

**MASTER FACILITIES USE AGREEMENT
BETWEEN SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT
AND SANTA MONICA COMMUNITY COLLEGE DISTRICT**

This Master Facilities Use Agreement (“Agreement”) is entered into and effective this _____ day of _____, 2019, (“Commencement Date”) between Santa Monica-Malibu Unified School District (“District”) and Santa Monica Community College District (“College”). District and College may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Education Code section 10900 authorizes public school districts to cooperate with one another for the purpose of authorizing, promoting and conducting programs of community recreation that will contribute to general recreational and educational objectives for children and adults of this State; and

WHEREAS, under Education Code section 10905, two or more public authorities may cooperate with each other to carry out the purposes set forth in Section 10900, and to that end may enter into agreements with each other and may do any and all things necessary and convenient to aid and cooperate in carrying out said purposes; and

WHEREAS, the District and College are authorized to operate recreation facilities including play fields, performing arts centers, hardscapes, swimming pools and other facilities and, by virtue of that authority, do operate and maintain such recreation facilities; and

WHEREAS, the District owns and operates multiple schools, school sites and facilities (“District Site(s)”) including recreational play fields, performing arts centers/theaters, hardscapes and other facilities (“District Premises”); and

WHEREAS, for purposes of this Agreement the District Premises shall include all District Sites with the exclusion of the Barnum Hall Theatre located at Santa Monica High School, 601 Pico Boulevard, Santa Monica, California 90405; and

WHEREAS, the College owns and operates multiple schools, school sites and facilities (“College Site(s)”) including recreational play fields, performing arts centers/theaters, hardscapes and other facilities (“College Premises”); and

WHEREAS, for purposes of this Agreement the College Premises shall include all College Sites with the exclusion of the Santa Monica College Performing Arts Center, located at 1310 11th Street, Santa Monica, California 90401; and

WHEREAS, the District Sites and College Sites may be referred to herein individually as a “Site” or collectively as the “Sites;” and

WHEREAS, the District Premises and College Premises may be referred to herein collectively as the “Premises;”

WHEREAS, the District and College desire to jointly use the District Premises and College Premises for playfields, playgrounds, restrooms, and recreation facility uses, as further detailed herein below; and

WHEREAS, the Parties agree that entering into the Agreement will benefit the community, providing facilities that promote and preserve their health and general welfare and will cultivate the development of good citizenship by providing adequate programs of community recreation; and

WHEREAS, the District, pursuant to Education Code section 10910, is authorized to “grant the use of any building, grounds or equipment of the district to any other public authority...whenever the use of the buildings, grounds or equipment for community recreational purposes will not interfere with use of the buildings, grounds, and equipment for any other purpose of the public school system;” and

WHEREAS, the District has determined, by approving this Agreement, that allowing use of the District Premises to College will not interfere with use of the District Premises for any other purpose of the District; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. **Supplemental Use Agreements.** Supplemental Use Agreements, governing specific programs and projects, are contemplated by the Parties and shall be executed pursuant to this Agreement as needed. This provision shall not be construed to prevent the District and the College from entering into other agreements relating to school sites and facilities not specifically mentioned herein, or as the Parties may desire.
2. **Fiscal and Use Agreement.** A Fiscal and Use Agreement, governing the development, construction and use of the John Adams Middle School Auditorium Replacement Project located at John Adams Middle School, 2425 16th Street, Santa Monica, California 90405, is contemplated by the Parties and shall be executed separately from this Agreement and the Supplemental Use Agreements.
3. **Title to Sites and Premises.** Nothing in this Agreement shall change, in any way, the Parties' ownership interest in their Sites and Premises.
4. **Term.** The "Term" of this Agreement shall be for ten (10) years from the Commencement Date and, unless sooner terminated under any provision hereof, the Term shall end on the anniversary of the Commencement Date. Unless terminated by either Party as indicated herein, the Term may be extended for an additional ten (10) years by mutual agreement of the Parties. Any extension of the Term shall be in writing and shall become effective only upon approval by the College's Board of Trustees ("College's Board") and the District's Board of Education ("District's Board").
5. **Payment for Use of Premises.** Unless otherwise stated in this Agreement, both District and College agree that the shared use of District and College Premises benefits both Parties, and therefore neither will charge the other a use fee for use of District or College Premises.
6. **Parity in Joint Use.** The Parties intend that there be parity in joint use of the Premises. If, during the Term of this Agreement, one or more Parties determine that there is a lack of parity in the joint use of the Premises, the Parties shall have the option to terminate the Agreement subject to the terms in Section 15 herein.
7. **Use of Premises.**
 - 7.1. Premises Specific Use Provisions. Specific use provisions for each District or College Premises are contained in each Premises specific Supplemental Use Agreement.
 - 7.2. Civic Center Act/Community Recreation Act. All scheduling, use, fee/admission fee collection, and other activities shall be compliant with the Civic Center Act, Education Code sections 38130, et seq. and Community Recreation Act, Education Code sections 10900, et seq.
 - 7.3. Rules and Regulations.
 - 7.3.1. District's Rules and Regulations. College's use of the District's Premises shall be pursuant to the District's then existing Policies and Regulations for use of the District's Premises ("District Use Rules"), as may be amended from time to time. College shall use reasonable efforts to exclude persons and entities whom College is aware have violated the District Use Rules from using the District's Premises. The District's current District Use Rules can be found here: http://www.smmusd.org/facility_permits/index.html.

7.3.2. College's Rules and Regulations. District's use of the College's Premises shall be pursuant to the College's then existing Policies and Regulations for use of the College's Premises ("College Use Rules"), as may be amended from time to time. District shall use reasonable efforts to exclude persons and entities whom District is aware have violated the College Use Rules from using the College's Premises. The College's current College Use Rules can be found here: <http://www.smc.edu/AboutSMC/Facility-Rentals/Pages/default.aspx>.

7.4. Personnel and Equipment.

7.4.1. The Parties at their sole cost and expense, shall provide: (i) such employees, volunteers, or others as are necessary to ensure the safety of all participants, spectators, and others present in connection with such use; and (ii) all personal property (e.g., equipment, materials, supplies and/or other items) as necessary to permit the use to occur and as necessary to ensure the safety of all participants, spectators, and others present in connection with such use.

7.4.2. The Parties specifically agree that personnel hired by the Party shall be employees or independent contractors of that Party and shall not be construed as employees or independent contractors of the other Party for any purpose whatsoever. If a Party wishes to use the other Party's employees or independent contractors in the conduct of programs (i.e. lifeguards, gym attendants, sport camp instructors, contract instructors, audio-visual crew, technical staff, etc.), the use of such employees shall be subject to a separate written agreement to be negotiated by that Party on terms to be mutually agreed upon.

7.4.3. In the event that a Party's use requires the provision of outside law enforcement (police, fire, etc.) personnel, the Party using the Premises shall be responsible for the payment of such law enforcement costs. In the event the law enforcement is provided by the hosting Party, the other Party shall reimburse the hosting Party for costs incurred.

8. **Condition of Premises.** The Premises are offered for use to the Parties on an "AS IS" basis.

8.1. The Parties shall not be required to make or construct any alterations including structural changes, additions or improvements to their Premises. By a Party's entry and use of the Premises pursuant to this Agreement, the Party accepts the Premises in "AS IS" condition.

8.2. The Parties acknowledge that neither Party's agents have made any representation or warranty as to the suitability of the Premises for the other Party's uses as described herein. Any agreements, warranties or representations not expressly contained in this Agreement shall in no way bind the Parties, and the Parties expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

9. **Maintenance and Repairs.**

9.1. As a condition of its use of a Premises, each Party, with the cooperation of the other Party as needed, and after each use, shall return the Premises to the same or equal condition as it was prior to said Party's use. The Parties, to the extent permitted by law and applicable contractual arrangements, may perform their maintenance and/or repair obligations using either their own personnel or contracted forces under the direct control of the Party.

9.2. Each Party, as a condition of its use of a Premises, shall repair, at that Party's sole expense, any and all parts of a Premises that have been damaged by said Party's use. A failure to repair such

damage may be deemed grounds for termination of this Agreement subject to the provisions of Section 15 herein.

10. **No Alterations and Improvements.** The Parties shall not construct or cause to be constructed any alterations or improvements on the Premises.
11. **Fingerprinting and Criminal Background Verification.** Each Party shall be responsible for ensuring compliance with its fingerprinting and criminal background investigation requirements. Upon request by a Party, the other Party shall provide written verification of compliance with its own fingerprinting and criminal background investigation requirements to requesting Party. The Parties' obligations to provide documentation verifying compliance with this section shall survive termination of the Agreement.
12. **Safety of Premises.** The Premises may be monitored by a safety system or protocol implemented, maintained and operated by the Parties ("Safety Measures"). However, the Parties specifically acknowledge, understand, and agree that the Parties are neither responsible for nor have the obligation to supply, provide, establish, maintain, or operate Safety Measures for the Premises. The Parties further expressly acknowledge and agree that the Parties shall not be liable for and are hereby released from any and all responsibility for any damage, loss, or injury to the other Party or its personal property resulting or arising out of any criminal activity (including, but not limited to, any damage, loss, or injury resulting from intrusions, petty theft, vandalism, or other similar acts) that may occur on or near the Premises, regardless of whether a Party was able to, actually did, or failed to provide notice to the other Party of a safety incident or situation occurring on the Premises which led to the damage, loss, or injury. The Parties make no warranties or representations as to the safety or security of the Premises, or Safety Measures. Unless expressly agreed to by the Parties, the Parties shall be responsible, at their sole cost, for supplying, providing, establishing, maintaining, and operating their own safety measures, protocols, personnel, or systems to encourage and ensure the security of the Party, its agents, officers, employees, licensees and invitees, and the Premises ("Party's Safety Measures"); provided, however, that Party must obtain prior written approval from the other Party prior to employing the Party's Safety Measures and provided that all of Party's Safety Measures are compatible with the Safety Measures.
13. **Accident/Incident Reporting.** Each Party shall submit written accident/incident reports to the other Party as soon as practicable but not more than twenty-four (24) hours after the occurrence of or a Party's receipt of information or notice regarding any accident or incident that occurs on the Premises including related claims, arrest or criminal charges associated with that Party's use of the Premises or Party's staff working on the Premises. Submission of written accident/incident reports shall be made pursuant to the section entitled "Notices." Accident/injury reports shall also be verbally reported to the Party's Maintenance Office during normal business hours and to the Party's Central Station during non-business hours.
14. **Inspection of Premises.** Prior to inspecting a Premises, the Party seeking to make the inspection shall coordinate with the other Party's Facilities Use Department for access to the Premises.
15. **Termination.** Termination of this Agreement may be for convenience or cause as specified below.
 - 15.1. **Termination for Convenience.** Either party may terminate this Agreement by written notification six (6) months prior to the effective date of the termination. Neither Party shall be required to provide just cause for termination in the written notification.
 - 15.2. **Termination for Cause.** Either Party may terminate this Agreement immediately for cause. Cause shall include, without limitation:
 - 15.2.1. Material violation of this Agreement by College or District; or
 - 15.2.2. Any act by a Party exposing the other Party to liability to others for personal injury or property damage; or

- 15.2.3. Either Party is adjudged a bankrupt, makes a general assignment for the benefit of creditors or a receiver is appointed on account of a Party's insolvency.
- 15.3. Either Party may allow a time period for the defaulting Party to "cure" the default, at the non-defaulting party's sole discretion. If Party terminates for cause, the other Party's rights in the Premises shall terminate upon receipt of notice of termination from the Party. Any termination under this Section shall not release a Party from the payment of any sum or payment for use of the Premises then due to a Party or from any claim for damages previously accrued or then accruing against a Party.
- 15.4. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District and/or College.
- 15.5. Upon termination of this Agreement, the Parties shall be responsible for restoring the other Party's Premises to its condition prior to the commencement of this Agreement with no damage thereto, reasonable wear and tear excepted.
16. **Indemnification.** To the fullest extent permitted by California law, each Party shall hold harmless, and indemnify the other Party and its board members, representatives, officers, consultants, employees, trustees, volunteers, and invitees against any and all loss, liability, damage, or expense, including any direct, indirect or consequential loss, liability, damage, or expense, for injury or death to persons, including employees of either Party, and damage to property, including property of either Party, arising out of or in connection with intentional, willful, wanton, reckless or negligent conduct resulting from the use, conduct or any activities of a Party related to this Agreement. However, neither Party shall be indemnified hereunder for any loss, liability, damage, or expense resulting from its sole negligence or willful misconduct.
17. **Insurance.** The Parties shall maintain, for the Term, at their own respective costs, their policy or policies of general liability and property insurance. Self-insurance authorized by state law and/or maintained by the Parties in their regular course of business for their other activities shall satisfy this requirement.
18. **Surrender of Agreement Not Merger.** The voluntary or other surrender of this Agreement by a Party, or a mutual cancellation thereof, shall not constitute a merger and shall, at the option of the other Party, terminate all or any existing subleases or subtenancies, or operate as an assignment to the other Party of any or all subleases or subtenancies.
19. **Notices.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, email, or facsimile transmission, addressed as follows:

<p><u>If to the District:</u></p> <p>Santa Monica-Malibu Unified School District 1651 16th Street Santa Monica CA 90404 Attn: Carey Upton, Chief Operations Officer</p> <p>With a copy to: Orbach Huff Suarez & Henderson LLP 1901 Avenue of the Stars, Suite 575 Los Angeles, California 90067 Attn: Sarine A. Abrahamian, Esq.</p>	<p><u>If to the College:</u></p> <p>Santa Monica Community College District 1900 Pico Boulevard Santa Monica, CA 90405 Attn: Dr. Kathryn E. Jeffery, Superintendent/President</p> <p>With a copy to: Campus Counsel Santa Monica Community College District 1900 Pico Boulevard Santa Monica, CA 90405</p>
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Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective three (3) days after deposit in the United States mail.

20. **Assignment.** The Parties shall not have the right, voluntarily or involuntarily, to assign this Agreement. The Parties may subcontract for use of all or part of the Premises if it is coordinated through and approved by the Facilities Use Department of District or College that facilitates the use of that Premises.
21. **Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.
22. **Entire Agreement of Parties.** This Agreement hereby incorporates the Supplemental Use Agreement(s) entered into between the Parties. This Agreement and the Supplemental Agreement(s) constitute the entire agreement between the Parties and supersede all prior discussions, negotiations and agreements, whether oral or written.
23. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the District's administrative offices are located.
24. **Compliance with All Laws.** The Parties at their own expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Premises, and shall faithfully observe in their use of the Premises all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("CEQA") and its implementing regulations) and the other Party's Use Policies, rules and regulations relating to the same ("Environmental Laws").
 - 24.1. The judgment of a court of competent jurisdiction, or a Party's admission in an action or a proceeding against a Party, whether the other Party is a party to it or not, that Party has violated any law or regulation or ordinance in their use of the Premises shall be considered conclusive evidence of that fact as between the Parties. If a Party fails to comply with any law, regulation or ordinance, the other Party reserves the right to take necessary remedial measures at the non-compliant Party's expense, for which the non-compliant Party agrees to reimburse the other Party on demand.
 - 24.2. The Parties shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises and any improvements by a Party or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). The Parties shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq., (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute,

law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

- 24.3. The Parties will promptly notify each other in writing if a Party has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Premises in violation of Environmental Laws. The Parties shall promptly provide copies to each other of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Premises or compliance with Environmental Laws. The Parties shall promptly supply each other with copies of all notices, reports, correspondence, and submissions made by a Party to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. The Parties shall promptly notify each other of any liens threatened or attached against the Premises pursuant to any Environmental Laws.
- 24.4. Each Party and the Party's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by that Party, may (but without the obligation or duty to do so), at any time and from time to time, on not less than ten (10) business days' notice to the other Party (except in the event of an emergency, in which case, no notice will be required), inspect the Premises to determine whether a Party is complying with the Party's obligations set forth in this Section, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as the Parties may agree.
- 24.5. Each Party shall indemnify, defend (by counsel reasonably approved in writing by the other Party), protect, release, save and hold harmless the other Party from and against any and all Claims arising from any breach of a Party's covenants under this Section.
25. **Each Party to Bear Own Costs and Attorneys' Fees.** Except as expressly set out in this Agreement, each Party shall bear its own respective costs, expenses and attorney's fees with respect to the Agreement.
26. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
27. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.
28. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document. Counterparts hereof that are transmitted by facsimile or electronic transmission shall be given identical legal effect as an original.
29. **Captions.** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.
30. **Severability.** Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed, and the remaining provisions shall continue as valid, legal and enforceable.

31. **Amendments to Agreement.** This Agreement may be amended or modified at any time by mutual agreement of the Parties. Any amendment or modification to this Agreement shall be in writing and shall be effective only upon approval by the District's and College's governing Boards.
32. **Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.
33. **Time Is of the Essence.** Time is of the essence with respect to the Parties' obligations herein.
34. **Further Actions.** Each Party hereto shall execute, acknowledge and deliver such additional documents, and take such further action(s), as may be reasonably required from time to time to carry out each of the provisions, and the intent, of this Agreement.
35. **Neutral Construction.** This Agreement shall not be construed as if prepared by one of the Parties, but according to its fair meaning as a whole, as if both Parties had prepared it.
36. **No Third-Party Beneficiary.** Unless otherwise specified herein, this Agreement shall not confer or be construed to confer any rights or benefits to any person or entity other than the Parties.
37. **Force Majeure.** If either Party is unable, in whole or in part, to perform its obligations under this Agreement, by reason of the occurrence of fire, casualty, unavoidable accident, failure of usual source of supply, strike, labor conditions, lockouts, war, acts of God, the enactment of any Federal, State, or municipal law or ordinance, or the issuance of any executive or judicial order, whether Federal, State, or municipal, or of any other legally constituted authority, or any other cause not within the control of the Party claiming relief notwithstanding the exercise of due diligence, the Party shall give written notice to the other Party as soon as practicable after the occurrence. The obligations of that Party shall be suspended during the continuance of the cause stated in the notice, which the Party shall remedy or remove expeditiously. In such case, the obligations, terms, and conditions of this Agreement shall be extended for the period necessary to compensate for any suspension of performance.
38. **Authorization to Sign Agreement.** Each individual executing this Agreement on behalf of College represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of College in accordance with a duly adopted resolution of College's Board, and that this Agreement is binding upon College in accordance with its terms, and College shall, concurrently with its execution of the Agreement, deliver to District upon its request a certified copy of a resolution of its Board authorizing the execution of this Agreement. Each individual executing this Agreement on behalf of District represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of District and this Agreement is binding upon District in accordance with its terms.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2019

Dated: _____, 2019

Santa Monica-Malibu Unified School District

Santa Monica Community College District

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____