

**EXHIBIT C  
TO FACILITIES LEASE**

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

- 1. Preliminary Services Payments.** [NOT APPLICABLE] The terms and conditions pertaining to the payment for Preliminary Services, if any, under the Facilities Lease, are set forth in the Agreement for Preliminary Services (Exhibit L to the Facilities Lease).
- 2. Site Lease Payments.** As indicated in the Site Lease, Contractor shall pay One Dollar (\$1.00) per year to the District as consideration for the Site Lease until the expiration or early termination of the Site Lease and/or the Facilities Lease.
- 3. Guaranteed Project Cost (or Guaranteed Maximum Price).** Pursuant to the Facilities Lease, Contractor will cause the Project to be constructed for [REDACTED] Dollars (\$ [REDACTED]), ("Guaranteed Project Cost" or "GPC" or "Guaranteed Maximum Price" or "GMP"). Except as indicated herein for modifications to the Project approved by the District pursuant to Exhibit D, or by written amendment, Contractor will not seek additional compensation from District in excess of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments. District shall also pay the accrued interest on Lease Payments as indicated herein. The Guaranteed Project Cost shall be calculated as follows, and shall include the following components, as further detailed below:

<b>DETAILED GPC TABLE</b>			
Item	Component	Percentage	Amount
<b>COST TO PERFORM WORK &amp; GENERAL CONDITIONS</b>			
(A)	<b>Cost to Perform Work</b> (Subcontractor costs plus costs of Contractor-performed work)		\$
(B)	<b>General Conditions</b> (Including all General Requirements)		\$
<b>(C)</b>	<b>SUBTOTAL OF COST TO PERFORM WORK &amp; GENERAL CONDITIONS</b>		<b>\$</b>
<b>MARK-UPS</b>			
(D)	<b>Bonds</b> (Proposed & agreed-upon % multiplied by (C))	%	\$
(E)	<b>Insurance</b> (Proposed & agreed-upon % multiplied by (C))	%	\$
(F)	<b>Overhead &amp; Profit</b> (Proposed & agreed-upon % multiplied by (C))	%	\$
<b>(G)</b>	<b>TOTAL INITIAL MARK-UP</b>		<b>\$</b>
<b>CONTINGENCIES(S) / ALLOWANCES</b>			
(H)	<b>Contingency</b> (Only if agreed to and indicate as a set amount, not a percentage)		\$
(I)	<b>Allowance(s)</b> (Only if agreed to and indicate as a set amount, not a percentage)		\$
<b>(J)</b>	<b>TOTAL CONTINGENCIES &amp; ALLOWANCES</b>		<b>\$</b>
	<b>TOTAL GPC (C) + (G) + (J)</b>		<b>\$</b>
	<b>Interest on Lease Payments</b> (For Parties information, identify total anticipated amount here)		\$
	<b>TOTAL GPC + Anticipated Interest on Lease Payments</b>		<b>\$</b>

**3.1. Cost to Perform Work.**

3.1.1. **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 GPC, after all leveling between trades and subcontractors and without any added allowances or contingencies, unless specifically identified and approved, in advance, by the District.

3.1.2. **Contractor-Performed Work.** Costs incurred by the Contractor for self-performed work, if approved in advance by the District and procured pursuant to the Contract Documents.

**3.2. General Conditions.** The fixed amount to be paid for all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and 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 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.

**3.3. Bonds.** Mark-up for Bonds shall be 1 percent (X%) calculated against the Costs to Perform Work and General Conditions, but **NOT** against the Contingency and Allowance(s) amount(s).

**3.4. Insurance.** Mark-up for Insurance shall be 1 percent (X%) calculated against the Costs to Perform Work and General Conditions, but **NOT** against the Contingency and Allowance(s) amount(s).

**3.5. Overhead and Profit.** Mark-up for Overhead and Profit shall be 12 percent (X%) calculated against the Costs to Perform Work and General Conditions, but **NOT** against the Contingency and Allowance(s) amount(s).

**3.6. Contingency.**

3.6.1. **Contingency Amount.** A contingency of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (“Contingency”) is included in the Guaranteed Project Cost and may be used at the Contractor’s request only upon obtaining the District’s prior written approval consistent with the requirements herein.

3.6.2. **Mark-Up Contingency Only When Used.** When the Parties establish the Guaranteed Project Cost, Contractor shall **NOT** calculate mark-up for Bonds, Insurance, and Overhead and Profit for the Contingency. When Contractor is pricing any Work paid from the Contingency, Contractor may mark-up its pricing in the same structure it can for a Change Order (see the “Format for Proposed Change Order” section in **Exhibit D**), but only if the Contractor did not include the Contingency amount when it priced its Fee, bonds and insurance, overhead or profit to establish the GPC.

3.6.3. **Requests for Use of Contingency.** Prior to performing any Work that Contractor intends to be paid for out of any portion of the Contingency, Contractor must submit to the

District a written request for the Contractor's use of the Contingency that shall include:

3.6.3.1. The same detail and requirements as a Proposed Change Order as indicated in **Exhibit D**; and

3.6.3.2. Substantiation enabling the District to determine that the proposed use of the Contingency covers one of the items below for an "Allowable Contingency Use" and "Conditions for Contingency Use."

3.6.4. **Allowable Contingency Use.** The Contingency shall only be used for the following items:

3.6.4.1. Scope gaps;

3.6.4.2. Costs to address unforeseen safety items not contemplated by the Parties at the time of the execution of the Contract;

3.6.4.3. Construction associated with the refinement of incomplete design information within the Plans and Specifications ("**Missing Design Information**") that **could** have been identified by the District and corrected prior to the District's issuance of the request for proposal (or request for qualifications and proposals) for this Project. If Contractor performed Preliminary Services including constructability review, the preceding shall only apply if the Missing Design Information **could not** have been reasonably identified by Contractor at that time.

3.6.4.4. Damage that has occurred between trades during construction, excluding: (i) costs of repairing or correcting Work damaged or improperly executed by workers; (ii) work that was improperly or incorrectly performed by Contractor or its subcontractors or suppliers; or (iii) damage that is covered by Contractor's or Subcontractor's insurance, excluding the District's insurance; or

3.6.4.5. Other items requested by the Contractor if approved by the District in writing, in the District's sole discretion.

3.6.5. **Conditions for Contingency Use.** The Contingency shall only be used if **all** the following conditions are satisfied:

3.6.5.1. If Contractor demonstrates that the item was not otherwise in its or its Subcontractors' pricing for the Project; and

3.6.5.2. Only if the cost of the Work is not recoverable by Contractor from any other available funding source, including, without limitation, from others, by insurance or otherwise.

3.6.6. **Substantiating Contingency Use.** Contractor shall prepare documents for its use of Contingency through the "Changes in the Work" section of **Exhibit D**. Any PCO shall identify that Contractor shall be compensated out of the Contingency. Contractor shall prepare an updated Schedule of Values that includes a line item for the Work approved by the District in connection with the PCO. Unless the Contingency is not within the Guaranteed Project Cost, the District does not need to issue a Change Order to authorize the use of Contingency, and may instead provide Contractor written authorization for the use of Contingency.

- 3.6.7. **Contingency Exhaustion.** If Contractor depletes the Contingency, any costs for items referenced in this “Contingency” section shall be at the Contractor’s sole expense.
- 3.6.8. **End of Project Reconciliation.** The unused portion of the Contingency shall be retained by the District at the end of the Project and will be documented by the District through any reasonable means, including, without limitation, a deductive Change Order.

**3.7. Allowances.**

- 3.7.1. Allowances in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the specific scopes and amounts as indicated below (“Allowance(s)”), are included in the Guaranteed Project Cost and may be used at the Contractor’s request only upon obtaining the District’s prior written approval consistent with the requirements herein.

Allowance to _____ [LIST SCOPE OF ALLOWANCE, IF APPLICABLE]	\$ _____ [LIST AMOUNT OF ALLOWANCE]
Allowance to _____ [LIST SCOPE OF ALLOWANCE, IF APPLICABLE]	\$ _____ [LIST AMOUNT OF ALLOWANCE]
Allowance to _____ [LIST SCOPE OF ALLOWANCE, IF APPLICABLE]	\$ _____ [LIST AMOUNT OF ALLOWANCE]

- 3.7.2. **Mark-Up Allowance(s) Only When Used.** When the Parties establish the Guaranteed Project Cost, Contractor shall **NOT** calculate mark-up for Bonds, Insurance, and Overhead and Profit for the Allowance(s). When Contractor is pricing any Work paid from the Allowance(s), Contractor may mark-up its pricing in the same structure it can for a Change Order (see the “Format for Proposed Change Order” section in **Exhibit D**), but only if the Contractor did not include the Allowances amount when it priced its Fee, bonds and insurance, overhead or profit to establish the GPC.
- 3.7.3. **Requesting Use of Allowance(s).** District may authorize the use Allowance(s) in its discretion. Contractor may request to use Allowance(s), but must do so by submitting to the District a written request for the use of an Allowance that shall include:
  - 3.7.3.1. The same detail and requirements as a Proposed Change Order as indicated in **Exhibit D**;
  - 3.7.3.2. An explanation in sufficient detail demonstrating to the District’s satisfaction that the use of the Allowance is necessary to complete the Project; and
  - 3.7.3.3. Substantiation enabling the District to determine that the proposed use of the Allowance covers one of the scopes of the Allowances above
- 3.7.4. **Cost of Allowance Work Exceeds Allowance.** Contractor acknowledges and agrees that it prepared the Allowance(s) amounts. If the actual cost of Work for any portion of the Allowance exceeds the amount identified by Contractor for that Work in the Allowance, Contractor shall be solely responsible for all additional costs unless otherwise provided by the Contract Documents.
- 3.7.5. **End of Project Reconciliation.** The unused portion of the Allowance(s) shall be retained by the District at the end of the Project and will be documented by the District through any reasonable means, including, without limitation, a deductive Change Order.

**4. Payment of Guaranteed Project Cost.** District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments plus interest as indicated herein.

**4.1. Tenant Improvement Payments.** Prior to the District's taking delivery or occupancy of the Project, the District shall pay to Contractor \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) ("Tenant Improvement Payment(s)"), based on the amount of Work satisfactorily performed and approved by the District less the total amount to be paid as Lease Payments, according to the Contractor's Schedule of Values (**Exhibit G** to the Facilities Lease) and pursuant to the provisions in **Exhibit D** to the Facilities Lease.

**4.2. Lease Payments Plus Interest.** Thirty (30) days after the Parties execute the Memorandum of Commencement Date attached to the Facilities Lease as **Exhibit E** and the Contractor has completed and satisfied the conditions indicated below, the District shall pay to Contractor \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) ("Lease Payment(s)") plus interest, as indicated below.

4.2.1. It is the intent of the Parties that the Lease Payments plus interest will be kept from the Contractor's final payment application(s), including payment application(s) seeking payment of any Retention held pursuant to the Contract Documents.

4.2.2. The Lease Payments plus interest shall be consideration for the District's rental, use, and occupancy of the Project and the School Site(s) and shall be made in equal monthly installments for the duration of the Term.

4.2.3. The District represents that the total annual Lease Payment plus interest 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.

4.2.4. **Fair Rental Value.** District and Contractor have agreed and determined that the total Lease Payments plus interest constitute adequate consideration for the lease term in the 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 Facilities Lease and 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.

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

4.2.5.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments plus interest 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.

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

4.2.5.3. The District covenants to take all necessary actions to include the estimated

Lease Payments plus interest in each of its final approved annual budgets.

4.2.5.4. 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 plus interest 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 plus interest or any other payments due hereunder. The covenants on the part of District contained in this 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 Facilities Lease agreed to be carried out and performed by the District.

4.2.5.5. The Contractor cannot, under any circumstances, accelerate the District's payments under the Facilities Lease, but the District may elect to buyout the Facilities Lease as provided for herein.

4.2.6. **Timing of Lease Payments.** The first Lease Payment is due only after the following conditions have been completed and satisfied:

4.2.6.1. The Final Tenant Improvement Payment has been paid;

4.2.6.2. All applicable Retention (less the Lease Payments) has been paid pursuant to the terms of the Contract Documents;

4.2.6.3. The Parties have executed the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E**; and

4.2.6.4. The Contractor has provided 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.

4.2.7. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at        percent. To the extent that the Term runs into a subsequent calendar year, the interest rate shall not adjust, unless agreed upon by the District in writing. The first payment is due 30 Days after execution of the Memorandum of Commencement Date and the above conditions have been completed and satisfied.

Date of Payment	(A) Lease Payments	(B) Interest Due on Lease Payment	Amount Due by District to Contractor (A + B)
First Payment	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___
30 days thereafter	1/12 of Lease Payment	\$___	\$___

30 days thereafter	1/12 of Lease Payment	\$__	\$__
30 days thereafter	1/12 of Lease Payment	\$__	\$__
30 days thereafter	1/12 of Lease Payment	\$__	\$__
30 days thereafter	1/12 of Lease Payment	\$__	\$__
<b>Total</b>		<b>\$__</b>	<b>\$__</b>

4.2.8. **Financed Portion of Lease Payments.** The District requires the Contractor to finance a portion of the Lease Payments and that financing is reflected in the table above.

4.3. In no event shall the cumulative total of the Tenant Improvement Payments and the Lease Payments plus interest ever exceed the Guaranteed Project Cost as defined herein, unless modified pursuant to **Exhibit D** to the Facilities Lease.

**5. Changes to Guaranteed Project Cost.**

5.1. As indicated in the 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 Guaranteed Project Cost. If a cost impact or a change is agreed to by the Parties, it shall be reflected as a reduction or increase in the Tenant Improvement Payments 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. Any change to the Guaranteed Project Cost shall not affect the Lease Payments, nor the interest rate, unless expressly agreed upon by the District in writing.

5.2. The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the Plans and Specifications, as identified in **Exhibit J** to the Facilities Lease.

5.3. **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 Guaranteed Project Cost shall be identified by Contractor, and if approved in writing by the District, that cost savings shall be deducted from the Guaranteed Project Cost. 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 Guaranteed Project Cost. Contractor shall be entitled to an extension of Contract Time equal to the delay in Project Completion caused by any cost savings adopted by District, if requested in writing before the approval of the cost savings.

5.4. **Insurance and Bond Reimbursements.** At Project Completion, Contractor shall require reimbursement from its insurance brokers and/or insurers and its bond brokers and/or sureties, all portions of Contractor’s bond premiums, either paid or to be paid, that are not at-risk due to a reduction in the Guaranteed Project Cost. All amounts of premium reimbursement that Contractor receives from the Contractor’s insurance brokers and/or insurers and its bond brokers and or sureties, shall be withheld by District from Contractor’s Lease Payment(s). The District shall estimate this amount until Contractor indicates what the total amount of this reimbursement.

6. **Future Buyout of Facilities Lease.** The District may choose to buyout the Lease Payments in a lump sum during the term of the Facilities Lease. The Parties agree that any buyout will be memorialized in writing and serve to terminate the Site Lease and the Facilities Lease and will reduce the interest owed based on the time of the

buyout. Under no circumstances can this buyout occur until at least sixty (60) days after Project Completion or the Execution of the Memorandum of Commencement Date, whichever is later. In no event shall any buyout increase the total amount of Lease Payment amounts, plus interest in excess of the amounts included in the Project's Guaranteed Project Cost.

Deductive Alternate #1        \$ \_\_\_\_\_

Deductive Alternate #2        \$ \_\_\_\_\_

I the below-indicated bidder, declare under penalty of perjury that the information provided, and representations made in this bid are true and correct.

\_\_\_\_\_  
Proper Name of Company

\_\_\_\_\_  
Name of Bidder Representative

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, and Zip

(     )  
\_\_\_\_\_  
Phone Number

(     )  
\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
E-Mail

By: \_\_\_\_\_  
Signature of Bidder Representative

Date: \_\_\_\_\_