidding procedures.

Despite the City's efforts to ensure wide solicitation of the Project through the normal procurement and contracting communities, bid websites, plan rooms, on May 5, 2016, the Procurement and Contracting Division only received one construction bid from the following contractor:

<b>Company</b>	<b>Location</b>	<b>Bid Amount</b>
NR Development	Duarte, CA	\$50,500.00

Staff submitted the bid results to the Library Board at its May 26, 2016, meeting. At that time, there was discussion by the Board on whether to proceed or not with the Project given its increased cost, and other alternatives available, including re-bidding or consolidating with other projects to be bid in the future. After discussing these options, the Library Board took formal action to recommend that the City Council proceed with contract award, and allocated an additional \$45,000 in Library Trust Fund budget to the Project.

***Public Works Contractor Registration Law (SB 854)***

Under California Labor Code Section 1771.1, as amended by Senate Bill (SB) 854 (2014), unless registered with the State of California Department of Industrial Relations (DIR), a contractor may not bid, nor be listed as a subcontractor, for any bid proposal submitted for public works projects on or after March 1, 2015. Similarly, a public entity cannot award a public works contract to a non-registered contractor, effective April 1, 2015. Staff has reviewed the DIR's contractor registration database, and has confirmed

that NR Development, Inc., and the listed subcontractors, are registered with the DIR, and are appropriately licensed.

NR Development, Inc., of Duarte, California submitted the lowest responsive bid. Staff reviewed the bid, references, and contractor's license, and found the Contractor to be properly licensed and qualified. A construction contract with NR Development, Inc., for the Project is included as **Attachment 2**.

### ***Local Business Preference Compliance***

Section 7.09.030 of the Palm Springs Municipal Code, "Local Business Preference Program," requires prime contractors to use good faith efforts to sub-contract the supply of materials and equipment to local business enterprises and to sub-contract services to businesses whose work force resides within the Coachella Valley. NR Development, Inc., is not considered a local business, however, demonstrated sufficient evidence of good faith efforts to sub-contract the supply of materials and equipment to local business enterprises.

### **ENVIRONMENTAL IMPACT:**

Section 21084 of the California Public Resources Code requires Guidelines for Implementation of the California Environmental Quality Act ("CEQA"). The Guidelines are required to include a list of classes of projects which have been determined not to have a significant effect on the environment and which are exempt from the provisions of CEQA. In response to that mandate, the Secretary for Resources identified classes of projects that do not have a significant effect on the environment, and are declared to be categorically exempt from the requirement for the preparation of environmental documents. In accordance with Section 15303 "New Construction or Conversion of Small Structures," Class 3 projects consist of construction and location of limited numbers of new, small facilities or structures such as electrical, and other utility extensions, as well as, accessory (appurtenant) structures, therefore, the Palm Springs Library Shade Structure, City Project. No. 15-27, is considered categorically exempt from CEQA, and a Notice of Exemption has been prepared and will be filed with the Riverside County Clerk. A copy of the Notice of Exemption is included as **Attachment 3**.

### **FISCAL IMPACT:**

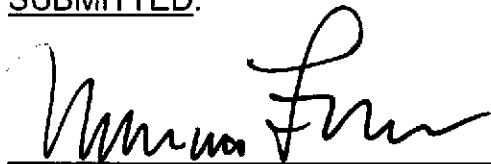
A total of \$17,192 is currently budgeted for the Project through the Library Endowment Trust Fund (Fund 151) in Account No. 151-2752-51025. On May 26, 2016, the Library Board approved an additional allocation of \$45,000 for the Project. The estimated Project budget and incurred expenditures are identified in Table 1.

<b>Table of Project Costs</b>	<b>Amount</b>
FY13/14 Library Endowment Fund	\$10,192
FY14/15 Library Endowment Fund	\$7,000
FY15/16 Library Endowment Fund (Additional Budget)	\$45,000
Design Services	(\$0)
Project Administration (through 6/7/16)	(\$2,644)
Project Administration (Estimated)	(\$1,000)
Construction Management	(\$5,000)
Construction Contract	(\$50,500)
Construction Contingency	(\$0)
<b>Remaining Budget</b>	<b>\$3,048</b>

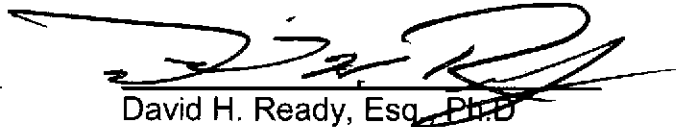
Table 1

Sufficient funding to award the contract in the amount of \$50,500 is available in the Library Endowment Trust Fund, Account No. 151-2752-51025.

SUBMITTED:



Marcus L. Fuller, MPA, P.E., P.L.S.  
Assistant City Manager/City Engineer



David H. Ready, Esq., Ph.D.  
City Manager

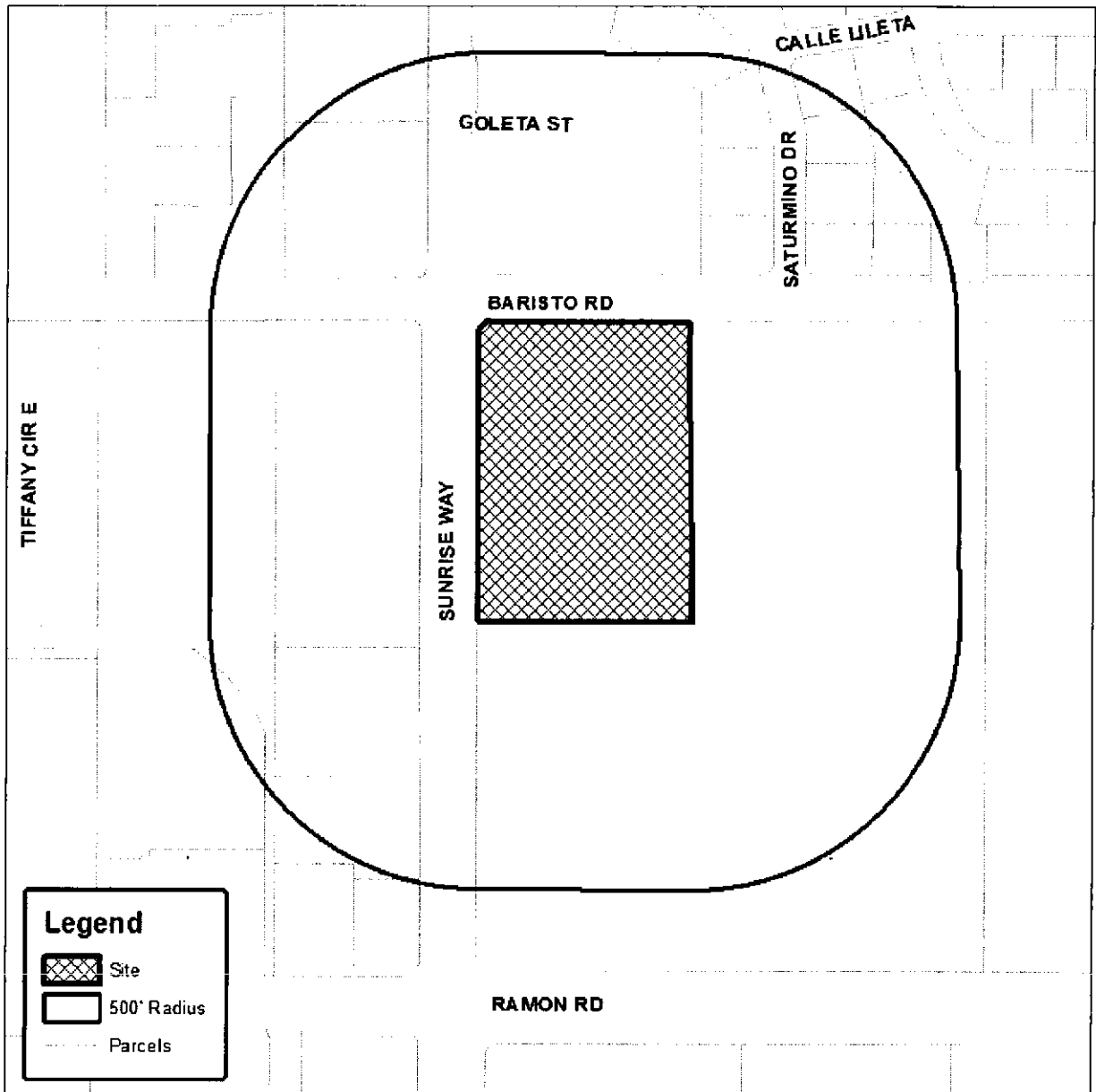
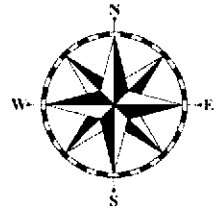
Attachments:

1. Vicinity Map
2. Construction Contract
3. Notice of Exemption

# **ATTACHMENT 1**



# Department of Public Works and Engineering Vicinity Map



CITY OF PALM SPRINGS

# **ATTACHMENT 2**



**AGREEMENT  
(CONSTRUCTION CONTRACT)**

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Palm Springs, a charter city, organized and existing in the County of Riverside, under and by virtue of the laws of the State of California, hereinafter designated as the City, and NR Development, Inc., a California corporation hereinafter designated as the Contractor.

The City and the Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 -- THE WORK**

For and in consideration of the payments and agreements to be made and performed by City, Contractor agrees to furnish all materials and perform all work required to complete the Work as specified in the Contract Documents, and as generally indicated under the Bid Schedule(s) for the Project entitled:

**PALM SPRINGS LIBRARY SHADE STRUCTURE  
CITY PROJECT NO. 15-27**

The Work comprises the fabrication and installation of a new shade structure including footings or foundations (if any) and all other appurtenant work. The new shade structure shall be installed at the Palm Springs Library located at 300 S. Sunrise Way.

**ARTICLE 2 -- COMMENCEMENT AND COMPLETION**

The Work to be performed under this Contract shall commence on the date specified in the Notice to Proceed by the City, and the Work shall be fully completed within the time specified in the Notice to Proceed.

The City and the Contractor recognize that time is of the essence of this Agreement, and that the City will suffer financial loss if the Work is not completed within the time specified in Article 2, herein, plus any extensions thereof allowed in accordance with applicable provisions of the Standard Specifications, as modified herein. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and the Contractor agree that as liquidated damages or delay (but not as a penalty), the Contractor shall pay the City the sum specified in Section 6-9 of the Special Provisions for each calendar day that expires after the time specified in Article 2, herein. In executing the Agreement, the Contractor acknowledges it has reviewed the provisions of the Standard Specifications, as modified herein, related to liquidated damages, and has made itself aware of the actual loss incurred by the City due to the inability to complete the Work within the time specified in the Notice to Proceed.

### **ARTICLE 3 -- CONTRACT PRICE**

The City shall pay the Contractor for the completion of the Work, in accordance with the Contract Documents, in current funds the Contract Price(s) named in the Contractor's Bid Proposal and Bid Schedule(s), and any duly authorized Construction Contract Change Orders approved by the City. The amount of the initial contract award in accordance with the Contractor's Bid Proposal is \$50,500.

Contractor agrees to receive and accept the prices set forth herein, as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the Work during its progress or prior to its acceptance including those for well and faithfully completing the Work and the whole thereof in the manner and time specified in the Contract Documents; and, also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the Work, suspension or discontinuance of the Work, and all other unknowns or risks of any description connected with the Work.

### **ARTICLE 4 -- THE CONTRACT DOCUMENTS**

The Contract Documents consist of the Notice Inviting Bids, Instructions to Bidders, the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations, the accepted Bid and Bid Schedule(s), List of Subcontractors, Local Business Preference Program – Good Faith Efforts, Non-Discrimination Certification, Non-Collusion Declaration, Bidder's General Information, Bid Security or Bid Bond, this Agreement, Worker's Compensation Certificate, Performance Bond, Payment Bond, Standard Specifications, Special Provisions, the Drawings, Addenda numbers 1 to 1, inclusive, and all Construction Contract Change Orders and Work Change Directives which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto.

### **ARTICLE 5 -- MUTUAL OBLIGATIONS**

For and in consideration of the payments and agreements to be made and performed by the City, the Contractor agrees to furnish all materials and perform all work required for the above stated project, and to fulfill all other obligations as set forth in the aforesaid Contract Documents.

City hereby agrees to employ, and does hereby employ, Contractor to provide the materials, complete the Work, and fulfill the obligations according to the terms and conditions herein contained and referred to, for the Contract Price herein identified, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth in the Contract Documents.

Contractor specifically acknowledges and agrees to be bound by the Wage Rates and Labor Code requirements specified in the Contract Documents, including the requirement to furnish electronic certified payroll records directly to the Labor Commissioner (via the Division of Labor Standards Enforcement), and shall pay the general prevailing rate of per diem wages as determined by the Director of the Department of Industrial Relations of the State of California.

#### **ARTICLE 6 -- PAYMENT PROCEDURES**

The Contractor shall submit Applications for Payment in accordance with the Standard Specifications as amended by the Special Provisions. Applications for Payment will be processed by the City Engineer as provided in the Contract Documents.

#### **ARTICLE 7 -- NOTICES**

Whenever any provision of the Contract Documents requires the giving of a written Notice between the parties, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the Notice.

#### **ARTICLE 8 -- INDEMNIFICATION**

The Contractor agrees to indemnify and hold harmless the City, and all of its officers and agents from any claims, demands, or causes of action, including related expenses, attorney's fees, and costs, based on, arising out of, or in any way related to the Work undertaken by the Contractor hereunder. This Article 8 incorporates the provisions of Section 7-15 "Indemnification," of the Special Provisions, which are hereby referenced and made a part hereof.

#### **ARTICLE 9 -- NON-DISCRIMINATION**

Contractor represents and agrees that it shall not discriminate against any subcontractor, consultant, employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, physical or mental disability, or medical condition. Contractor shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, physical or mental disability, or medical condition. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

#### **ARTICLE 10 -- MISCELLANEOUS**

Terms used in this Agreement which are defined in the Standard Specifications and the Special Provisions will have the meanings indicated in said Standard Specifications and the Special Provisions. No assignment by a party hereto of any rights under or interests

in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

The City and the Contractor each binds itself, its partners, successors, assigns, and legal representatives, to the other party hereto, its partners, successors, assigns, and legal representatives, in respect of all covenants, agreements, and obligations contained in the Contract Documents.

***SIGNATURES ON NEXT PAGE***

**IN WITNESS WHEREOF**, the City and the Contractor have caused this Agreement to be executed the day and year first above written.

**CITY OF PALM SPRINGS,  
CALIFORNIA**

**APPROVED BY THE CITY COUNCIL:**

By \_\_\_\_\_  
David H. Ready  
City Manager

Date \_\_\_\_\_

Agreement No. \_\_\_\_\_

**ATTEST:**

By \_\_\_\_\_  
James Thompson  
City Clerk

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
Douglas Holland  
City Attorney

**RECOMMENDED:**

By \_\_\_\_\_  
Marcus L. Fuller, PE, PLS  
Assistant City Manager/City Engineer

**CONTRACTOR**

By: NR Development, Inc., a California corporation  
Firm/Company Name

By: \_\_\_\_\_  
Signature (notarized)

By: \_\_\_\_\_  
Signature (notarized)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

(This Agreement must be signed in the above space by one having authority to bind the Contractor to the terms of the Agreement.)

(This Agreement must be signed in the above space by one having authority to bind the Contractor to the terms of the Agreement.)

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss

On \_\_\_\_\_  
before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_

On \_\_\_\_\_  
before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.  
Notary Signature:

WITNESS my hand and official seal.  
Notary Signature:

Notary Seal:

Notary Seal:

# **ATTACHMENT 3**

**NOTICE OF EXEMPTION**

To:  Office of Planning and Research  
1400 Tenth Street, Room 121  
Sacramento, CA 95814

From: City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

Clerk of the Board  
County of Riverside  
P.O. Box 751  
Riverside, CA 92502-0751

**Project Title:** Palm Springs Library Shade Structure, City Project No. 15-27

**Project Applicant:** City of Palm Springs

**Project Location (Specific):** Palm Springs Library, located at 300 S. Sunrise Way

**Project Location (City):** City of Palm Springs

**Project Location (County):** Riverside

**Project Description:** The scope of work includes the fabrication and installation of a new shade structure at the front entrance of the Palm Springs Library. The scope of work comprises of a 10'(W) x 36'(L) x 9'-6"(H) cantilevered steel framing structure (including footings or foundations), metal perforated panels, powder coating, modification to existing irrigation and landscaping, and all other appurtenant work.

**Name of Public Agency Approving Project:** City of Palm Springs

**Name of Person or Agency Carrying Our Project:** City of Palm Springs, Public Works & Engineering Department  
3200 E. Tahquitz Canyon Way, Palm Springs, CA 92262

**Exempt Status:** (check one)

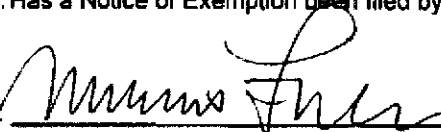
- Ministerial (Sec. 21080(b) (1); 15268);
- Declared Emergency (Sec. 21080(b) (3); 15269(a));
- Emergency Project (Sec. 21080(b) (4); 15269 (b)(c));
- Categorical Exemption. State type and section number: 15303 Class 3 (e) – New Construction
- Statutory Exemptions. State code number:

Reasons why project is exempt: Class 3 consists of construction and location of limited number of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences, therefore, the Palm Springs Library Shade Structure, City Project No. 15-27, is considered categorically exempt from CEQA.

**Lead Agency Contact Person:** Marcus L. Fuller Area Code/Telephone/Extension: (760) 322-8380

**If filed by applicant:**

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?  Yes  No

Signature:  Date: 6/7/16 Title: Assistant City Manager/City Engineer

Signed by Lead Agency  Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code  
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date received for filing at OPR: \_\_\_\_\_