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AGREEMENT

BETWEEN

THE CITY OF TUSTIN

AND

**THE SOUTH ORANGE COUNTY COMMUNITY COLLEGE
DISTRICT**

FOR

CONVEYANCE OF A PORTION OF MCAS, TUSTIN

AND

**THE ESTABLISHMENT OF AN ADVANCED TECHNOLOGY
EDUCATIONAL CAMPUS**

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3 **AGREEMENT**
4 **BETWEEN**
5 **THE CITY OF TUSTIN**
6 **AND**
7 **THE SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT**
8 **FOR**
9 **CONVEYANCE OF A PORTION OF MCAS, TUSTIN**
10 **AND**
11 **THE ESTABLISHMENT OF AN ADVANCED TECHNOLOGY EDUCATIONAL**
12 **CAMPUS**

13
14 . THIS AGREEMENT (this "Agreement") is made and entered into this 22 day of
15 April, 2004, by and between the CITY OF TUSTIN ("City"), a municipal corporation
16 organized under the laws of the State of California, acting in its capacity as the Local
17 Redevelopment Authority for the disposition and conveyance of portions of the former Marine
18 Corps Air Station Tustin, California, and the SOUTH ORANGE COUNTY COMMUNITY
19 COLLEGE DISTRICT ("SOCCCD"). The City and SOCCCD are sometimes referred to herein
20 individually as a "Party" and collectively as the "Parties". The Parties agree as follows:

1
22 **1.0 SUBJECT AND PURPOSE OF THIS AGREEMENT; APPLICABLE**
23 **REQUIREMENTS**

24
25 **1.1 Background for this Agreement.**

26
27 1.1.1. Pursuant to the Defense Base Closure and Realignment Act of 1990 (Part A of
28 Title XXIX of Public Law 101-510; U.S.C. Section 2687 Note), as amended (the "Base Closure
29 Law"), the United States (the "Government") determined to close the Marine Corps Air Station
30 Tustin ("MCAS Tustin") located substantially within the City of Tustin. In 1992, the City was
31 designated by the Office of Economic Adjustment on behalf of the Secretary of Defense as the
32 local redevelopment authority ("LRA") for preparation of a reuse plan for MCAS Tustin and in
33 order to facilitate the closure of MCAS Tustin and its reuse in furtherance of the economic
34 development of the City and surrounding region.

35
36 1.1.2. In its capacity as the LRA, the City served as the lead agency for preparing the
37 base reuse plan, the applicable environmental documents under California law, and other
38 documents related to the planning for the civilian reuse of MCAS Tustin. The City determined
39 that the most appropriate tool to guide the conversion of the base from military to civilian use
40 and to facilitate review and approval of entitlements, permits, and uses was the preparation of a
41 combined reuse plan and specific plan. The MCAS Tustin Reuse Plan ("Reuse Plan") was
42 developed in accordance with federal procedures under the Base Closure Law and was adopted
3 by the City of Tustin City Council on October 16, 1996 and amended by Errata in September
44 1998. The Reuse Plan was subsequently reviewed and approved by the United States
45 Department of Housing and Urban Development. On February 3, 2003 the City approved and

1 adopted the MCAS Tustin Specific Plan/Reuse Plan by Ordinance No. 1257 setting forth the
2 zoning and entitlement framework for future development of the former MCAS Tustin (“Specific
3 Plan”). The portion of the former MCAS Tustin located within the City of Tustin is referred to
4 herein as “Tustin Legacy”. The Specific Plan conforms to and implements the Reuse Plan and
5 the Tustin General Plan.
6

7 1.1.3. A Final Joint Environmental Impact Statement/Environmental Impact Report for
8 the Disposal and Reuse of MCAS Tustin (the “Final EIS/EIR”) and Mitigation Monitoring and
9 Reporting Program for the Final EIS/EIR were adopted by the City on January 16, 2001. In
10 March 2001, a Record of Decision was issued by the Department of the Navy (hereinafter,
11 “Navy”) approving the Final EIS/EIR and the Reuse Plan.
12

13 1.1.4. SOCCCD reviewed drafts of the Reuse Plan and Specific Plan, the attendant
14 EIS/EIR, and other related and supporting documents. SOCCCD participated in the formulation
15 of such documents, provided comments, and otherwise fully participated in the process that
16 culminated in the certification of the environmental documents and the adoption and approval of
17 the Reuse Plan and Specific Plan.
18

19 1.1.5. The Reuse Plan and Specific Plan include all detailed planning, policies,
20 regulations, and implementation strategies and procedures necessary to guide the reuse and
1 development of all property located within MCAS Tustin. The Reuse Plan and Specific Plan are
22 intended to serve as both policy-oriented and regulatory documents and contain the development
23 and reuse regulations that will govern all development, construction, and use of property at
24 Tustin Legacy, subject to the provisions of Section 1.7.
25

26 1.1.6. Pursuant to the authority provided by section 2905(b)4 of the Base Closure Law
27 and the implementing regulations of the Department of Defense (32 CFR Part 175), the Secretary
28 of the Navy, on behalf of the United States of America, is authorized to convey surplus property
29 at a closing installation to the LRA at no cost for economic development purposes.
30

31 1.1.7. In May 2002, the Navy approved an Economic Development Conveyance of
32 Property (“EDC”) and agreed to convey 1,153 acres of the former MCAS Tustin to the City. On
33 May 13, 2002, a portion of this property was conveyed by the Navy to the City by Federal Deed,
34 in accordance with the provisions of that certain Agreement Between The United States of
35 America and the City of Tustin, California, For The Conveyance of a Portion of the Former
36 Marine Corps Air Station Tustin (“Conveyance Agreement”), which sets forth the terms and
37 conditions of the conveyance of portions of MCAS Tustin from the Navy to the City (“City
38 Property”). A portion of the City Property was leased to the City by the Navy pursuant to the
39 Conveyance Agreement and that certain Lease In Furtherance of Conveyance Between the
40 United States of America and The City of Tustin, California For Portions of the Former Marine
41 Corps Air Station Tustin (the “LIFO”).
42

3 1.1.8. The Conveyance Agreement contemplates that the City will, following
44 conveyance of the applicable portion of the City Property from the Navy to the City, convey a

1 portion of the City Property to SOCCCD (“SOCCCD Property”) for educational purposes in
2 accordance with the Reuse Plan and Specific Plan.
3

4 **1.2 Definitions; Attachments.** Capitalized terms used herein, including in the
5 Exhibits attached hereto, unless otherwise defined herein, shall have the respective meanings
6 specified in the Glossary of Defined Terms attached hereto as Exhibit “A.” Unless otherwise
7 indicated, references in this Agreement to sections, paragraphs, clauses, exhibits, attachments
8 and schedules are those contained in or attached to this Agreement and all exhibits and schedules
9 referenced herein are incorporated herein by this reference as though fully set forth in this
10 Agreement.
11

12 **1.3 General Intent of This Agreement.**
13

14 1.3.1. Consistent with the Reuse Plan and Specific Plan, the City desires and intends to
15 convey the SOCCCD Property to SOCCCD, and SOCCCD desires and intends to acquire the
16 SOCCCD Property, to plan, develop, maintain, and use such property solely and continuously as
17 an Advanced Technology Educational Campus. SOCCCD recognizes and acknowledges that
18 pursuant to Government Code Section 54999 *et seq.*, Article XIID, Section 4(a) of the State
19 Constitution, the California Environmental Quality Act, and other provisions of state law,
20 SOCCCD is obligated, or may be obligated, to dedicate, install, construct, or otherwise
21 contribute and fund such capital improvements and infrastructure as may be necessary to serve
22 the SOCCCD Property and any development or use maintained on the SOCCCD Property, or to
23 otherwise mitigate any adverse impacts development of the SOCCCD Property may cause or
24 create, subject to the provisions of Section 4.7.1.
25

26 1.3.2. The City, acting in its capacity as the LRA, will coordinate with and assist
27 SOCCCD in its development and use of the SOCCCD Property as an Advanced Technology
28 Educational Campus provided the City receives assurances from SOCCCD that the SOCCCD
29 Property will be developed and used in a manner consistent with the Reuse Plan and Specific
30 Plan and that SOCCCD will participate in any financing plans or programs the City may devise
31 or implement to fund infrastructure improvements necessary or desirable to provide municipal,
32 utility, and public services to all property and development within the boundaries of the former
33 MCAS Tustin, subject to the provisions of Section 4.7.1.
34

35 **1.4 Purpose of This Agreement.**
36

37 1.4.1. The purpose of this Agreement is (a) to effectuate the Reuse Plan and Specific
38 Plan, in accordance with the terms and conditions set forth in the Conveyance Agreement, the
39 Federal Deed and LIFOC, through the disposition and development of portions of Tustin Legacy
40 as further described herein and (b) to provide for the conveyance to SOCCCD of the SOCCCD
41 Property, for the maintenance of the SOCCCD Property by SOCCCD and the construction by
42 SOCCCD on the SOCCCD Property of improvements that will support an Advanced
43 Technology Educational Campus on the SOCCCD Property, including necessary infrastructure
44 and other improvements as more particularly described herein.
45

1 1.4.2. This Agreement provides for the disposition by the City to SOCCCD of the
2 SOCCCD Property and further ensures that the SOCCCD Property is planned, developed,
3 maintained and used in a manner consistent with the Reuse Plan and Specific Plan. Subject to
4 the specific provisions set forth in this Agreement, this Agreement is intended to:
5

- 6 1. Identify the planning goals of SOCCCD and the City for the SOCCCD
7 Property;
- 8
- 9 2. Identify the scope and schedule for short-range improvements and long-
10 range development plans for the SOCCCD Property;
- 11
- 12 3. Establish a process for meaningful consultation on development and
13 operational issues of mutual concern;
- 14
- 15 4. Identify capital infrastructure improvements, roadway, existing utility and
16 new utility rights-of-way and easement dedications, as may be needed, and
17 environmental impact report mitigation that will be required of SOCCCD;
- 18
- 19 5. Identify procedures necessary or desirable to implement this Agreement;
20 and
- 21
- 22 6. Affirm SOCCCD's commitment to return, directly to the City, the
23 SOCCCD Property, or any portion thereof, not used for the purposes for
24 which it was transferred in accordance with the Reuse Plan and Specific
25 Plan.
26

27 1.4.3. This Agreement will ensure the implementation of the Reuse Plan and Specific
28 Plan, eliminate uncertainty in planning, provide for the orderly development of the SOCCCD
29 Property, eliminate uncertainty about the validity of the application of the rules and regulations
30 in the Reuse Plan and Specific Plan to the SOCCCD Property and SOCCCD, allow installation
31 of necessary or desirable improvements, provide for public services appropriate to the
32 development and use of SOCCCD, and generally serve the public interest within the City and the
33 surrounding region.
34

35 1.4.4. The Parties acknowledge that the consideration to be received by the City
36 pursuant to this Agreement and the consideration to be received by SOCCCD hereunder
37 constitute sufficient consideration to support the covenants and agreements of the City and
38 SOCCCD.
39

1 **1.5 Description of SOCCCD Property Affecting This Agreement.**

2
3 1.5.1. Initial Closing and Conveyance of SOCCCD Property. The initial closing and
4 conveyance of the SOCCCD Property (“Initial Closing”) will consist of approximately 37.66
5 acres, more or less, of the SOCCCD Property located in the City, County of Orange, California
6 as more particularly described as Parcels I-E-1.1, I-E-3 and I-E-4, and legally described on
7 Exhibit “B” (“Initial SOCCCD Parcels”). The Initial Closing by the City to SOCCCD will occur
8 upon satisfaction of the requirements set forth herein for such transfer.
9

10 1.5.2. Subsequent Closing and Conveyance of SOCCCD Property. A subsequent
11 closing and conveyance of the SOCCCD Property (“Subsequent Closing”) will consist of
12 approximately 30.71 acres, more or less, of the remaining SOCCCD Property located in the City,
13 County of Orange, California as more particularly described as Parcels IV-J-4, IV-J-5, and IV-J-
14 6, and legally described on Exhibit “C” (“Subsequent SOCCCD Parcels”). The Subsequent
15 Closing by the City to SOCCCD will occur upon satisfaction of the requirements set forth herein
16 for such transfer.
17

18 1.5.3. Pending conveyance of the Subsequent SOCCCD Parcels by the Navy to the City,
19 SOCCCD agrees to sublease from the City at the Initial Closing the Subsequent SOCCCD
20 Parcels in accordance with the Sublease.
1

22 **1.6 Federal Requirements Applicable to Tustin Legacy.** The Parties acknowledge
23 and agree that this Agreement is entered into as part of the Economic Development Conveyance
24 of certain property at Tustin Legacy to the City pursuant to the Base Closure Law, the
25 Conveyance Agreement and the terms and conditions of the Federal Deed, including the
26 Environmental Restriction pursuant to California Civil Code Section 1471 contained therein, and
27 as required by the Reuse Plan and Specific Plan. Notwithstanding any provision to the contrary
28 contained herein, this Agreement is and shall be subject to the terms and conditions of the
29 Conveyance Agreement and the Federal Deed and the rights, obligations and remedies of the
30 Federal Government thereunder, and nothing contained in this Agreement shall be construed in a
31 manner that is inconsistent with the rights, obligations and remedies of the Federal Government
32 thereunder, provided, that other than those obligations set forth in the Quitclaim Deed, SOCCCD
33 shall not be deemed to have assumed any of the City's obligations to the Federal Government
34 under the Conveyance Agreement or the Federal Deed.
35

36 **1.7 Local Requirements.**

37
38 1.7.1 This Agreement is subject to all Government Requirements, including the Tustin
39 General Plan, the Reuse Plan, the Specific Plan and any redevelopment plan hereinafter enacted
40 with respect to the SOCCCD Property, each of which is incorporated herein by reference and
41 made a part hereof as though fully set forth herein.
42

3 1.7.2 Notwithstanding any other provision of this Agreement, in the event SOCCCD
44 processes plans for a particular structure with the California Division of the State Architect
45 (“DSA”), as required or permitted under Section 81130-81149 of the California Education Code,

1 as it may be amended from time to time (“The Field Act”), or by DSA or another State of
2 California agency under another applicable statute that concerns the review and approval of
3 building plans for community college structures, then SOCCCD shall be exempt from processing
4 such plans for a particular structure with the City.
5

6 1.7.3 SOCCCD and the City acknowledge that the foregoing provisions of this Section
7 1.7 do not limit the City's right to exercise normal processing, review and approval rights, and
8 collection of normal fees in connection therewith, concerning matters not within DSA's
9 authority, including, but not limited to, plans for grading, drainage, siting of improvements,
10 alterations to a public right-of-way, circulation, parking and utilities connection.
11

12 1.7.4 SOCCCD shall provide copies of plans being processed by SOCCCD with DSA
13 to the City on a timely basis (either as part of the ongoing communication process provided for
14 in Section 4.5 or otherwise) for the City's courtesy review and comment.
15

16 1.7.5 The City shall exercise its processing, review and approval authority in a manner
17 that does not discriminate against SOCCCD as compared with other school districts developing
18 property within Tustin Legacy.
19

20 **1.8 Not a Development Agreement.** This Agreement is not a Development
1 Agreement as provided in Government Code Section 65864 and is not a grant of entitlement,
22 land use approval or vested right in favor of SOCCCD. The City shall cooperate in good faith,
23 within applicable legal constraints and consistent with applicable City policies, and take such
24 actions as may be necessary and appropriate to effectuate and carry out this Agreement in a
25 timely manner.
26

27 **2.0 EFFECT OF AGREEMENT IS BINDING**

28

29 This Agreement, and all of the terms, covenants, obligations, rights, standards, and
30 conditions of this Agreement, shall run with the land comprising the SOCCCD Property and
31 shall be binding upon and inure to the benefit of the parties and their respective assigns, heirs,
32 other successors-in-interest, lessees, and all other persons or entities acquiring the SOCCCD
33 Property or any portion thereof or any interest therein. Nothing in this Agreement shall be
34 construed as a dedication or transfer of any right or interest in the title to the SOCCCD Property,
35 except as otherwise expressly provided in this Agreement. All of the provisions of this
36 Agreement shall be enforceable as equitable servitudes and shall constitute covenants running
37 with the land pursuant to applicable law, including, but not limited to, Section 1468 of the
38 California Civil Code. All of the burdens, obligations, duties, rights, and benefits of the parties
39 under this Agreement (including without limitation the right of SOCCCD to construct, develop,
40 and maintain an Advanced Technology Educational Campus) shall continue in full force and
41 effect, notwithstanding the completion of all or any portion of the Advanced Technology
42 Educational Campus, until such time as the City in its sole discretion determines that
3 enforcement of these burdens, obligations, duties, rights, and benefits is no longer equitable.
44

45 **3.0 PLANNING GOALS**

1
2 **3.1 General Planning Goals.** The SOCCCD Property is designated for development
3 and use as an Advanced Technology Educational Campus and is located within and constitutes
4 an integral part of Neighborhood A of the Reuse Plan and Specific Plan. Neighborhood A is part
5 of a broader mix of public-serving uses in an educational environment that includes community
6 college uses, an elementary school site, and County of Orange anticipated facilities including a
7 Regional Law Enforcement Training Facility and an abused children’s shelter. SOCCCD will
8 plan, develop and maintain an Advanced Technology Educational Campus as defined in Exhibit
9 A to this Agreement. SOCCCD will use reasonable efforts to plan, develop, and use the
10 SOCCCD Property in a manner that is supportive of the intent of Neighborhood A and which is
11 compatible with the other uses which may be developed and maintained within Neighborhood A
12 in accordance with the Reuse Plan and the Specific Plan.

13
14 **3.2 Use of SOCCCD Property.** The Parties acknowledge and agree that the
15 SOCCCD Property will be conveyed for use in perpetuity and continuously as an Advanced
16 Technology Educational Campus. SOCCCD represents and agrees that its undertakings pursuant
17 to this Agreement are for the purpose of developing such an Advanced Technology Educational
18 Campus and not for speculation in land holding or for subsequent sale to other parties.
19 SOCCCD acknowledges and agrees that no voluntary or involuntary successor in interest of
20 SOCCCD shall acquire any rights or powers under this Agreement except as provided in Article
21 12.

22
23 **4.0 DEVELOPMENT AND REUSE**

24
25 **4.1 Development General Requirements.** Subject to the applicable provisions of
26 this Agreement, development of the SOCCCD Property is subject to all Governmental
27 Requirements including but not limited to the Tustin General Plan, the Reuse Plan and Specific
28 Plan, Cooperative Agreement DO2-119 between the City of Tustin, Orange County Flood
29 Control District and the County of Orange, Agreement Between the City of Irvine and The City
30 of Tustin Regarding the Implementation, Timing and Funding of Transportation/Circulation
31 Mitigation for the MCAS Tustin Project, Amendment to the Joint Exercise of Powers Agreement
32 Between the City of Santa Ana and the City of Tustin Regarding the Tustin-Santa Ana
33 Transportation System Improvement Authority, and any Redevelopment Plan(s) enacted
34 hereafter with respect to the SOCCCD Property, each of which is incorporated herein by
35 reference and made a part hereof as though fully set forth herein.

36
37 **4.2 Development Standards.** Subject to the applicable provisions of this Agreement,
38 the maximum density and intensity of uses, the general location of uses, the number and size of
39 legal lots, the maximum height and size of the proposed improvements, requirements for the
40 dedication and reservation of land for public purposes and other standards of development
41 applicable to the SOCCCD Property shall be in accordance with Chapter 2, Plan Description, and
42 Chapter 3, Land Use and Development/Reuse Regulations, in the Reuse Plan.

43
44 **4.3 Development Process.**

1 4.3.1. SOCCCD shall prepare short-range and long-range academic and facilities plans
2 for the SOCCCD Property (“Short-Range Plan” and “Long-Range Plan”) that demonstrate
3 SOCCCD’s financial and management plans to implement the requirements of the Reuse Plan
4 and Specific Plan. Such plans shall promote orderly growth and development of the SOCCCD
5 Property and establish a framework for campus development. The facilities planning shall
6 include but not be limited to the following components as applicable:
7

- 8 1. academic quads and classroom buildings
- 9 2. student/faculty housing
- 10 3. ancillary services
- 11 4. support commercial operations on the campus
- 12 5. recreation/open space
- 13 6. parking locations
- 14 7. roadways
- 15 8. security and maintenance/utility functional areas

16
17 The preparation of the Short-Range Plan is expected to take approximately two (2) years
18 to complete with the preparation of the Long-Range Plan expected to take approximately five (5)
19 years to complete. These time schedules may vary, contingent upon changes in academic needs,
20 enrollment demand and availability of funding. Notwithstanding any such variations in time
21 schedules, SOCCCD acknowledges and agrees that within five (5) years from the date of the
22 Initial Closing it shall have completed the Short-Range Plan and Long-Range Plan, and shall
23 have made significant progress towards the implementation of such plans. The Parties
24 acknowledge that the provisions of the Short-Range Plan and Long-Range Plan will be subject to
25 revision and refinement from time to time as development proceeds or SOCCCD's needs and
26 plans evolve over time.
27

28 SOCCCD will consult with the City in preparation of its Short Range and Long-Range
29 Plans and shall share a preliminary draft of such plans with the City for review and comment
30 prior to its release to the public. SOCCCD agrees to give consideration to all comments received
31 from the City on such plans. In adoption of its Short Range and Long-Range Plans, SOCCCD
32 shall comply with all requirements of CEQA and its implementing regulations.
33

34 4.3.2 Prior to commencing the use of the SOCCCD Property or the construction or
35 installation of any improvement on the SOCCCD Property and subject to the applicable
36 provisions of this Agreement (including Section 1.7), SOCCCD shall comply with the
37 Development Processing Requirements, including the requirement to prepare and submit a
38 Concept Plan for an Advanced Technology Educational Campus on the SOCCCD Property in
39 accordance with Section 4.2.1 of the Specific Plan and all requirements contained in Chapter 4 of
40 the Specific Plan.
41

42 SOCCCD shall process all appropriate environmental documents for individual projects
43 as required by CEQA and its implementing regulations. SOCCCD shall also notify the City of
44 all projects on the SOCCCD Property as that term is defined by CEQA.
45

1 **4.4 Major Improvements.** Subject to the applicable provisions of this Agreement
2 (including Section 1.7), SOCCCD shall not construct or make or permit the construction or
3 making of any Major Improvements on the SOCCCD Property without providing the
4 Community Development Director, as a courtesy, with all documents and information related to
5 any such Major Improvements (“Construction Documents”), including concept drawings, design
6 development drawings, and final construction designs and specifications. Subject to the
7 applicable provisions of this Agreement (including Section 1.7), SOCCCD shall provide the
8 Community Development Director, as a courtesy, with the Construction Documents at each
9 phase of the development and drafting process, or upon a reasonable request by the Community
10 Development Director or his/her designated representative. The City may provide comments to
11 any Construction Documents and SOCCCD agrees to give full consideration to all such
12 comments received by SOCCCD within thirty (30) days following receipt by the Community
13 Development Director of the applicable Construction Documents and SOCCCD shall not begin
14 construction of the Major Improvement(s) under review by the City prior to the expiration of
15 such thirty (30) day review period.
16

17 **4.5 Development Coordination.** During the planning and development of the
18 Advanced Technology Educational Campus on the SOCCCD Property, SOCCCD shall hold
19 regular meetings, at least quarterly, with City representatives included the Assistant City
20 Manager and the Community Development Director, and their representatives, to discuss the
21 planning, development, and operational issues of mutual concern, including the preparation,
22 submission and review of concept plans, the Short Range and Long Range Development Plans
23 and Construction Documents. Such meetings shall serve as a forum for exchange of information
24 concerning the design and development of the Advanced Technology Educational Campus as
25 well as provide the opportunity for the City to advise SOCCCD of other development issues
26 which may affect the SOCCCD Property.
27

28 **4.6 Existing Structures and Other Improvements.** Subject to the requirements of
29 Chapter 3 of the Reuse Plan and Section 5.3 of this Agreement, SOCCCD shall demolish or
30 upgrade existing structures on the SOCCCD Property to conform to the Uniform Building Code,
31 as amended by the City, State of California Title 24 Access Compliance (handicapped
32 provisions), and the requirements of the Americans with Disabilities Act (“ADA”). Existing
33 buildings, open space areas, and other improvements on the SOCCCD Property shall be
34 demolished or upgraded in accordance with Chapter 3 of the Specific Plan.
35

36 **4.7 Utilities and Infrastructure.**
37

38 **4.7.1 Backbone Infrastructure Improvements.**
39

40 4.7.1.1 SOCCCD acknowledges and agrees that the development of the SOCCCD
41 Property, together with the development of the remainder of Tustin Legacy, will require the
42 funding and construction of backbone infrastructure improvements located off the SOCCCD
43 Property, including Tustin Legacy road improvements, traffic and circulation improvements,
44 flood control channels and retention basins, and lighting and landscaping (“City’s Tustin Legacy
45 Backbone Infrastructure Program”).

1
2 4.7.1.2 Except for lighting and landscaping backbone infrastructure which may be
3 funded by a City assessment district, the City hereby waives and agrees to relieve SOCCCD of
4 its fair share obligation for the City's Tustin Legacy Backbone Infrastructure Program, whether
5 funded by City Community Facilities District(s), by City Assessment District(s), or by City
6 capital facilities fees. SOCCCD agrees not to oppose a determination by the City to form an
7 assessment district for lighting and landscaping, and to include the SOCCCD Property in such
8 district, and agrees not to oppose the imposition of assessments on terms that do not discriminate
9 against the SOCCCD Property as compared with other public agency property in the proposed
10 district.

11
12 4.7.1.3 Capital facilities also needed to serve Tustin Legacy are facilities for water
13 (domestic and reclaimed), sewer, electricity, gas, telephone, cable and telecommunications
14 ("Other Entities' Tustin Legacy Backbone Infrastructure Program"). SOCCCD shall pay its fair
15 share contribution to the Other Entities' Tustin Legacy Backbone Infrastructure Program to the
16 full extent permitted by applicable law through connection fees of those entities or as otherwise
17 required by each such entity's rules and regulations for service.

18
19 4.7.1.4 This Agreement meets the EIS/EIR requirement that any development
20 applicant enter into an Agreement to acknowledge its fair share contribution to funding the
1 construction of backbone infrastructure at Tustin Legacy.

22
23 4.7.2 Horizontal Improvements. SOCCCD acknowledges and agrees that it shall be
24 responsible for design, installation and construction of all Horizontal Improvements for
25 development of the SOCCCD Property and as required by the City or other utility providers
26 pursuant to any entitlement conditions, Development Permit, the Reuse Plan or any other
27 governmental requirement, subject to the provisions of Section 1.7.

28
29 4.7.3 Utilities.

30
31 4.7.3.1 Provision of Utilities. SOCCCD shall be solely responsible for
32 obtaining utility services to serve the SOCCCD Property. Any separate metering of utilities
33 required by any utility service provider shall be the responsibility of SOCCCD. SOCCCD shall
34 pay all service charges, and all initial utility deposits and fees, for water, electricity, sewage,
35 janitorial, trash removal, gas, telephone, pest control and any other utility services furnished to
36 the SOCCCD Property and the improvements on the SOCCCD Property ("Utilities"). The City
37 shall not be liable for any reason for any loss or damage resulting from an interruption of any of
38 these services. In order to facilitate upgrading of utility systems, the City may designate the
39 provider of Utilities and in such event SOCCCD shall use such designated provider; provided
40 that SOCCCD shall have no claim against the City, of any type, for any failure of such provider
41 to provide such service, and SOCCCD's remedy, if any, shall be limited to such provider.

42
3 4.7.3.2 Pre-existing Utility Systems. SOCCCD acknowledges and agrees that
44 pre-existing water, electric, sewer, natural gas, and storm drainage systems may be present on the
45 SOCCCD Property ("Utility Systems") and that such Utility Systems will be transferred to

1 SOCCCD from the City as related personal property by a Bill of Sale at the Initial Closing. The
2 Utility Systems are to be upgraded or replaced with new systems as part of the planned
3 development and reuse of MCAS Tustin or may be used by the Government for the provision of
4 Utilities to support ongoing Government activities on MCAS Tustin. SOCCCD, its employees,
5 agents, or contractors, shall not alter, modify, repair, replace, or relocate any part of the Utility
6 Systems without the prior written consent of the City. Such consent is within the reasonable
7 discretion of the City and will not be granted where any such alteration, modification, repair,
8 replacement, or relocation may interfere with the development or reuse of MCAS Tustin.
9 SOCCCD shall be responsible for all costs related to such alteration, modification, repair,
10 replacement, or relocation. The City, the Government, and utility service providers shall at all
11 times have full access to the SOCCCD Property for operation, maintenance, repair and
12 replacement of these systems as may be required. An easement providing such access shall be
13 included in the quitclaim deed conveying the SOCCCD Property from the City to SOCCCD.
14 Such operation, maintenance, repair and replacement activities shall take priority over the
15 provision of Utilities to SOCCCD or any use of the SOCCCD Property by SOCCCD in the event
16 of any conflict and the City and the Government shall not be liable for any loss or damage
17 resulting from the disconnection or interruption of utility services to SOCCCD or any
18 interference with SOCCCD's use of the SOCCCD Property necessitated by such activities. The
19 determination to disconnect or interrupt any of SOCCCD's utility service or interfere with
20 SOCCCD's use of the SOCCCD property is within the sole discretion of the City, provided that
21 the City will provide SOCCCD with fourteen (14) days' prior notice of such determination,
22 except in the case of utility breakages and emergency interruptions not within the control of the
23 City.

24 25 **5.0 CONSENT TO REGULATION AND FINANCING**

26
27 **5.1 SOCCCD Consent to Regulation.** Subject to the applicable provisions of this
28 Agreement (including Section 1.7), SOCCCD acknowledges and consents to the City's
29 regulation of the development and the use of the SOCCCD Property, notwithstanding any other
30 provision of state law or equity to the contrary, including any principle or right of sovereignty or
31 preemption that may otherwise inure to the benefit of SOCCCD under the laws of the State of
32 California. SOCCCD acknowledges that its compliance with the regulatory program as
33 described in this Agreement is required by the Reuse Plan and Specific Plan and is a primary
34 inducement in securing (1) the conveyance of the SOCCCD Property from the United States and
35 (2) the City's support and approval of such conveyance.

36
37 **5.2 Consent to Financing Participation.** SOCCCD consents to and agrees to
38 participate in and shall not contest, oppose, or challenge any Funding Process the City may
39 initiate to finance the Tustin Legacy Backbone Infrastructure Program provided the terms of
40 such Funding Process do not discriminate against the SOCCCD Property as compared with other
41 portions of the City Property, and all subject to the provisions of Section 4.7.1.

42
43 **5.3 No Opposition.** SOCCCD shall not contest, oppose, or challenge, nor fund or
44 assist in any way any other person or entity to contest, oppose, or challenge before any local,
45 state, or federal agency, or file or maintain any actions or proceedings before a court or

1 administrative body to set aside, enjoin, challenge, appeal, or otherwise pursue any legal,
2 equitable, or administrative remedies regarding the approval or implementation of any proposals,
3 applications, approvals or permits (including any related environmental documentation) relating
4 to the former MCAS Tustin, or regarding any proposed, approved, or existing uses at the former
5 MCAS Tustin which are consistent with the Reuse Plan or Specific Plan including but not
6 limited to development proposals on Parcel I-E-1 or any other parcel abutting the SOCCCD
7 Property.

8 9 **6.0 ENVIRONMENTAL PROVISIONS**

10 11 **6.1 As Is, Where Is, With All Faults.**

12
13 6.1.1 SOCCCD acknowledges and agrees that SOCCCD has examined the Property and
14 will accept the property in an “AS IS, WHERE IS, WITH ALL FAULTS” condition, in its
15 present state and condition and with all faults, if any. SOCCCD further acknowledges and
16 agrees, except as otherwise provided in this Agreement, that the City has not made and does not
17 make and specifically negates and disclaims any representations, warranties, promises,
18 agreements or guarantees of any kind or character, whether express or implied, oral or written,
19 past, present or future, whether by the City or any of its agents, elected or appointed officials, or
20 representatives or employees.

1
22 6.1.2 Environmental Condition of SOCCCD Property; Restrictions. SOCCCD
23 acknowledges and agrees that the acquisition of the SOCCCD Property by SOCCCD will be
24 subject to other conditions, restrictions, and clauses contained in many of the environmental
25 reports prepared for the City Property, including without limitation the Conveyance Agreement,
26 the Environmental Baseline Study (“EBS”), the Finding of Suitability to Transfer (“FOST”), any
27 quitclaim deed for the SOCCCD Property from the Navy, the Finding of Suitability to Lease
28 (“FOSL”), and the EIS/EIR (“Environmental Reports”), and that the City has provided, or
29 provided access to, all such Environmental Reports known to the City.

30
31 **6.2 Environmental Mitigation.** SOCCCD shall install, contribute, dedicate,
32 improve, or otherwise provide all necessary Environmental Mitigation as applicable for the use
33 and development of the SOCCCD Property. Such mitigation shall be fully installed or completed
34 as identified in the Final EIS/EIR. The Environmental Mitigation required for the SOCCCD
35 Property is described in the EIS/EIR and the quitclaim deed conveying the SOCCCD Property
36 from the Government to the City, which, in relevant part, is set forth verbatim in the quitclaim
37 deed attached as Exhibit “D” to this Agreement (“Quitclaim Deed”).

38
39 **6.3 Adequacy of the EIS/EIR.** SOCCCD acknowledges that the EIS/EIR is a legally
40 adequate and sufficient document, prepared, certified, and approved in a manner consistent with
41 all applicable provisions of federal and state law, and SOCCCD and the City acknowledge that
42 the EIS/EIR is the controlling program environmental document governing this Agreement and
43 the conveyance of the SOCCCD Property to SOCCCD from the City, but only to the extent
44 SOCCCD uses the SOCCCD Property in the manner provided in Section 4 of this Agreement.
45 SOCCCD acknowledges and agrees that it is also required to comply with all requirements of

1 CEQA and its implementing regulations in adopting the program document and any additional
2 required supplemental documentation for the acquisition of the SOCCCD Property and for
3 individual projects on the SOCCCD Property.

4 5 **7.0 TRANSFER AND CONVEYANCE** 6

7 **7.1 Schedule.** The City agrees to convey that portion of the SOCCCD Property
8 owned by the City to SOCCCD in an initial closing (the "Initial Closing") no later than thirty
9 (30) days after the execution of this Agreement; at such Initial Closing, the City also will transfer
10 possession to SOCCCD, by Sublease, of that portion of the SOCCCD Property held by the City
11 under the terms of that certain Lease in Furtherance of Conveyance dated May 13, 2002. The
12 City agrees to transmit to SOCCCD a deed for the conveyance of the remaining portion of the
13 SOCCCD Property to SOCCCD in a subsequent closing ("Subsequent Closing(s)") no later than
14 forty-five (45) days after the City receives title from the Government of such remaining
15 portion(s) of the SOCCCD Property.
16

17 Upon written acceptance of this Agreement, this Agreement shall constitute the joint
18 escrow instructions of SOCCCD and the City to Escrow Holder (First American Title) to open
19 an escrow. Escrow Holder shall not prepare any further escrow instructions restating or
20 amending this Agreement unless specifically so instructed by the City and SOCCCD in writing.
21 Any such supplemental escrow instructions must be in writing and signed by the City and
22 SOCCCD and accepted by the Escrow Holder as effective.
23

24 **7.2 Quitclaim Deed.** The SOCCCD Property shall be conveyed by one or more good
25 and sufficient quitclaim deeds in substantially the form of the Quitclaim Deed attached hereto
26 and made a part hereof as Exhibit "D".
27

28 **7.3 Sublease.** That portion of the SOCCCD Property not owned in fee by the City at
29 the time of the Initial Closing shall be transferred to SOCCCD by the sublease attached hereto
30 and made a part hereof as Exhibit "E" ("Sublease"). The Parties shall also record a short form
31 notice of the Sublease against the portions of the SOCCCD subleased from the City to SOCCCD
32 in substantially the form of Exhibit "F," attached hereto and made a part hereof ("Short Form
33 Notice of Sublease").
34

35 **7.4 Personal Property.** The City's right, title and interest in the Personal Property
36 shall be transferred to the SOCCCD at the Closings pursuant to the terms and conditions of a Bill
37 of Sale, in substantially the form attached hereto and made a part hereof as Exhibit "G".
38

39 **7.5 Surveys and Title Insurance.** SOCCCD shall have the right to request and
40 obtain an ALTA extended coverage owner's policy of insurance and any other title endorsements
41 as SOCCCD deems necessary; provided that the issuance of an ALTA Policy shall not delay the
42 Close of Escrow and shall not be a condition precedent to the Close of Escrow. Any title
43 insurance that may be desired by SOCCCD shall be procured at its sole cost and expense. The
44 City shall cooperate with SOCCCD or its authorized agent and shall permit examination and
45 inspection of any documents relating to the title of the SOCCCD Property as it may have

1 available. If such searches disclose title exceptions that appear to be in error to SOCCCD, the
2 City agrees to cooperatively work with SOCCCD to have the title exceptions removed, released,
3 or insured over recognizing that the SOCCCD Property is being conveyed by the City "As Is".
4

5 **8.0 ESCROW CLOSING**

6
7 **8.1 City Document Deliveries.** The City shall deliver to the Initial Closing and
8 Subsequent Closing, as appropriate, the following documents reasonably satisfactory to
9 SOCCCD and in a form previously reviewed and approved by SOCCCD, duly authorized,
10 executed, and notarized:
11

12 A. Quitclaim Deed in the form set forth in Exhibit "D" conveying fee ownership of
13 the SOCCCD Property to SOCCCD.
14

15 B. Bill of Sale for the Personal Property that will be conveyed to SOCCCD in the
16 form set forth in Exhibit "G."
17

18 C. Sublease in the form set forth in Exhibit "E" transferring possession of the leased
19 SOCCCD Property to SOCCCD.
20

21 D. Short Form Notice of Sublease in the form set forth in Exhibit "F".
22

23 E. A Federal "FIRPTA" Affidavit executed by the City certifying that the City is not
24 a "foreign person" under the Foreign Investment in Real Property Tax Act.
25

26 F. California's Real Estate Withholding Exemption Certificate Form 597-W.
27

28 G. Such proof of the City's authority and authorization to enter into this Agreement
29 and consummate the transactions contemplated hereby, and such proof of the power and
30 authority of the individuals(s) executing and/or delivering any instruments, documents or
31 certificates on behalf of the City to act for and/or bind the City as may be reasonably required by
32 the Title Company and/or SOCCCD.
33

34 H. Certificate confirming that the City's representations in this Agreement are true
35 and correct as of the date of the Closing in substantially the form set forth in Exhibit "H-1".
36

37 I. Such other documents or instruments as Escrow Holder may reasonably request to
38 consummate the transaction contemplated herein.
39

40 **8.2 SOCCCD Document Deliveries.** SOCCCD shall deliver to the Initial Closing
41 and Subsequent Closing, as appropriate, the following documents reasonably satisfactory to the
42 City and in a form previously reviewed and approved by the City, duly authorized, executed, and
43 notarized:
44

1 A. Quitclaim Deed in the form set forth in Exhibit "D" conveying fee ownership of
2 the SOCCCD Property to SOCCCD.

3
4 B. Bill of Sale for the Personal Property that will be conveyed to SOCCCD in the
5 form set forth in Exhibit "G."

6
7 C. Sublease in the form set forth in Exhibit "E" transferring possession of the leased
8 SOCCCD Property to SOCCCD.

9
10 D. Short Form Notice of Sublease in the form set forth in Exhibit "F".

11
12 E. Such proof of the SOCCCD's authority and authorization to enter into this
13 Agreement and to consummate the transactions contemplated hereby, and such power and
14 authority of the individuals(s) executing and delivering any instruments, documents or
15 certificates on behalf of SOCCCD to act for and/or bind SOCCCD as may be reasonably
16 required by the Title Company and/or the City.

17
18 F. Certificate confirming that the SOCCCD representations in this Agreement are
19 true and correct as of the date of the Closing in substantially the form set forth in Exhibit "H-2".

20
21 G. Such other documents or instruments as Escrow Holder may reasonably request to
22 consummate the transaction contemplated herein.

23
24 **8.3 Procedures for Conveyance of SOCCCD Property from City to SOCCCD.**

25
26 8.3.1 Costs and Expenses. All costs and expenses of Closing shall be the responsibility
27 of SOCCCD.

28
29 8.3.2 Other Actions of Escrow Holder. At the Close of Escrow and subject to
30 satisfaction or waiver by the benefited party of any of the document delivery requirements noted
31 in Section 8.1 or 8.2, Escrow Holder shall promptly undertake the following in the manner
32 indicated below:

33
34 8.3.2.1 Funds. Debit all expenses of escrow to SOCCCD to be deposited with
35 the Escrow Holder by SOCCCD.

36
37 8.3.2.2 Recording. Cause the Quitclaim Deed, the Short Form Notice of
38 Sublease and other documents which SOCCCD and the City may mutually direct, or which may
39 be required to be recorded by the terms of this Agreement, to be recorded in the Official
40 Records, obtain conformed copies thereof and distribute same to SOCCCD and the City.

41
42 8.3.2.3 Title Policy. If requested by SOCCCD, direct the Title Company to
3 issue SOCCCD's Title Policy to SOCCCD. Concurrent with the issuance of the Title Insurance
44 Policy and the City's Title Insurance Policy, if any, the Title Company shall provide
45 endorsements as may be requested by the respective insured parties.

1
2 8.3.2.4 Delivery of Documents to SOCCCD and City. Deliver to SOCCCD
3 and the City original counterparts (and conformed copies, if applicable) of the Quitclaim Deed,
4 the Short Form Notice of Sublease, the FIRPTA Certificate, the California Form 597-W and
5 other documents (or copies thereof) deposited into Escrow by SOCCCD or the City pursuant
6 hereto, and deliver to SOCCCD and the City a certified copy of their respective Escrow closing
7 statements.

8
9 8.3.2.5 Other Actions. Take such other actions as the SOCCCD and the City
10 direct pursuant to mutually executed supplemental escrow instructions.

11 12 **9.0 RESERVED EASEMENTS**

13
14 The Quitclaim Deed conveying the SOCCCD Property to SOCCCD shall contain any
15 necessary reservations of easements by the City that the City determines are required to
16 implement the Reuse Plan and Specific Plan and facilitate redevelopment of MCAS Tustin.

17 18 **10.0 COVENANTS AND RESTRICTIONS**

19
20 **10.1 Use Covenant.** SOCCCD covenants for itself and its successors that SOCCCD,
1 and its successors, shall use the SOCCCD Property only for those uses specified in Section 3.2 of
22 this Agreement.

23
24 **10.2 Maintenance Covenant.** From and after the date of acquisition by SOCCCD of
25 any portion of the SOCCCD Property, SOCCCD and its successors shall: (i) maintain the
26 portions of the SOCCCD Property owned by it in a clean and weed-free condition; (ii) maintain
27 any improvements on the SOCCCD Property under construction consistent with construction
28 industry practice; and (iii) upon completion of all or any portion of improvements, maintain
29 improvements in the same aesthetic and same condition or better as the condition of the
30 improvements at the time a certificate of occupancy is issued on the improvements, reasonable
31 wear and tear excepted.

32 33 **10.3 Non-Discrimination and Equal Opportunity.**

34
35 10.3.1 SOCCCD covenants and agrees, for itself and its successors, that (a) it shall not
36 discriminate against any employee or applicant for employment on any basis prohibited by law
37 and (b) it has received and read, understands and agrees to be bound with respect to the entirety
38 of the SOCCCD Property by the Non-Discrimination Covenant contained in the Navy Deed.

39
40 10.3.2 SOCCCD shall provide equal opportunity in all employment practices.

41
42 10.3.3 Obligation to Refrain from Discrimination. SOCCCD covenants and agrees for
3 itself and its successors that there shall be no discrimination against or segregation of any person,
4 or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital
5 status, national origin or ancestry in the use, occupancy, tenure, or enjoyment of the SOCCCD

1 Property nor shall SOCCCD itself or any person claiming under or through it establish or permit
2 any such practice or practices of discrimination or segregation with reference to the selection,
3 location, number, use or occupancy of tenants, subtenants, sublessees or vendees of the
4 SOCCCD Property.
5

6 10.3.4 Redevelopment Law; Form of Nondiscrimination and Nonsegregation Clauses.

7 All deeds, leases or contracts that SOCCCD enters into that affect the SOCCCD Property shall
8 contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:
9

10 10.3.4.1 In Deeds:
11

12 “The grantee herein covenants by and for itself, its successors and assigns,
13 and all persons claiming under or through them, that there shall be no
14 discrimination against or segregation of, any person or group of persons
15 on account of race, color, creed, religion, sex, sexual orientation, marital
16 status, national origin or ancestry in the sale, lease, sublease, transfer, use,
17 occupancy, tenure or enjoyment of the land herein conveyed, nor shall the
18 grantee itself or any person claiming under or through it, establish or
19 permit any such practice or practices of discrimination or segregation with
20 reference to the selection, location, number, use or occupancy of tenants,
1 lessees, subtenants, sublessees or vendees in the land herein conveyed.
22 The foregoing covenants shall run with the land.”
23

24 10.3.4.2 In Leases:
25

26 “The lessee herein covenants by and for itself, its successors and assigns,
27 and all persons claiming under or through them, that there shall be no
28 discrimination against or segregation of any person or group of persons,
29 on account of race, color, creed, religion, sex, sexual orientation, marital
30 status, national origin or ancestry in the leasing, subleasing, renting,
31 transferring, use, occupancy, tenure or enjoyment of the land herein
32 leased, nor shall lessee itself, or any person claiming under or through it,
33 establish or permit such practice or practices of discrimination or
34 segregation with reference to the selection, location, number, use or
35 occupancy of tenants, lessees, sublessees, subtenants or vendees in the
36 land herein leased.”
37

38 10.3.4.3 In Contracts:
39

40 “There shall be no discrimination against or segregation of any person or
41 group of persons on account of race, color, creed, religion, sex, sexual
42 orientation, marital status, national origin or ancestry in the sale, lease,
3 sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor
44 shall the transferee itself or any person claiming under or through it,
45 establish or permit any such practice or practices of discrimination or

1 segregation with reference to the selection, location, number, use or
2 occupancy of tenants, lessees, subtenants, sublessees or vendees of the
3 land.”
4

5 **11.0 DEED RESTRICTIONS/COVENANTS RUNNING WITH THE LAND**
6

7 The obligations of SOCCCD set forth in this Agreement shall be covenants running with
8 the land, shall be set forth in the Quitclaim Deed and shall be binding upon SOCCCD and all
9 subsequent owners of the SOCCCD Property or any part thereof. The Quitclaim Deed shall
10 convey the SOCCCD Property subject to reservations, covenants and restrictions set forth in the
11 quitclaim deed transferring the SOCCCD Property from the Navy to the City, the Conveyance
12 Agreement and this Agreement.
13

14 **12.0 CHANGES TO OWNERSHIP AND CONTROL BY SOCCCD**
15

16 **12.1 Restrictions on Rights and Powers Under Agreement.** SOCCCD agrees that
17 no voluntary or involuntary successor in interest of SOCCCD shall acquire any rights or powers
18 under this Agreement or in the SOCCCD Property except as set forth in this Article 12.
19

20 **12.2 Restrictions on Transfer.** SOCCCD and its successors-in-interest shall not
21 effect, or agree to effect, any transfer, sale, assignment, gift or other conveyance of all or any
22 portion of the SOCCCD Property or any improvements thereon or any interest therein, or any
23 right or interest under this Agreement, whether voluntarily, involuntarily or by operation of law
24 or otherwise (collectively, a “Transfer”), unless such Transfer is a Permitted Transfer.
25 “Permitted Transfer” shall mean only any of the following:
26

27 (a) Any mortgage, deed of trust, pledge, hypothecation or other similar
28 transfer (including sale-leaseback financing transactions) for the purpose of providing security
29 for the repayment of indebtedness and related obligations incurred to finance or refinance the
30 acquisition, development or construction of the SOCCCD Property or improvements thereon in
31 accordance with the provisions of this Agreement, provided, that such mortgage, deed of trust,
32 pledge, hypothecation or other similar transfer (including sale-leaseback financing transactions)
33 shall:
34

35 (I) be subordinate to this Agreement, and
36

37 (II) provide that the proceeds of such mortgage, deed of trust, pledge,
38 hypothecation or other similar transfer (including sale-leaseback financing transactions) shall be
39 used solely for the purposes set forth in Article 12.2(a).
40

41 (b) Granting of easements or similar rights to public utilities or governmental
42 or quasi-governmental entities in the ordinary course of development or operation of the
3 SOCCCD Property in accordance with the provisions of this Agreement.
+4

1 (c) Leases or subleases for use of the SOCCCD Property only as permitted
2 under this Agreement, provided that the City has approved the lessee or sublessee, which
3 approval shall not be unreasonably withheld. In the event SOCCCD or a successor desires to
4 effect a lease or sublease, SOCCCD or such successor shall submit to the City the name of the
5 proposed lessee or sublessee and such other information as the City may reasonably request for
6 the purposes of determining that such lessee or sublessee has the capability and resources
7 necessary to carry out its obligations under the proposed lease or sublease. The information that
8 may be requested by the City shall include, but not be limited to, (i) current financial statements
9 of the proposed lessee or sublessee to the extent existing (and if not, then other reasonable
10 evidence of financial resources), (ii) the names of the persons or entities who manage or control
11 the affairs of the proposed lessee or sublessee and (iii) information regarding the experience of
12 the proposed lessee or sublessee (and the persons managing or controlling such lessee or
13 sublessee) in owning or operating enterprises such as or similar to the enterprises to be pursued
14 under the proposed lease or sublease. Within twenty (20) business days after receipt of the
15 relevant information reasonably requested by the City, the City shall give SOCCCD or its
16 successor written notice of approval or disapproval of the proposed lessee or sublessee.
17

18 (d) Any other Transfer as to which SOCCCD or its successor in interest
19 receives the prior written consent of the City, which consent may be withheld by the City for any
20 reason whatsoever.
21

22 **12.3 Other Transfers.** For the purposes of this Agreement, "Transfer" also shall
23 include any of the following:
24

25 (a) If SOCCCD is or becomes bankrupt or insolvent or if any involuntary
26 proceeding is brought against SOCCCD (unless, in the case of a petition filed against SOCCCD,
27 the same is dismissed within ninety (90) days), or SOCCCD makes an assignment for the benefit
28 of creditors, or institutes a proceeding under or otherwise seeks the protection of federal or State
29 bankruptcy or insolvency laws, including the filing of a petition for voluntary bankruptcy or
30 instituting a proceeding for reorganization or arrangement;
31

32 (b) If a writ of attachment or execution is levied on this Agreement or on the
33 SOCCCD Property, or on any portion thereof, where such writ is not discharged within ninety
34 (90) days;
35

36 (c) If, in any proceeding or action in which a Party is a party to such
37 proceeding or action, a receiver is appointed with authority to take possession of the SOCCCD
38 Property, or any portion thereof, or any improvements thereon, where possession is not restored
39 to the Party within ninety (90) days; or
40

41 (d) If SOCCCD experiences any change in status, ownership or control after
42 which SOCCCD does not continue to be engaged as a duly authorized provider of college-level
3 educational services under applicable law.
44

1 **12.4 Remedies for Improper Transfers.** Any purported Transfer that is not a
2 Permitted Transfer shall, at the election of the City, be null and void. If there is any Transfer that
3 is not a Permitted Transfer, such Transfer shall be a Material Default under this Agreement as of
4 the date of the transfer, which date shall not be extended by Force Majeure Delay. In the event
5 of a Transfer in violation of this Article 12, the City shall have all remedies available to it at law
6 and in equity, including the right to exercise the Right of Reverter contained in Section 16.3.

7
8 **12.5 Termination of Restrictions.** The provisions of this Article 12 shall expire and
9 be of no further force or effect on the date thirty (30) years after the date on which the first
10 Quitclaim Deed is recorded in the official records of Orange County, California.

11
12 **13.0 INDEMNIFICATION AND ENVIRONMENTAL PROVISIONS**

13
14 **13.1 SOCCCD's Indemnification.** SOCCCD shall indemnify, protect, defend,
15 assume all responsibility for and hold harmless the City and its appointed and elected officials,
16 employees, contractors, representatives and agents (collectively referred to as the "Indemnified
17 Parties"), with counsel reasonably acceptable to the City, from and against any and all Claims
18 resulting or arising from or in any way connected with the following, provided SOCCCD shall
19 not be responsible for (and such indemnity shall not apply to) the gross negligence or willful
20 misconduct of the Indemnified Parties:

- 1
22 A. SOCCCD's use of the SOCCCD Property in any way;
23
24 B. Any other activities of SOCCCD;
25
26 C. Any plans or designs for Improvements prepared by or on behalf of the SOCCCD,
27 including any errors or omissions with respect to such plans or designs;
28
29 D. Any loss or damage to the City resulting from any inaccuracy in or breach in any
30 representation or warranty of SOCCCD, or resulting from any breach or default by SOCCCD
31 under this Agreement; or
32
33 E. Any development or construction of improvements by SOCCCD, whether
34 regarding quality, adequacy or suitability of the plans, any labor, service, equipment, or material
35 furnished to the SOCCCD Property, any person furnishing the same or otherwise.
36

37 **13.2 Environmental Indemnification.** Effective as to the SOCCCD Property, upon
38 SOCCCD's acquisition of the fee title to all or any portion thereof, SOCCCD shall, to the
39 maximum extent permitted by law, indemnify, protect, defend, assume all responsibility for and
40 hold harmless the Indemnified Parties from and against any and all Claims resulting or arising
41 from or in any way connected with the existence, release, threatened release, presence, storage,
42 treatment, transportation and/or disposal of any Hazardous Materials at any time on, in, under,
3 from, about or adjacent to any portion or portions of the SOCCCD Property, regardless whether
44 any such condition is known or unknown now or upon acquisition and regardless of whether any
45 such condition pre-exists acquisition or is subsequently caused, created or occurring, provided,

1 however, that SOCCCD shall not be responsible for (and such indemnity shall not apply) to the
2 gross negligence or willful misconduct of the Indemnified Parties. This environmental
3 indemnity shall be included in any recorded short form of this Agreement against said lands and
4 shall be binding upon successors of SOCCCD owning all or any part thereof in accordance with
5 Section 13.3 of this Agreement.
6

7 **13.3 Duration of Indemnities.** The indemnities set forth in this Section 13 shall
8 survive any Closing or the termination of this Agreement, and shall be included in the Quitclaim
9 Deed and continue to be binding and in full force and effect in perpetuity with respect to
10 SOCCCD and its successors.
11

12 **14.0 REPRESENTATIONS**

13
14 **14.1 City.** The City hereby represents to SOCCCD that on and as of the date of this
15 Agreement and on and as of the Closing, the City has full capacity, right, power and authority to
16 execute, deliver and perform this Agreement and all documents to be executed by the City
17 pursuant hereto, and all required action and approvals therefore have been duly taken and
18 obtained for the Closing. The individuals signing this Agreement and all other documents
19 executed or to be executed pursuant hereto on behalf of the City shall be duly authorized to sign
20 the same on the City's behalf and to bind the City thereto. This Agreement and all documents to
1 be executed pursuant hereto by the City are and shall be binding upon and enforceable against
22 the City in accordance with their respective terms.
23

24 **14.2 SOCCCD.** SOCCCD hereby represents to the City that on and as of the date of
25 this Agreement and on and as of the Closing, SOCCCD has full capacity, right, power and
26 authority to execute, deliver and perform this Agreement and all documents to be executed by
27 SOCCCD pursuant hereto, and all required action and approvals therefore have been duly taken
28 and obtained for the Closing. The individuals signing this Agreement and all other documents
29 executed or to be executed pursuant hereto on behalf of SOCCCD shall be duly authorized to
30 sign the same on SOCCCD's behalf and to bind SOCCCD thereto. This Agreement and all
31 documents to be executed pursuant hereto by SOCCCD are and shall be binding upon and
32 enforceable against SOCCCD in accordance with their respective terms.
33

34 **15.0 NOTICE**

35
36 Notices shall be deemed sufficient under this Agreement if made in writing and
37 submitted to the following addresses (or to any new or substitute address hereinafter specified, in
38 a writing theretofore delivered in accordance with the notice procedure set forth herein by the
39 intended recipient of such notice):
40

41	If to the City:	City of Tustin
42		300 Centennial Way
3		Tustin, CA 92780
44		Attn: City Manager & Assistant City Manager
45		

1 City of Tustin
2 300 Centennial Way
3 Tustin, CA 92780
4 Attn: Community Development Director

5
6 With a copy to: George R. Schlossberg, Esq.
7 Kutak Rock LLP
8 1101 Connecticut Avenue, N.W.
9 Suite 1000
10 Washington, DC 20036
11 (202) 828-2418

12
13 If to SOCCCD: Dr. Raghu P. Mathur, Chancellor
14 South Orange County Community College District
15 8000 Marguerite Parkway
16 Mission Viejo, CA 92692

17
18 With a copy to: Dennis O'Neil
19 Hewitt & O'Neil LLP
20 19900 MacArthur Blvd.
1 Irvine, CA 92612

21
22
23 **16.0 EFFECT OF CONVEYANCE.**

24
25 **16.1 Effect of Quitclaim Deeds.** The delivery of the executed Quitclaim Deed
26 pursuant to this Agreement from the City to SOCCCD shall be deemed full performance by the
27 City of its obligations hereunder with regard to the SOCCCD Property other than any obligations
28 of the City which are required by this Agreement to be performed after the delivery of such
29 Quitclaim Deed.

30
31 **16.2 Possession.** Upon Closing, the City shall immediately deliver possession of the
32 SOCCCD Property to SOCCCD.

33
34 **16.3 Right of Reverter.**

35
36 16.3.1 Notwithstanding SOCCCD's obligation to use the Property for the purposes for
37 which it was transferred in accordance with Section 10 of this Agreement in perpetuity, and
38 SOCCCD's obligation not to sell, transfer, assign or otherwise convey any interest in the
39 Property other than in accordance with section 12 of this Agreement for a period of thirty (30)
40 years, the Quitclaim Deed and the Bill of Sale shall each include, for a period of thirty (30)
41 years, a right of reverter ("Right of Reverter") in favor of the City that is incorporated into this
42 Agreement as if included herein.

3
4 16.3.2 The City shall incorporate the Right of Reverter in agreements and deeds with
5 other school districts developing property within Tustin Legacy and exercise such Right of

1 Reverter in a manner that does not discriminate against SOCCCD as compared with such other
2 school districts.

3
4 **16.4 As Is, Where Is, With All Faults.**

5
6 16.4.1 No Representations or Warranties. Except as provided herein, the SOCCCD
7 Property shall be conveyed “as is, where is, with all faults” and without any representation or
8 warranty whatsoever and without any obligation on the part of the City except as expressly
9 provided for by this Agreement or the Quitclaim Deed.

10
11 16.4.2 No Unauthorized Representations. No person acting on behalf of the City is
12 authorized to make, and by execution hereof, SOCCCD acknowledges that no person has made,
13 any representation, agreement, statement, warranty, guarantee or promise regarding the
14 SOCCCD Property or the transaction contemplated herein or the past, present or future zoning,
15 land use entitlements, construction, physical condition or other status of the SOCCCD Property
16 except as may be expressly set forth in this Agreement. No representation, warranty, agreement,
17 statement, guarantee or promise, if any, made by any person acting on behalf of the City that is
18 not contained in this Agreement will be valid or binding on the City.

19
20 16.4.3 Release. Save and except for the covenants, representations and warranties of
21 the City and any other “Released Party” (as defined below in this Section) under this Agreement,
22 SOCCCD and any person claiming by, through or under SOCCCD, including all voluntary and
23 involuntary successors of SOCCCD owning all or any portion of the Site (“Releasing Party”),
24 hereby waives, as of the date of execution of this Agreement and as of the Closing Date, its right
25 to recover from, and fully and irrevocably releases, the City and its officers, elected officials,
26 employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns
27 (individually, a “Released Party”, collectively, the “Released Parties”) from any and all Claims
28 that SOCCCD may now have or hereafter suffer or acquire for any costs, losses, liabilities,
29 damages, expenses, demands, actions or causes of action: (a) arising from any information or
30 documentation supplied by any of the Released Parties; (b) arising from any condition of the
31 SOCCCD Property, known or unknown by any Releasing Party or any Released Party; (c)
32 arising from any construction defects, errors, omissions or other conditions, latent or otherwise,
33 including environmental matters, as well as economic and legal conditions on or affecting the
34 SOCCCD Property, or any portion thereof; (d) arising from the existence, release, threatened
35 release, presence, storage, treatment, transportation or disposal of any Hazardous Materials at
36 any time on, in, under, from, about or adjacent to the SOCCCD Property or any portion thereof;
37 (e) by any governmental authority or any other third party arising from or related to any actual,
38 threatened, or suspected release of a Hazardous Material on, in, under, from, about, or adjacent
39 to the SOCCCD Property, or any portion thereof, including any investigation or remediation at or
40 about the SOCCCD Property; (f) arising from the Tustin Legacy Backbone Infrastructure
41 Program, the cost or extent thereof, or the amount of the Fair Share Contribution; and/or (g)
42 arising from the formation of any community facilities district in connection with the
43 recoupment or payment of the Fair Share Contribution; provided, however, that the foregoing
44 release by the Releasing Parties shall not apply to the extent that any Claim is the result of the
45 willful misconduct or fraud of the City or its officers, employees, representatives, agents or

1 consultants arising after the Close of Escrow. This release includes Claims of which SOCCCD
2 is presently unaware or which SOCCCD does not presently suspect to exist which, if known by
3 SOCCCD, would materially affect SOCCCD's release to the Released Parties. SOCCCD
4 specifically waives the provision of California Civil Code Section 1542, which provides as
5 follows:

6
7 "A general release does not extend to claims which the creditor does not know or
8 suspect to exist in his favor at the time of executing the release, which if known
9 by him must have materially affected his settlement with the debtor."

10
11 In this connection and to the extent permitted by law, SOCCCD hereby agrees, represents
12 and warrants, which representation and warranty shall survive the Closings on SOCCCD and the
13 termination of this Agreement and not be merged with the Quitclaim Deed, that SOCCCD
14 realizes and acknowledges that factual matters now unknown to it may have given or may
15 hereafter give rise to Claims or controversies which are presently unknown, unanticipated and
16 unsuspected, and SOCCCD further agrees, represents and warrants, which representation and
17 warranty shall survive the Closings on the SOCCCD Property and the termination of this
18 Agreement and not be merged with the Quitclaim Deed, that the waivers and releases herein
19 have been negotiated and agreed upon in light of that realization and that SOCCCD, on behalf of
20 itself and the other Releasing Parties, nevertheless hereby intends to release, discharge and acquit
21 the Released Parties from any such unknown Claims and controversies which might in any way
22 be included as a material portion of the consideration given to the City by SOCCCD in exchange
23 for the City's performance hereunder.

24
25 This release shall run with the land and bind all owners and successor owners thereof
26 and, to further evidence its effectiveness with respect to successor owners of the SOCCCD
27 Property, shall be included in its entirety in the Quitclaim Deed.

28 29 **17.0 SHORT FORM NOTICE OF AGREEMENT**

30
31 Upon execution of this Agreement, the City and SOCCCD shall execute the Short Form
32 Notice of Agreement attached hereto as Exhibit "I". The Short Form Notice of Agreement shall
33 be recorded in the Official Records of the County of Orange, California immediately following
34 the execution of this Agreement. The Short Form Notice of Agreement shall be in a form
35 approved by the City Manager and the City Attorney.

36 37 **18.0 MISCELLANEOUS PROVISIONS**

38
39 **18.1** No amendment, change, modification or supplement to this Agreement shall be
40 valid and binding on any of the Parties unless it is represented in writing and signed by each of
41 the Parties hereto.

42
43 **18.2** The covenants, representations and warranties contained in this Agreement shall
44 survive any investigation made by any Party hereto and the closing of the transactions
45 contemplated hereby.

1
2 **18.3** The Parties shall fully cooperate with each other in attaining the purposes of this
3 Agreement and shall take any additional acts or sign any additional documents as may be
4 necessary or appropriate as related thereto.
5

6 **18.4** In all cases, the language in all parts of this Agreement shall be construed simply,
7 according to its fair meaning and not strictly for or against any Party, with the view of preserving
8 and protecting the intent and purposes of the Reuse Plan and Specific Plan, it being agreed that
9 the Parties or their agents have all participated in the preparation of this Agreement.
10

11 **18.5** No waiver of any provision of this Agreement shall be deemed or shall constitute
12 a waiver of any other provision whether or not similar, nor shall any waiver constitute a
13 continuing waiver. No waiver shall be deemed a waiver and no waiver shall be binding unless
14 executed in writing by the Party making the waiver.
15

16 **18.6** The provisions of this Agreement shall be binding upon and inure to the benefit of
17 the Parties and the subsequent owner(s) of all or any portion of the SOCCCD Property and their
18 respective successors. There are no third-party beneficiaries to this Agreement, and neither Party
19 shall have any right to assign its rights under this Agreement except for the City's right to assign
20 this Agreement to a city or other governmental entity that succeeds to the City's jurisdictional
1 authority concerning the City Property.
2

23 **18.7** This Agreement may be executed in two or more identical counterparts, each of
24 which shall be deemed to be an original and each of which shall be deemed to be one and the
25 same instrument when each Party signs each such counterpart.
26

27 **18.8** All attachments to this Agreement, including all Exhibits and the Reuse Plan, are
28 incorporated as a part of this Agreement.
29

30 **18.9** Each of the Recitals is incorporated into this Agreement.
31

32 **18.10** All references to the Parties shall include all officials, officers, personnel,
33 employees, agents, assigns, and subcontractors of the Parties.
34

35 **18.11** This Agreement, together with the exhibits attached hereto and the Reuse Plan
36 and Specific Plan, is intended by the Parties to be the final expression of their agreement with
37 respect to the subject matter of this Agreement and the complete and exclusive statement of the
38 terms of this Agreement between the Parties, and supersedes any prior understandings between
39 the Parties, whether oral or written.
40

41 **18.12** The failure of either Party to insist, in any one or more instances, upon strict
42 performance of any of the terms of this Agreement shall not be construed as a waiver or
3 relinquishment of such Party's right to future performance of this Agreement, but the obligations
4 of the other Party with respect to such future performance shall continue in full force and effect.
45 Whenever the terms of this Agreement call for one Party to approve an action or make a

1 determination before the other Party may undertake or perform such action, said approval or
2 determination shall not be unreasonably denied or delayed.
3

4 **18.13** Within ten (10) days after receiving a written request from SOCCCD, the City
5 will execute and deliver to SOCCCD an estoppel certificate stating whether (i) to the City's
6 knowledge SOCCCD or the SOCCCD Property is in violation of the provisions of this
7 Agreement, specifically including, but not limited to Section 3.2 and Article 12, and if the City
8 believes SOCCCD or the SOCCCD Property is in violation of any part of this Agreement,
9 describing such violation with reasonable detail, and (ii) in the City's belief a particular existing
10 or proposed use or transaction described by SOCCCD in reasonable detail in its request for such
11 estoppel certificate will violate Section 3.2 or Article 12 of this Agreement (and, if the City
12 believes such proposed use or transaction will constitute such a violation, then describing the
13 reason(s) for the City's belief with reasonable detail).
14

15 **19.0 LIST OF EXHIBITS**

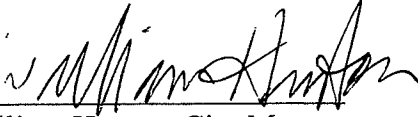
- 16 A. Glossary of Defined Terms
- 17 B. Description of Initial SOCCCD Parcels
- 18 C. Description of Subsequent SOCCCD Parcels
- 19 D. Quitclaim Deed
- 20 E. Sublease
- 21 F. Short Form Notice of Sublease
- 22 G. Bill of Sale
- 23 H-1. Representations of the City
- 24 H-2. Representations of SOCCCD
- 25 I. Short Form Notice of Agreement
- 26
- 27
- 28
- 29
- 30

Signature Page Follows

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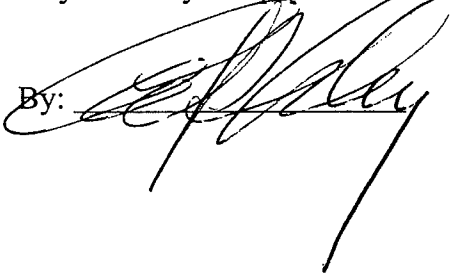
The Parties have each executed this Agreement as of the date first written above.

CITY OF TUSTIN

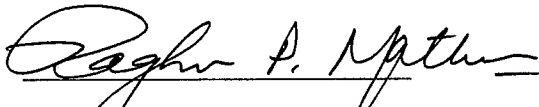


William Huston, City Manager

Approved as to Form:
City Attorney or Special Counsel

By: 

**SOUTH ORANGE COUNTY COMMUNITY
COLLEGE DISTRICT**



By: Dr. Raghu P. Mathur
Title: chancellor

Approved as to Form:
SOCCCD Counsel

By: 