

REVISED EXHIBIT C
TO
AMENDED AND RESTATED MASTER FACILITIES LEASE
Dated January 28, 2025, for reference purposes only
To replace previous Exhibit C in its entirety

**GUARANTEED MAXIMUM PRICE AND
 OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS**

- SITE LEASE PAYMENT(S).** As indicated in the Master Site Lease, Contractor shall pay One Dollar (\$1.00) per year, prepaid for the **party's administrative convenience, for the duration of the Project Master Site Lease and the Master Facilities Lease** ~~for the parties' administrative convenience,~~ to the District upon execution of the Master Site Lease, but before payment of the first Tenant Improvement Payment. For illustrative purposes only, if the **Term of the Master Site Lease and the Master Facilities Lease** is for 3.25 years (which is 39 months) and the ~~Master Facilities Lease~~ **leaseback period** is for one year (which is 12 months), then the prepaid rent is Five Dollars (\$5.00). The District will notify the Contractor to prepay rent at the time the District issues the Notice of Award or Notice to Proceed. The District will cooperate with Contractor's reasonable request to provide documentation to facilitate the payment of Site Lease Payment(s).
- TOTAL CONTRACT PRICE IS THE TOTAL GUARANTEED MAXIMUM PRICE (GMP) PLUS THE PRICE FOR PRECONSTRUCTION SERVICES, IF ANY.** The total Contract Price includes the following:

	Sub-Total	Mid-Total	Final-Total
Preconstruction Services (Original Agreement (CC23-0297-39))			\$289,010.00
WSM PH II (GMP No. 1)			
GMP – No. 1 Whole Site Modernization Phase II (Amendment No. 1 A1-G1)			\$26,817,927.11
Final Tenant Improvement Payment(s)*		\$25,547,243.66	
Preliminary Tenant Improvement Payments: 95% of the Contractor's final, District-approved amount to construct the Project	\$23,883,458.14		
+ Allowance(s)	\$1,075,000.00		
+ Contractor Contingency	\$588,785.52		
Lease Payments**		\$1,257,024.11	
Interest Due on Lease Payments***		\$13,659.34	
Total GMP = GMP No. 1 WSM PH II			\$26,817,927.11
Total Contract Price = Preconstruction Services + Total GMP			\$27,106,937.11
*FINAL Tenant Improvement Payments are as define defined in Article 7 of Exhibit G to the Master Facilities Lease and shall be 95% of the Contractor's final, District approved amount to construct the			

Project at the time of the execution of the Contract (“Preliminary Tenant Improvement Payments”) plus 100% of the Allowance(s) amount plus 100% of the Contractor Contingency amount.

**Lease Payments shall be 5% of the Contractor’s final, District approved amount to construct the Project at the time of the execution of the Contract.

***Interest Due on Lease Payments shall be the financing charge that the District pays Contractor in addition to the Lease Payments.

These definitions are indicated in **Exhibit G** to the Master Facilities Lease.

Contractor must maintain separate Schedule(s) of Values (**SOV**) for (1) Tenant Improvement Payments and (2) Lease Payments and Interest Due on Lease Payments. **The SOV shall be submitted per the Sample SOV for invoicing included in Exhibit G, Attachment 4.**

Contractor will invoice 100% of the Tenant Improvements. District will pay 100% of the Preliminary Tenant Improvements, but will pay 95% of Contractor Contingency, Allowance(s), and subsequent Change Orders (see Section 8 below), and will withhold 5% of Contractor Contingency, Allowance(s), and subsequent Change Orders for Retention.

3. **PRECONSTRUCTION SERVICES WSM PH II (ORIGINAL AGREEMENT (CC23-0297-39).** Pursuant to the **Master** Facilities Lease, Contractor will cause preconstruction services to be performed for **Two Hundred Eighty-Nine Thousand and Ten Dollars (\$289,010.00)**.

4. **GUARANTEED MAXIMUM PRICE (OR “GMP”).** This section identifies the components that make up the GMP and is **NOT** an indication of how it is paid as Tenant Improvement Payments or Lease Payments or Interest Due on Lease Payments. Pursuant to the Master Facilities Lease, Contractor will cause the Project to be constructed for the GMP amount(s) indicated herein above. Except as indicated herein for modifications to the Project approved by the District, Contractor will not seek additional compensation from District in excess of the GMP, plus any approved Change Order amounts. District shall pay the GMP to Contractor as indicated herein. The GMP includes the following components and as further detailed herein:

4.1. **Cost to Perform Work**

4.1.1. **Subcontract Costs.** Payments made by the Contractor to subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents. The final, contracted-for amount between the Contractor and each subcontractor shall be the exact amount that is put into the final GMP after all leveling between trades and subcontractors and without any added allowances or contingencies, unless specifically identified and approved, in advance, by the District.

4.1.2. **Contractor-Performed Work.** Costs incurred by the Contractor for self-performed work.

4.2. **General Conditions/General Requirements.** The fixed amount to be paid is for all costs for labor, equipment, and materials for the items identified therein which are necessary for the proper management of the Project, which shall include all costs paid or incurred by the Contractor (except for insurance); all fees, permits, assessments and charges that are required to be paid to other agencies or entities to permit, authorize or entitle construction, reconstruction or completion of the Project; taxes; and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, whether required by law

or collective bargaining agreements, including project stabilization agreement or otherwise paid or provided by Contractor to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the cost of General Conditions shall be increased or reduced accordingly.

4.3. **Overhead and Profit.**

4.4. **Bonds and Insurance.**

4.5. **Allowances. (Reference Specification Section 01 21 00)**

4.5.1. The Allowance(s) amounts indicated herein are included in the GMP and Contractor may use them only when specifically authorized to do so by the District.

4.5.2. Prior to requesting the use and subsequent payment for any use of an Allowance, Contractor must submit to the District a written request for the Allowance that shall include a description of the requested use of the Allowance and why it is necessary to complete the Project.

4.5.3. Contractor shall prepare documents for its use of an Allowance pursuant to the “Adjustment To Guaranteed Maximum Price (GMP) And Contract Time On Account Of Changes To The Work” and “Change Orders” sections of **Exhibit G** to the Master Facilities Lease (General Conditions) and Attachment 1 to **Exhibit G** (“Payment – Extra, Additional, Deleted Work, Allowances, or Contractor Contingencies”). **The Contractor is entitled to mark-up its pricing in the same way it marks-up its pricing for a Change Order when it uses an Allowance, because the Contractor is prohibited from including the Allowances amount when it prices its General Conditions, bonds and insurance, overhead or profit to establish the GMP.**

4.5.4. Once the District approves the use of a portion of the Allowance(s) amount(s), the Contractor shall invoice 100% of the approved amount of that specific Allowance on the Schedule of Values for the Tenant Improvement Payments, the District will pay 95% of that amount, and withhold 5% of that amount as Retention, as indicated herein below and in **Exhibit G** to the Master Facilities Lease.

4.5.5. **The Allowance(s) amounts is further defined herein below:**

To Be Included in GMP No. 1 WSM PH II (AMENDMENT NO. 1 (A1-G1)):	
Allowance(s): TBD	TBD
Allowance No. 1: Unforeseen site, soil, compaction grouting, & utility conditions	\$205,000.00
Allowance No. 2: Unforeseen agency requirements	\$50,000.00
Allowance No. 3: Unforeseen hazmat and termite conditions	\$55,000.00
Allowance No. 4: Unforeseen SWPPP conditions...	\$50,000.00
Allowance No. 5: Unforeseen mechanical, electrical, plumbing, and low voltage work conditions	\$140,000.00
Allowance No. 6: Unforeseen demolition and structural including concrete slab vapor emissions work conditions	\$145,000.00
Allowance No. 7: Unforeseen building and architectural work conditions	\$115,000.00

Allowance No. 8: Unforeseen irrigation and landscaping work conditions	\$55,000.00
Allowance No. 9: Unforeseen security guard or additional security requirements	\$110,000.00
Allowance No. 10: Unforeseen builders risk insurance deductible	\$150,000.00
Total Allowances for GMP No. 1 WSM PH II:	TBD \$1,075,000.00

4.5.6. Any unused portion of Allowances shall be retained one hundred percent (100%) by the District at the end of the Project.

4.6. Contractor Contingency. (Reference Specification Section 01 21 00)

4.6.1. The Contractor Contingency amount indicated herein is included in the GMP and Contractor may use it only when specifically authorized to do so by the District (“Contractor Contingency”). (See Attachment No. 4, **Exhibit D**).

4.6.2. Prior to requesting the use and subsequent payment for any portion of the Contractor Contingency, Contractor must submit to the District a written request for the Contractor Contingency that shall include a description of the requested use of the Contractor Contingency and why it is necessary to complete the Project.

4.6.3. Contractor shall prepare documents for its use of any part of the Contractor Contingency pursuant to the “Adjustment To Guaranteed Maximum Price (GMP) And Contract Time On Account Of Changes To The Work” and “Change Orders” sections of **Exhibit G** to the Master Facilities Lease (General Conditions) and Attachment 1 to **Exhibit G** (“Payment – Extra, Additional, Deleted Work, Allowances, or Contractor Contingencies”). **The Contractor is entitled to mark-up its pricing in the same way it marks-up its pricing for a Change Order when it uses any part of the Contractor Contingency, because the Contractor is prohibited from including the Contractor Contingency amount when it prices its General Conditions, bonds and insurance, overhead or profit to establish the GMP.**

4.6.4. Once the District approves the use of a portion of the Contractor Contingency amount(s), the Contractor shall invoice 100% of the approved amount of that specific Contractor Contingency on the Schedule of Values for the Tenant Improvement Payments, the District will pay 95% of that amount, and the District will withhold 5% of that amount as Retention, as indicated herein below and in **Exhibit G** to the Master Facilities Lease.

4.6.5. The Contractor Contingency shall only be for the following items:

4.6.5.1. Scope Gaps, and errors in covering and pricing specific scopes of work due to mathematical miscalculations or unaccounted-for tasks at the time the GMP was established, but not for errors in judgement in pricing items such as under estimating price escalation; Contractor is not responsible for errors and omissions of the architect or architect’s consultants. As-built shall be considered for reference only.

4.6.5.2. Construction costs associated with the refinement of incomplete design information within the Scope of Work that would have been identified and

corrected prior to the soliciting/bidding phase as part of a reasonable constructability review of the Documents on which the GMP is based. Notwithstanding that an allowance has been established, Contractor shall be entitled to a change order for costs incurred because of incomplete designs where such costs exceed the allowance.

4.6.5.3. Other items requested by the Contractor (e.g., overtime costs on specific items) if approved by the District and in the District's sole discretion.

4.6.6. The Contractor Contingency shall only be used to the extent the Contractor can document that item was not otherwise in its or its subcontractors' pricing for the Project and only to the extent that the cost of work is not recoverable by Contractor from others, by insurance or otherwise. If the District chooses to utilize all or a portion of the Contractor Contingency for uses of the Contractor Contingency, as defined herein, the District shall notify the Contractor in writing in accordance with **Exhibit G** to the Master Facilities Lease.

4.6.7. Any unused portion of the Contractor Contingency shall be retained one hundred percent (100%) by the District at the end of the Project.

5. **PAYMENT OF GUARANTEED MAXIMUM PRICE.** District shall pay the GMP to Contractor in the form of (a) Tenant Improvement Payments and (b) Lease Payments and the Interest Due on Lease Payments as indicated herein.

5.1. **Tenant Improvement Payments.** Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Contractor the total amount of the Tenant Improvement Payments, based on the amount of Work satisfactorily performed and approved by the District, according to the Contractor's Schedule of Values (**Exhibit G**) and pursuant to the provisions in **Exhibit G** to the Master Facilities Lease. In particular, prior to the District's taking delivery or occupancy of the Project, the District will pay to Contractor the final Tenant Improvement Payment, plus Retention. See Section 2 above of this **Exhibit C** as well as Section 7 of **Exhibit G** on Tenant Improvement Payments.

5.2. **Lease Payments and Interest Due on Lease Payments.** After the Parties execute the Memorandum of Commencement Date (**Exhibit L**), and the Contractor has completed and satisfied the conditions as indicated below, the District shall pay to Contractor the Lease Payments and the Interest Due on Lease Payments as indicated below. Contractor shall submit to the District a monthly, written invoice for each Lease Payment and the Interest Due on that Lease Payment, at least thirty (30) days prior to the "Date of Payment" as indicated below for that Lease Payment.

5.2.1. The Parties acknowledge that the Lease Payments and Interest Due on Lease Payments are both within the GMP and the District will track and pay both the Lease Payments and the Interest Due on Lease Payments amounts together as indicated herein.

5.2.2. The Lease Payments and the Interest Due on Lease Payments shall be consideration for the District's rental, use, and occupancy of the Project and the Project Site and shall be made in monthly installments for the duration of the Term.

5.2.3. The District represents that the total annual Lease Payment and the Interest Due on Lease Payments obligation does not surpass the District's annual budget and will not require the District to increase or impose additional taxes or obligations on the

public that did not exist prior to the execution of the Facilities Lease.

5.2.4. **Fair Rental Value.** District and Contractor have agreed and determined that the total Lease Payments and the Interest Due on Lease Payments constitute adequate consideration for the Master Facilities Lease and are reasonably equivalent to the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Master Facilities Lease and Master Site Lease, the uses and purposes which may be served by the Project and the benefits therefrom which will accrue to the District and the general public.

5.2.5. **Each Payment Constitutes a Current Expense of the District.**

5.2.5.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments and the Interest Due on Lease Payments and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

5.2.5.2. Lease Payments and the Interest Due on Lease Payments hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for this purpose. This Master Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder.

5.2.5.3. The District covenants to take all necessary actions to include the estimated Lease Payments and the Interest Due on Lease Payments in each of its final approved annual budgets.

5.2.5.4. The District further covenants to in good faith make all necessary appropriations (including any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Lease Payments and the Interest Due on Lease Payments that come due and payable during the period covered by each such budget. Contractor acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments and the Interest Due on Lease Payments or any other payments due hereunder. The covenants on the part of District contained in this Master Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Master Facilities Lease agreed to be carried out and performed by the District.

5.2.5.5. The Contractor cannot, under any circumstances, accelerate the District's payments under the Master Facilities Lease.

5.2.6. **Timing of the Lease Payments and Interest Due on Lease Payments.** The first Lease Payment is due within the timeframe stated below only after **all of** the

following conditions have been completed and satisfied. The District may waive any of these conditions to the payment of Lease Payments at its sole discretion and may withhold up to 150% of any disputed amounts **from Lease Payments based on the "Withholding of Payments" Provisions in Exhibit G to the Master Facilities Lease**. The District shall not be liable for payment of interest on those disputed amounts pending final adjudication of those disputes.

5.2.6.1. The Contractor has submitted a ~~final~~ **Final** subcontractors list with the required information on the District's Final Subcontractors List Form, which is **Attachment 3 of Exhibit G**, under Labor Code 1773.3 (d); and

5.2.6.2. The District has beneficially occupied ~~for the applicable [increment/stage/phase] the~~ or **could beneficially occupy if it chooses to do so upon Substantial Completion for the applicable GMP No. 1, WSM of the Project and now occupies the same; and**

5.2.6.3. **The** District has issued a **its** certificate of Substantial Completion for the applicable ~~[increment/stage/phase], whichever is earlier;~~ **GMP No. 1, WSM of the Project required to be performed pursuant to the Master Facilities Lease, except as indicated in punchlist dated _____, 20____; and**

5.2.6.4. The ~~final~~ **Final** Tenant Improvement Payment has been paid and all Retention (**if applicable**) has been paid **or, at the District's sole discretion, it chooses instead to withhold up to 150% of any disputed amounts and pay the remainder of the final Tenant Improvement Payments and/or the Retention; and**

5.2.6.5. The Contractor has submitted the San Diego Unified School District's Prime Contractor's ~~DVBE~~ **Disabled Veteran Business (DVB)** Subcontracting Report and the District has accepted that Report as Satisfying the ~~DVBE~~ **DVB** Participation Mandatory Requirement. ~~This~~ **The Prime Contractor's DVB Subcontracting** Report ~~is only applicable for the last MOC of the Project~~ **must include DVB Participation from all completed GMPs; and**

Upon completion of items 5.2.6.1 through 5.2.6.4-5, the ~~Parties shall execute~~ **District will issue** the Memorandum of Commencement Date, attached to the Master Facilities Lease as **Exhibit L**.

5.2.7. **Waiver and Release.** No later than ~~sixty (60)~~ **thirty (30)** days following the executing of the Memorandum of Commencement Date (**Exhibit L**), Contractor shall provide a duly completed and executed "Unconditional Waiver and Release Upon Final Payment" compliant with Civil Code section 8138 from all subcontractors of any tier and suppliers that each has been paid all amounts owing to it from the Contractor for all Work on the Project relating to Tenant Improvements, not Lease Payments, prior to the District's taking delivery or occupancy of the Project ("Waiver and Release").

5.2.7.1. In the event the ~~Waiver and Release~~ **Contractor** has not been provided to the District **the "Unconditional Waiver and Release Upon Final Payment" from all subcontractors of any tier and suppliers** within the ~~sixty (60)~~ **thirty (30)** days following the execution of the Memorandum of

Commencement Date (**Exhibit L**), District reserves the right to suspend any further Lease Payments until such time as the Waiver and Release is provided **Contractor provides all of those “Unconditional Waiver and Release Upon Final Payment” documents, at which time District shall resume Lease Payments, paying all amounts then due with no interest owed other than that which is due per the Lease Payment schedule.**

5.2.8. The Lease Payment amount and the Interest Due on Lease Payment amount shall be paid pursuant to the following structure and the annual interest rate shall be at **two percent (2%)**:

TO BE INCLUDED IN GMP No. 1 WSM PH II (AMENDMENT NO. 0X (A1-G1)):			
Date of Payment	(A) Total Lease Payment	(B) Total Interest Due on Lease Payment	(A + B) Total Lease Payment plus Interest due by District to Contractor
45 Days after execution of Memorandum of Commencement	\$104,752.01	\$1,138.28	\$105,890.29
30 days thereafter	\$104,752.01	\$1,138.28	\$105,890.29
30 days thereafter	\$104,752.01	\$1,138.28	\$105,890.29
30 days thereafter	\$104,752.01	\$1,138.28	\$105,890.29
30 days thereafter	\$104,752.01	\$1,138.28	\$105,890.29
30 days thereafter	\$104,752.01	\$1,138.28	\$105,890.29
30 days thereafter	\$104,752.01	\$1,138.28	\$105,890.29
30 days thereafter	\$104,752.01	\$1,138.28	\$105,890.29
30 days thereafter	\$104,752.01	\$1,138.28	\$105,890.29
30 days thereafter	\$104,752.01	\$1,138.28	\$105,890.29
30 days thereafter	\$104,752.01	\$1,138.28	\$105,890.29
30 days thereafter	\$104,752.01	\$1,138.28	\$105,890.29
30 days thereafter	\$104,752.00	\$1,138.26	\$105,890.26
Total	\$1,257,024.11	\$13,659.34	\$1,270,683.45

5.2.9. **Financed Portion of Lease Payments.** The District requires the Contractor to finance a portion of the Lease Payments, which is reflected in the table above.

5.2.10. In no event shall the cumulative total of the Tenant Improvement Payments and the Lease Payments, and Interest Due on Lease Payments ever exceed the GMP as defined herein, unless modified pursuant to **Exhibit G** to the Master Facilities Lease.

6. CHANGES TO GUARANTEED MAXIMUM PRICE

6.1. As indicated in the Master Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the GMP. If a cost impact or a change is agreed to by the Parties, it shall be reflected as a reduction or increase in GMP and paid upon the payment request from the Contractor when the work is performed or deducted from the next payment request from the Contractor, as applicable. The process for these changes shall be as follows:

6.1.1. The Parties acknowledge that the Schedule of Values for Tenant Improvement Payments will increase or decrease based upon an agreed change. As such, the

parties must first agree to the cost of a change to the GMP or the District authorizes or directs a change to the GMP pursuant to the "CHANGES" section of **Exhibit G** to the Master Facilities Lease. In this regard, the District's process for approval of Change Orders are not a part of the GMP at the time of the execution of the Contract. The Parties also acknowledge that the District will withhold Retention for any Change Orders, just like the District will withhold Retention from uses of Allowances (s) and uses of Contractor Contingency that the District approve for the Project.

6.1.1.1. Once the District approves a Change Order, the Contractor shall invoice 100% of the approved amount of that Change Order on the Schedule of Values for the Tenant Improvement Payments, the District will pay ninety-five (95%) of that amount, and the District will withhold five (5%) of that amount as Retention, as indicated herein and in **Exhibit G** to the Master Facilities Lease. For Clarification: While the Parties treat Change Orders, Allowance(s), and Contractor Contingency the same for purposes of withholding 5% for Retention, the Parties treat Change Orders differently for purposes of changing the GMP. This is because Change Orders must be added to the Schedule of Values for the Tenant Improvement Payments, which changes the GMP. In contrast, Allowance(s) and Contractor Contingency are already part of the GMP. See section 2 above.

6.1.1.2. Retention will be paid as indicated in **Exhibit G** to the Master Facilities Lease. Retention will be paid on or after the final Tenant Improvement Payment.

6.1.1.3. Once those updated amounts are agreed to, the Parties shall amend the Contract Documents, as required, to reflect this change.

6.1.1.4. The next application for Tenant Improvement Payments will reflect the updated GMP amount and the Contractor will increase or decrease its requested payment based on that updated GMP amount.

- 6.2. The Parties acknowledge that the Lease Payments and the Interest Due on Lease Payments amount will remain unchanged through the Project and will be shown on the Schedule of Values for Lease Payments.
- 6.3. The Parties acknowledge that the GMP is based on the Construction Documents, including the Plans and Specifications, as identified and incorporated by reference herein.
- 6.4. **Cost Savings.** Contractor shall work cooperatively with Architect, subcontractors and District, in good faith, to identify appropriate opportunities to reduce Project costs and promote cost savings. Any identified cost savings from the GMP shall be identified by Contractor, and if approved in writing by the District, that cost savings shall be deducted from the GMP. If any cost savings require revisions to the Construction Documents, Contractor shall work with the District with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. At the District's discretion, any reasonable cost incurred by District and/or the Contractor for those revisions may be paid for out of the identified savings before it is deducted from the GMP. Contractor shall be entitled to an **a non-compensable equitable time** extension of ~~Contract Time~~ equal to the delay in Project **Substantial** Completion caused by any cost savings adopted by District, if requested in writing before the approval of the cost savings.

7. **Future Buyout of Facilities Lease.** The District may choose to buyout the Lease Payments in a lump sum during the term of the Master Facilities Lease. The Parties agree that any buyout will be memorialized in writing and serve to terminate the Master Site Lease and the Master Facilities Lease and will reduce the interest owed based on the time of the buyout. Under no circumstances may this buyout occur until at least sixty (60) days after the execution of the Memorandum of Commencement Date. In no event shall any buyout increase the total amount of Lease Payment amounts, plus interest in excess of the amounts included in the GMP.

In Process