

MAJOR ITEMS OF BUSINESS

RECOMMENDATION NO. 17

SUBJECT: SUPPLEMENTAL STAFF REPORT SUMMARIZING LEASE TERMS

SUBMITTED BY: Superintendent/President

SUMMARY: Attached is the Facility Use Lease Agreement between the Santa Monica Community College District ("SMC") and the Santa Monica-Malibu Unified School District ("SMMUSD") for use of the Pico Classroom Complex.

The key provisions of the lease are as follows:

Lease Term: Two years. The lease can be extended by mutual agreement.

Lease Payment: \$500,000 per academic year. The lease payments will be made as a credit against the rent SMC pays to SMMUSD for the Madison property.

Premises: The premises consist of the Pico Classroom Complex. In addition, SMMUSD is authorized to use restrooms on the first floor of Drescher Hall.

Parking: SMC is providing 40 parking permits that can be used for unassigned parking spaces in Lots 3 and 4.

Alterations and Improvements: At its own expense, SMMUSD can make alterations and improvements. Major alterations require approval of SMC. SMMUSD is required to restore the premises to their original condition at the end of the lease.

COVID Protocols: In connection with the leased premises, SMMUSD COVID protocols apply. Use of other College property requires compliance with SMC COVID protocols.

Operations: The lease contains a variety of operational provisions addressing use, access, maintenance and repairs, deliveries and student dropoff, emergency procedures, security systems, policing, crime reporting, and threat assessment,

Indemnification: SMMUSD will indemnify SMC for all liability from SMMUSD's use of the premises with the exception of willful misconduct by SMC. In addition, SMMUSD will indemnify SMC for all abuse and molestation claims that might be made by SMMUSD students.

**FACILITY USE LEASE AGREEMENT
BETWEEN SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT
AND SANTA MONICA COMMUNITY COLLEGE DISTRICT**

This Facility Use Lease Agreement ("Agreement") is entered into and effective this 18th day of August 2022, ("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, the District is temporarily relocating its Olympic High School Continuation Program, Project Based Learning Cohort, Off Campus Learning Center, and Independent Study Hub ("District Programs") to facilitate extensive repairs due to severe water damage and mold to the SMASH/Muir campus, located at 2525 5th Street and 2526 6th Street, Santa Monica, CA 90405 ("Campus"); and

WHEREAS, it was discovered that there was extensive water intrusion into the Campus's buildings, and an investigation of the extent of that intrusion revealed the presence of mold, which necessitates abatement and repair on an emergency basis before students and staff can resume school operations; and

WHEREAS, the College owns and operates multiple schools, school sites, and facilities including classroom instruction facilities; and

WHEREAS, the College identified underutilized space that could be made available to the District ("Premises" or "Facilities" further defined below); and

WHEREAS, the District desires to make use of the College's Facilities known as the Santa Monica College Pico Classroom Complex, whose address is 1900 Pico Blvd., Santa Monica, CA 90405, for the temporary relocation of the District Programs; and

WHEREAS, the Facilities are ideally suited for temporary housing because they are school related Facilities that are Field Act compliant, and Division of the State Architect (DSA) approved, to ensure the required safety of District students; and

WHEREAS, the District and College previously executed a short-term Facility Use Permit Agreement ("Permit"), and contemplated a later Facility Use Lease Agreement; and

WHEREAS, the Permit granted the District access to move and set up classrooms and instructional necessities in the Facilities identified herein; and

WHEREAS, the College is authorized to enter into this Agreement in accordance with Education Code Section 81378.1, and the College gave public notice on July 11, July 19, and July 26, 2022 that the Premises is going to be utilized to accommodate the District's Programs during the emergency abatement and repair; and

WHEREAS, the College has determined, by approving this Agreement, that allowing the District use of the College's underutilized classroom instruction facilities will not interfere with their use by the College for any other purpose; and

WHEREAS, the District and College now desire to enter into this Agreement.

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

AGREEMENT

1. **Premises.** College hereby leases to District, and District hereby leases from College, the Premises located at 1900 Pico Boulevard, Santa Monica, California, in the location depicted within the red outline on the map attached hereto as Exhibit 1 and incorporated herein by reference. The Premises include the College Pico Classroom Complex.
2. **Term.**
 - 2.1. Initial Term. This Agreement shall commence July 11, 2022, and end June 30, 2024 (“Initial Term”), unless sooner terminated under any provision hereof. Any extension of this Initial Term shall be subject to the Parties’ mutual and fully-executed written amendment.
 - 2.2. Extension of Term. Any extension of the Agreement Term within the first five years of the District’s use shall be by mutual, fully-executed written amendment. Should the District desire to extend the Agreement Term, it will notify the College by December 31st, of the year immediately preceding the prior Initial or extended Term’s expiration.
3. **Lease Payments.**
 - 3.1. **Fees and Costs.** Compensation for District lease of the Premises, including Restroom Facilities (further defined below) will be \$500,000 annually (“Annual Fee”). The Annual Fee includes all parking, maintenance, and custodial service costs provided by the College to the District for use of the Premises and Restroom Facilities.
 - 3.2. **Payment Structure/Credits.** The College will accept payment of the Annual Fee in the form of a one-to-one lease credit. The credit will be applied to the College’s lease, currently in effect through May 3, 2058, for the entirety of the District property located at 1018 Arizona Avenue, Santa Monica, CA 90401, otherwise known as the “Madison Campus”. The annual invoice(s) for rent payments issued by the District to the College will show a \$500,000 credit toward the College’s rent payment for the Madison Campus.
 - 3.3. **Early Termination.** Termination of this Agreement, pursuant to Section 25 herein, will result in an adjustment to the District’s Annual Fee obligation. The Annual Fee for that academic year will be pro-rated between the semester the District utilized the Premises and Restroom Facilities and the semester the District did not. The District’s pro-rated lease obligation will be \$250,000 per semester of that academic year.
4. **Parking.**
 - 4.1. The College will provide the District with 40 active parking permits per academic semester through its iParq System to use unassigned parking spaces in College Parking Lots 3 and 4.
 - 4.1.1. The College shall create parking permits and accounts in the iParq System, based on the list the District will provide (“SMMUSD Faculty/Staff Parking List”). The SMMUSD Faculty/Staff Parking List shall include each faculty/ staff member’s:
 - 4.1.1.1. full name;
 - 4.1.1.2. email address;
 - 4.1.1.3. phone number specific to the individual receiving the permit; and
 - 4.1.1.4. vehicle(s) year, make, model, and license plate number.

- 4.1.2. The College will provide individuals on the SMMUSD Faculty/ Staff Parking List detailed, step-by-step instructions to access and personalize their iParq System account. District personnel may contact Parking@smc.edu with parking and parking permit issues or questions.
 - 4.1.3. The District may provide the College with updates to the SMMUSD Faculty/Staff Parking List throughout the Term of this Agreement.
- 4.2. Parking is provided on a space available basis. All vehicles must be safely parked without blocking fire lanes or other vehicles. District vehicles and personnel cannot park in space designated for College staff or otherwise restricted.
- 5. **Use of Premises.** The District is authorized to use the Premises for its public educational programs, including Olympic High School, Project Based Learning, Off Campus Learning Center, and Independent Study Hub. All District educational programs will be delivered within the Premises or on other District property.
- 6. **Personnel and Equipment.**
 - 6.1. The Parties, at their sole cost and expense, shall provide necessary personnel and equipment to perform their obligations herein.
 - 6.2. All personnel hired by a 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.
- 7. **Condition of Premises.**
 - 7.1. The Premises are offered for use by the District on an "AS IS" basis. By the District's entry and use of the Premises pursuant to this Agreement, the District accepts the Premises in "AS IS" condition. It is the District's responsibility to make such improvements as it deems necessary to make the Premises suitable for its intended use.
 - 7.2. The District acknowledges that the College has not made any representation or warranty as to the suitability of the Premises for the District's intended use. 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.
 - 7.3. The Parties shall not cause or permit any Dangerous Condition (defined below) to exist on the Premises. A Party will promptly provide notice, pursuant to the "Notice" section of the Agreement, if the Party becomes aware a Dangerous Condition exists on the Premises.
 - 7.3.1. "Dangerous condition", as defined in Government Code Section 830(a), "means a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used."
- 8. **Maintenance, Repairs, and Infrastructure Services.**
 - 8.1. The College shall be responsible for performing the following services on the Premises, in accordance with College standards:

- 8.1.1. Facility Maintenance and Repair. Ordinary Maintenance (defined below) and repairs to the Premises including, without limitation, service, and maintenance of: HVAC (including regular filter changes), plumbing, electrical, pest abatement, painting, perimeter fencing and gates, security and alarm systems, and exterior and interior lighting.
 - 8.1.1.1. "Ordinary Maintenance" is work to correct deterioration, decay, or damage to restore the infrastructure identified herein as nearly as practical.
- 8.1.2. Custodial Services. Monday through Friday custodial services.
- 8.1.3. Exterior Windows. Annual exterior window cleaning.
- 8.1.4. Security System. Upkeep of key-card and automatic access security system, security cameras, and all other access systems provided.
- 8.1.5. Grounds Keeping. Landscaping, maintenance, and replacement of: irrigation systems, exterior and interior lighting, and perimeter fencing and gates, including automatic access equipment.
- 8.1.6. Utilities. Basic utility services including telephone and data, water, gas, electricity, trash, and recycling.
- 8.1.7. Pest Control. Indoor and outdoor.
- 8.2. The District, with the College's cooperation as needed, shall repair, at its sole expense, damage to the Premises caused by the District's use. Failure to repair such damage may be deemed grounds for termination of this Agreement subject to the provisions of Section 25 herein.

9. Alterations and Improvements.

- 9.1. The District may perform non-structural alterations, non-structural additions, painting, repainting, and decorating without prior approval from the College.
 - 9.1.1. In the event any such work has a cost of materials and labor in excess of \$5,000, the District shall provide the College a written description of the work performed upon its completion.
- 9.2. Except as authorized in Section 9.1, District will not make any alterations, renovations, improvements, repairs, or otherwise demolish or remove all or any part of the Premises or any improvements or any installations in, on, or to the Premises or any part thereof (including, without limitation, any structural alterations, removal of walls or ceilings, or any cutting or drilling into any part of the Premises) (collectively "Alterations") unless and until District shall have (a) obtained the prior written consent of College and (b) complied with all such requirements concerning such Alterations as may be imposed by College from time to time. If such approval is granted, District shall cause the work described in any approved plans and specifications to be performed, at its expense, promptly, efficiently, competently and in a good and workmanlike manner by duly qualified or licensed persons or entities, using first grade materials, without interference with, or disruption to, the operations of the College. All such work shall comply with all applicable Law.
- 9.3. Unless waived by the College in writing, the District shall restore the Premises to their condition prior to the commencement of this Agreement with no damage thereto, reasonable wear and tear excepted and shall be responsible for the cost of damage to the Premises which occurs directly through the District's use. The College will provide the District with a presentation of costs for reimbursements ("Costs") after the District has relinquished possession of the Premises. Within

ten (10) working days from receipt of the Costs, the District shall either pay the Costs or notify the College of its intention to challenge the College's requested reimbursements. When the District challenges the College's Costs a meet and confer conference shall be promptly held. Once the Parties reach an agreed upon Cost, the District shall make the reimbursement within ten (10) working days.

10. Premises.

- 10.1. The College will cause to be installed a keypad on the glass access doors on the east-west walkway.
- 10.2. The College will provide the District access to its work order and custodial operations system.
- 10.3. The College will provide custodial services on weeknights and spot checks during the day.
- 10.4. Grounds service will be provided on the weekend.
- 10.5. The College will remove all wall items, computers, and MFD/Copiers. All furniture in Room 136 shall be moved by College.
- 10.6. The District will move and store all College furniture and return it upon the termination of this Agreement. The District may use any such furniture.

11. Restrooms.

- 11.1. Two gender-specific restrooms are located within the Premises.
- 11.2. District personnel and students requiring the use of restroom facilities, including an all-gender restroom, are authorized to use the restrooms on the first floor of Drescher Hall. Access to the building will be through the north side door to the hallway. Proof of vaccination will not be required, but anyone entering must comply with the College's indoor mask requirement.
- 11.3. The District is authorized to install a portable executive restroom at a location approved by the Vice President for Business and Administration.
- 11.4. The gender-specific restrooms located within the Premises, the restrooms on the first floor of Drescher Hall, and any District installed portable executive restroom are collectively referred to as "Restroom Facilities".

12. Deliveries and Student Dropoff.

- 12.1. The College has designated the restricted driveway west of the Premises for District deliveries. The District will be provided with keys to unlock the bollards. District personnel shall have the responsibility to remove and replace the bollards. The bollards may be removed only while the delivery is taking place and must be immediately replaced upon exit of the vehicle.
- 12.2. District student drop off shall occur on Pico Boulevard. The District shall designate a location and work with the City of Santa Monica on removing any street parking required to do so at its sole cost and expense.
- 12.3. District shall ensure that its staff and students do not use the driveway or turnaround east of the Premises for pickup or drop off.

13. Emergency Procedures.

- 13.1. The District and College have jointly approved an All-Hazard Mitigation Plan (Version 3.0 2017).
- 13.2. In accordance with the Plan Maintenance provisions (page 284) of the All-Hazard Mitigation Plan, District and College shall meet within 30 days of the execution of this Agreement to review their

respective emergency procedures given the District's use of the Premises and take such action as is necessary consistent with the purposes of the All-Hazard Mitigation Plan.

14. IT and Network.

- 14.1. District will install its own network using fiber from the City of Santa Monica. It is District's responsibility to secure access.
- 14.2. District will install their own WIFI access points and wireless network. College will remove existing access points within the Premises.
- 14.3. District understands that the College has a variety of WIFI access points throughout its campus. The College does not have content filtering on its access points. To the extent that District students access College WIFI access points, they may be subject to content that the District itself would not allow. District understands and agrees that the College has no obligation to alter its WIFI access point rules.
- 14.4. District will use College access controls to the Premises. College will provide key fobs to District personnel and program them so that they only access the Premises or certain areas of the Premises. District will provide College with a list of names of its personnel and the areas they should be provided access to.
- 14.5. District may install security cameras within or on the Premises. However, such cameras would be on the District's network and not integrated with the College's security cameras. No security camera on the Premises shall be removed or altered.
- 14.6. All technology equipment shall be provided by the District and serviced by the District. College shall have no responsibility for District's network or equipment.
- 14.7. All College phones within the Premises shall remain in place and used for emergency communication only. If District would like any phone relocated, the relocation shall be undertaken by the College.
- 14.8. The District will install its own telephones for its use. The phone will be VOIP and use the District's network.
- 14.9. College and District will share an IDF in accordance with a mutually agreed protocol. All cabling within the Premises to support District's network must be undertaken by the District.

15. Policing.

- 15.1. The Santa Monica College Police Department is responsible for law enforcement on College property.
- 15.2. District intends to assign one of its Campus Security Officers to the Premises. The Campus Security Officer shall interact only with District students.
- 15.3. In the event the Campus Security Officer observes any activity that requires law enforcement intervention, they shall immediately contact Santa Monica College Police.

16. Crime Reporting.

- 16.1. In accordance with the Clery Act, the College is responsible to collect four distinct categories of crimes in its Annual Security Report. This obligation extends to any crimes taking place within the Premises or on public property adjacent to the College campus. District shall report within 12 hours

to the Santa Monica College Police Department any of the following crimes that occur on the Premises or off the premises if related to District students coming or going to the Premises:

- 16.1.1. Criminal homicide (murder and non-negligent manslaughter, manslaughter by negligence), sexual assault (rape, fondling, incest, statutory rape), robbery, aggravated assault, burglary, motor vehicle theft, arson.
- 16.1.2. Hate crimes: larceny-theft, simple assault, intimidation, destruction/ damage/ vandalism of property.
- 16.1.3. Violence Against Women Act offenses: domestic violence, dating violence, stalking.
- 16.1.4. Arrests and referrals for disciplinary action: weapons law violations, drug abuse violations, liquor law violations.

17. Threat Assessment.

- 17.1. In the event a Party learns an individual using the Premises or the Santa Monica College Campus presents a potential threat to staff or students, which potentially impacts District Programs, it shall promptly report the threat to Santa Monica College Police Department and notify the other Party's On-Site Contact as soon as practicable.

- 17.1.1. Santa Monica College Police Department Contacts:

- 17.1.1.1. All uniformed College Police Enforcement Personnel
 - 17.1.1.2. Johnnie Adams, Police Chief, (310) 434-4302
 - 17.1.1.3. Jere Romano, Captain, (310) 434-8135
 - 17.1.1.4. Dispatcher (24-hours), (310) 434-4300

- 17.2. The District will provide the College with the cell phone numbers of the District's on-site administrative contacts. The College will provide the District with the cell phone numbers of the College's its on-site administrative contacts.

- 17.2.1. College On-Site Administrative Contacts:

- 17.2.1.1. Christopher Bonvenuto, Vice President for Business and Administration, (310) 592-4532
 - 17.2.1.2. Mike Tuitasi, Vice President for Student Affairs, (310) 429-7595
 - 17.2.1.3. Devin Starnes, Director of Facility Management, (310) 420-1854

- 17.2.2. District On-Site Administrative Contacts:

- 17.2.2.1. Jessica Rishe, Principal, (310) 729-4590
 - 17.2.2.2. Cynthia McGregory, Principal, (310) 228-8952
 - 17.2.2.3. Nicole Nicodemus, (213) 712-2620

18. COVID-19 Protocols.

- 18.1. In connection with its use of the Premises, District COVID-19 protocols shall apply and the District shall not be subject to College COVID-19 protocols within the Premises.

- 18.2. The District shall ensure District employees and students are aware of the College COVID-19 protocols concerning use of common areas and entry into buildings. The District understands the College has the right to enforce its COVID-19 protocols, including requiring proof of vaccination, for District employees and students who seek to enter College buildings other than the Premises and designated restroom facilities in Drescher Hall.
- 18.3. In the event the District becomes aware a College employee may have been in close contact with a District employee or student infected with COVID-19, the District will notify the College within 24 hours of such exposure.
- 18.4. In the event the College becomes aware a District employee may have been in close contact with a College employee or student infected with COVID-19, the College will notify the District within 24 hours of such exposure.

19. **Use Restrictions.**

- 19.1. District shall not use or occupy the Premises as a residence or for any lodging purpose.
- 19.2. District shall not stack, store or display goods or materials on the exterior of the Premises.
- 19.3. District shall not permit pets or animals of any kind other than service animals to enter the Premises without prior written approval from College.
- 19.4. District shall not permit firearms, explosives, or other hazardous materials to be on or in the Premises.
- 19.5. District shall not use or occupy the Premises, or permit any act or omission in or about the Premises in violation of any federal, state, county, municipal law, statute, ordinance, rule, regulation, order or judicial law, now or hereafter in effect, whether or not presently contemplated, including rules and regulations of the Santa Monica Community College District (collectively, the "Law"). District shall discontinue immediately any use of the Premises which is declared by any governmental authority to be a violation of Law.
- 19.6. The District shall not place additional locks or bolts upon any doors or windows located on the Premises, nor shall any changes be made in existing locks or door mechanisms.
- 19.7. District shall not knowingly cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises, except for Hazardous Material which is necessary to District's operations and will be used, kept and stored in a manner that complies with all Hazardous Material Laws. 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.
- 19.8. If District breaches the obligations stated in the preceding paragraph, or if the presence of Hazardous Material on the Premises caused or permitted by District results in contamination of the Premises or any other area of the College, or if contamination of the Center or any other area

of the College by any Hazardous Material otherwise occurs for which District is responsible, in addition to such act or omission constituting a breach of this Agreement and a default hereunder, District shall indemnify, defend (by counsel reasonably approved in writing by the College) and hold harmless the College and its board members, representatives, officers, consultants, employees, trustees, volunteers, and invitees from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of usable space or of any amenity of College, damages arising from any adverse impact on College operations, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such contamination. This indemnification of College by District includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision. Without limiting the foregoing, if the presence of any Hazardous Material caused or permitted by District results in any contamination of the Premises or any other area of College, District shall promptly take all actions at its sole expense as are necessary to return the Premises or any other area of College to the condition existing prior to the introduction of any such Hazardous Material to the Premises or any other area of College; provided that College's approval of such clean-up actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on College, in College's reasonable discretion. The Parties will promptly notify each other in writing if they have or acquire 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 each other with copies 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 the 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 and related to District's use of the premises. The District shall promptly notify the College of any liens threatened or attached against the Premises pursuant to any Environmental Laws.

- 19.9. District will not place or suffer to be placed or maintained on the exterior of the Premises, or any part of the interior visible from the exterior thereof, any sign, advertising matter or any other thing of any kind, and will not place or maintain any decoration, letter or advertising matter on the glass of any window or door of the Premises without first obtaining the College's prior written approval. All signage shall be consistent with applicable Law and shall be approved by all governmental entities having jurisdiction with respect thereto.
- 19.10. District shall not paint or decorate the exterior of the Premises, or any part of the interior visible from the exterior, without first obtaining College's written approval.
20. **Discontinuances and Interruptions of Utility Services.** College shall not be liable to SMMUSD in damages or otherwise if any utility shall become unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility, or (b) for any interruption in any utility service (including, without limitation, any heating, ventilation or air-conditioning) caused by the making of by the malfunction of any equipment or infrastructure, any necessary repairs or improvements, or by any cause beyond College's reasonable control.
21. **Control of Access.** With the exception of specific COVID-19 Protocols agreed to by the Parties in Section 18, the College, at its option and in its sole discretion, may at any time control and limit access to, in or

about, the College and surrounding area for the public health, safety, welfare, or any public purpose. College shall not be liable or responsible for any damages arising therefrom to the District, or any operations of District. District further agrees any such action by College does not entitle District to any damages from the College other than under the indemnification provision herein (Section 26).

22. **Safety of Premises.** The Premises may be monitored by a safety system or protocol implemented, maintained and operated by either District or College ("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.
23. **Accident/Incident Reporting.** District shall submit written accident/incident reports to the College as soon as practicable but not more than twenty-four (24) hours after the occurrence of or the District'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 District's use of the Premises or District'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 College's Police Department.
24. **Inspection of Premises.** District will permit College, its agents, employees, and contractors to enter all parts of the Premises at any reasonable time to inspect the same and to enforce or carry out any provision of this Agreement, including, without limitation, any access necessary for the making of any repairs which are College's obligation or right hereunder. No prior notice is required for such entry or inspections. However, absent an emergency, College will schedule inspections to minimize disruption of District's operations and shall provide reasonable notice if repairs are needed.
25. **Termination.** Termination of this Agreement may be for convenience or cause as specified below. Prior to either Party providing a Notice of Termination, and within ten (10) days after either Party determines there is a basis for Termination, the other Party shall be notified in writing, and a meet and confer conference shall be promptly held.
 - 25.1. **Termination for Convenience.** Either party may terminate this Agreement by written notification 60 days prior to the effective date of the termination. Neither Party shall be required to provide just cause for termination in the written notification.
 - 25.2. **Termination for Cause.** Either Party may terminate this Agreement immediately for cause. Cause shall include, without limitation:
 - 25.2.1. Material violation of this Agreement by College or District; or
 - 25.2.2. Any act by a Party exposing the other Party to liability to others for personal injury or property damage; or

- 25.2.3. 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.
- 25.3. Following the meet and confer conference, a Party shall allow a reasonable period for the defaulting Party to "cure" the default. If a Party terminates for cause, the other Party's rights in the Premises shall terminate sixty (60) days from 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.
- 25.4. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District and/or College.
26. **Indemnification.**
- 26.1. To the fullest extent permitted by California law, District shall indemnify, defend (by counsel reasonably approved in writing by the College) and hold harmless the College and its board members, representatives, officers, consultants, employees, trustees, volunteers, and invitees ("College Indemnitees") 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 and/or damage to property, arising out of or in connection with the use, conduct or any activities of District, its employees, or its students related to this Agreement, regardless of who was responsible for such injury or death. excepting instances of Willful Misconduct (defined below) by College Indemnitees. The District's obligation to indemnify, defend, and hold harmless shall exist regardless of the College Indemnitees' negligence.
- 26.1.1. "Willful Misconduct" is an intentional action so unreasonable or dangerous that the individual performing the action knows or should know it is highly probable to result in harm.
- 26.2. To the fullest extent permitted by California law, District shall indemnify, defend (by counsel reasonably approved in writing by the College), and hold harmless College Indemnitees against any and all loss, liability, damage, or expense, including any direct, indirect or consequential loss, liability, damage, or expense, for injury or death arising from any allegation of abuse or molestation by a student attending school on the Premises, regardless of who was responsible for such abuse or molestation.
27. **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.
28. **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.
29. **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:

<u>If to the District:</u> Santa Monica-Malibu Unified School District 1651 16th Street Santa Monica CA 90404 Attn: Carey Upton, Chief Operations Officer With a copy to: Orbach Huff & Henderson LLP 1901 Avenue of the Stars, Suite 575 Los Angeles, California 90067 Attn: David Orbach, Esq.; and Sarine A. Abrahamian, Esq.	<u>If to the College:</u> Santa Monica Community College District 1900 Pico Boulevard Santa Monica, CA 90405 Attn: Dr. Kathryn E. Jeffery, Superintendent/President With a copy to: Campus Counsel Santa Monica Community College District 1900 Pico Boulevard Santa Monica, CA 90405
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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.

30. **Assignment.** District shall not have the right, voluntarily or involuntarily, to assign this Agreement or to enter into any sublease.
31. **Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.
32. **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.
33. **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 of Los Angeles.
34. **Compliance with All Laws.**
 - 34.1. The District at its own expense shall comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Premises, and shall faithfully observe in its 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").
 - 34.2. 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.

35. **Compliance with Education Code Section 81378.1.**

35.1. Education Code Section 81378.1 states: "The governing board shall include, as a condition in any agreement to let any buildings, grounds, or space therein, together with any personal property located thereon, a provision that the agreement shall be subject to renegotiation and may be rescinded after 60 days' notice to the lessee if the governing board determines at any time during the term of the agreement that the buildings, grounds, or space therein subject to the agreement are needed for academic activities."

35.2. The College has determined that it has no need for the property for academic activities during the term of agreement. However, in compliance with Section 81379.1, this Agreement shall be subject to renegotiation and may be rescinded after 60 days' notice to the District if the governing board determines at any time during the term of the Agreement that the Premises are needed for academic activities.

36. **Each Party to Bear Own Costs and Attorneys' Fees.** Except as expressly set out in this Agreement, if either Party institutes legal action to enforce its rights under this Agreement, each Party shall solely bear its own respective costs, expenses and attorney's fees and no court shall have authority or jurisdiction to rule or order contrary to this section.

37. **Agreement to Cooperate.** Each Party agrees to cooperate with the other in conducting their respective activities on the Premises. Each Party agrees to promptly respond to concerns relating to use of the Premises expressed by the other Party.

38. **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.

39. **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.

40. **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.

41. **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.

42. **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.

43. **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.

44. **Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.

45. **Time Is of the Essence.** Time is of the essence with respect to the Parties' obligations herein.

46. **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.
47. **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.
48. **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.
49. **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.
50. **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. Every 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: _____, 2022

Dated: _____, 2022

Santa Monica-Malibu Unified School District

Santa Monica Community College District

By: _____

By: _____

Print Name: Ben Drati, EdD

Print Name: _____

Print Title: Superintendent of Schools

Print Title: _____

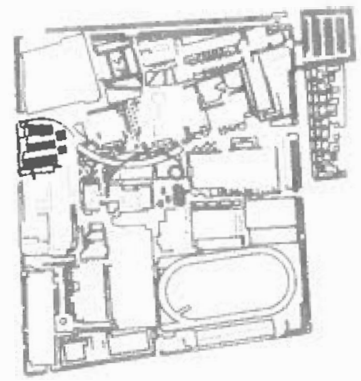
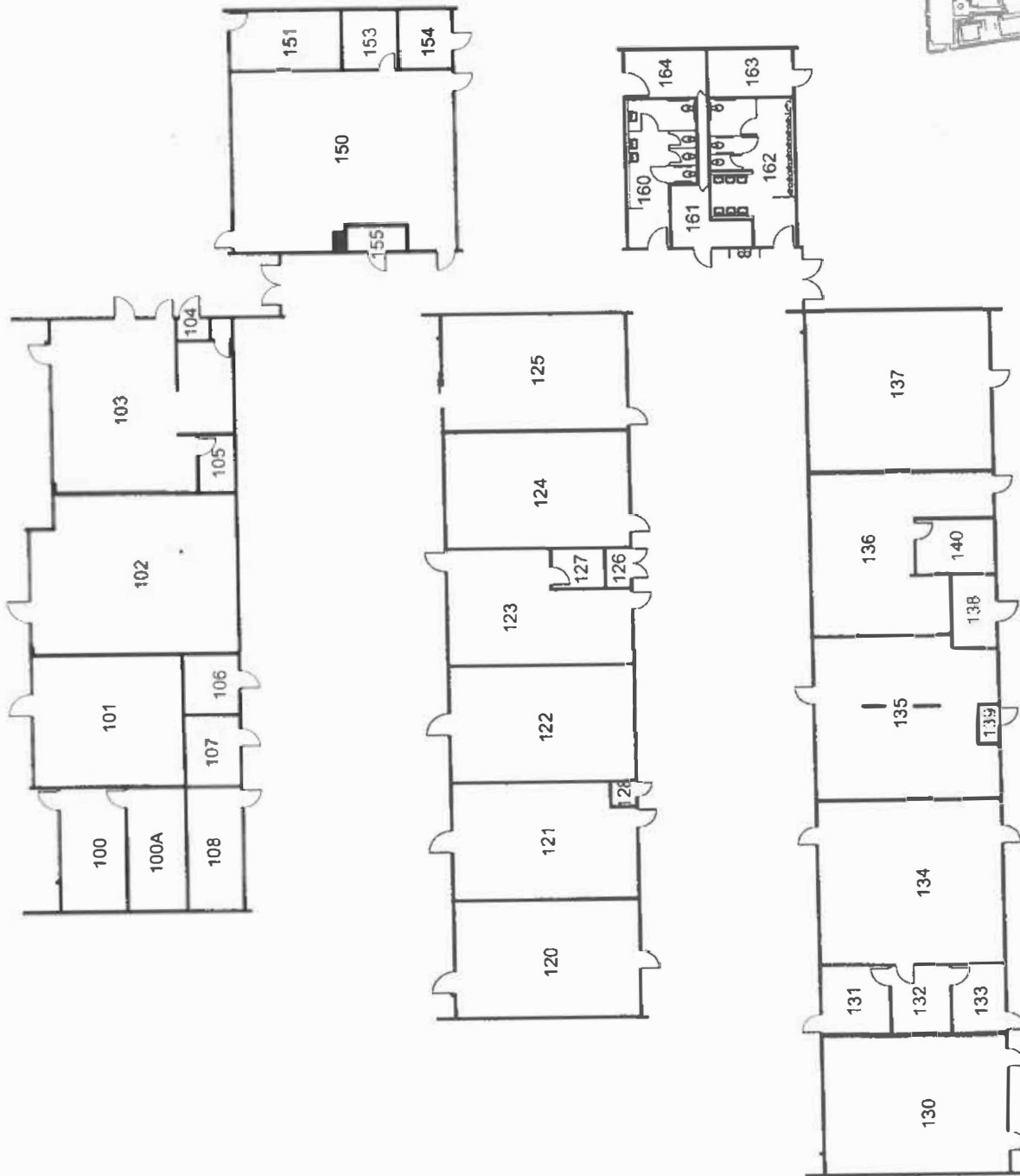


EXHIBIT 1

780 - Santa Monica Community College District

781 - Santa Monica College

Building 1 PICO CLASSROOM COMPLEX

Santa Monica College

Room #	Room Type	ASF	Stations	Dept	Prog	TOP/Service and Support	Status
100	310 Office	226	4	55	0099	General Assignment	A
100-A	310 Office	201	4	55	0099	General Assignment	A
101	110 Classroom	558	28	55	0099	General Assignment	A
102	110 Classroom	920	46	55	0099	General Assignment	A
103	110 Classroom	868	43	55	0099	General Assignment	A
103-A	730 Storage	12	0	55	0099	General Assignment	A
107	310 Office	109	1	55	0099	General Assignment	A
108	310 Office	108	1	55	0099	General Assignment	A
120	110 Classroom	610	30	55	0099	General Assignment	A
121	110 Classroom	587	29	55	0099	General Assignment	A
122	110 Classroom	606	30	55	0099	General Assignment	A
123	110 Classroom	511	25	55	0099	General Assignment	A
124	110 Classroom	606	30	55	0099	General Assignment	A
125	110 Classroom	608	30	55	0099	General Assignment	A
130	110 Classroom	720	36	55	0099	General Assignment	A
131	310 Office	130	1	55	0099	General Assignment	A
133	310 Office	100	1	55	0099	General Assignment	A
134	110 Classroom	854	43	55	0099	General Assignment	A
135	110 Classroom	810	40	55	0099	General Assignment	A
136	110 Classroom	774	39	55	0099	General Assignment	A
137	110 Classroom	846	42	55	0099	General Assignment	A
150	110 Classroom	1,047	52	55	0099	General Assignment	A
151	310 Office	184	1	55	0099	General Assignment	A
153	730 Storage	92	0	55	0099	General Assignment	A
154	310 Office	88	1	55	0099	General Assignment	A
Total Rooms: 25		12,175	557				