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**DEVELOPMENT AGREEMENT**

**AND**

**AMENDED AND RESTATED 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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## EXHIBITS

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A	County-SOCCCD Exchange Parcel	Section 1.1.15
B-1	SOCCCD-County Exchange Parcel (Fee)	Section 1.1.15
B-2	SOCCCD-County Exchange Parcel (Sublease)	Section 1.1.15
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DEVELOPMENT AGREEMENT

AND

AMENDED AND RESTATED 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

**THIS DEVELOPMENT AGREEMENT AND AMENDED AND RESTATED 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 (this “**Development Agreement**”) is dated for identification purposes this 22nd day of May, 2013 (the “**Identification Date**”), is entered into by and between the **CITY OF TUSTIN** (“**City**”), a municipal corporation organized under the laws of the State of California, acting in its capacity as the Local Redevelopment Authority for the disposition and conveyance of portions of the former Marine Corps Air Station Tustin, California, and the **SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT** (“**SOCCCD**”), a public agency, and amends and restates that certain 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 dated March 10, 2004, (the “**Original Agreement**”). This Development Agreement shall be recorded in the Official Records of the County Recorder of Orange County, California (“**Official Records**”) immediately following the Identification Date but shall not become effective until the Effective Date as set forth in Section 1.4 below. The City and SOCCCD are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties.**” The Parties agree as follows:

**1. SUBJECT AND PURPOSE OF THIS DEVELOPMENT AGREEMENT;  
APPLICABLE REQUIREMENTS.**

**1.1 Background for this Development Agreement.**

1.1.1 Pursuant to the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of Public Law 101-510; U.S.C. Section 2687 Note), as amended (the “**Base Closure Law**”), the United States (the “**Government**”) determined to close the Marine Corps Air Station Tustin (“**MCAS Tustin**”) located substantially within the City of Tustin. In 1992, City was designated by the Office of Economic Adjustment on behalf of the Secretary of Defense as the local redevelopment authority (“**LRA**”) for preparation of a reuse plan for MCAS

Tustin and in order to facilitate the closure of MCAS Tustin and its reuse in furtherance of the economic development of City and the surrounding region.

1.1.2 In its capacity as the LRA, City served as the lead agency for preparing the base reuse plan, the applicable environmental documents under California law, and other documents related to the planning for the civilian reuse of MCAS Tustin. City determined that the most appropriate tool to guide the conversion of the base from military to civilian use and to facilitate review and approval of entitlements, permits, and uses was the preparation of a combined reuse plan and specific plan. The MCAS Tustin Reuse Plan (the “**Reuse Plan**”) was developed in accordance with federal procedures under the Base Closure Law and was adopted by the City of Tustin City Council (the “**City Council**”) on October 16, 1996 and amended by Errata in September 1998. The Reuse Plan was subsequently reviewed and approved by the United States Department of Housing and Urban Development. On February 3, 2003, City approved and adopted the MCAS Tustin Specific Plan/Reuse Plan by Ordinance No. 1257 setting forth the zoning and entitlement framework for future development of the former MCAS Tustin (the “**Initial Specific Plan**”). The portion of the former MCAS Tustin located within City of Tustin is referred to herein as “**Tustin Legacy**.”

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

1.1.4 Pursuant to the authority provided by Section 2905(b)4 of the Base Closure Law and the implementing regulations of the Department of Defense (32 CFR Part 174), the Secretary of the Navy, on behalf of the Government, is authorized to convey surplus property at a closing installation to the LRA at no cost for economic development purposes.

1.1.5 In May 2002, the Navy approved an Economic Development Conveyance of Property (“**EDC**”) and agreed to convey 1,153 acres of the former MCAS Tustin to City. On May 13, 2002, a portion of this property was conveyed by the Navy to City by Federal Deed (the “**Federal Deed**”), in accordance with the provisions of that certain Agreement Between The United States of America and the City of Tustin, California, for the Conveyance of a Portion of the Former Marine Corps Air Station Tustin (“**Original Navy-City Conveyance Agreement**”), which sets forth the terms and conditions of the conveyance of portions of MCAS Tustin from the Navy to City (“**City Property**”). A portion of the City Property was leased to City by the Navy pursuant to the Navy-City Conveyance Agreement and that certain Lease In Furtherance of Conveyance Between the United States of America and The City of Tustin, California For Portions of the Former Marine Corps Air Station Tustin dated May 13, 2002 (the “**LIFOC**”).

1.1.6 The Navy-City Conveyance Agreement has been amended by (1) that certain “Modification One (1) to Agreement between the United States of America Acting by and through the Secretary of the Navy and the City of Tustin California for Conveyance of a Portion of the Marine Corps Air Station, Tustin” dated April 10, 2006; (2) that certain “Modification Two (2) to Agreement between the United States of America Acting by and through the Secretary of the Navy and the City of Tustin, California, for Conveyance of a Portion

of the Marine Corps Air Station, Tustin” dated July 31, 2006; and (3) that certain Modification Three (3) to the Agreement between the United States of America and the City of Tustin California, for the Conveyance of a Portion of the Former Marine Corps Air Station Tustin” dated December 19, 2011. The term “**Navy-City Conveyance Agreement**” as used herein means the Original Navy-City Conveyance Agreement as amended by the three Modifications described above.

1.1.7 The Navy-City Conveyance Agreement contemplates that City will, following conveyance of the applicable portion of the City Property from the Navy to City, convey such portion of the City Property to SOCCCD for such purposes as may be in accordance with the Specific Plan.

1.1.8 Pursuant to the Original Agreement, (1) City conveyed to SOCCCD in an initial closing (the “**Initial Closing**”) fee title to approximately 37.66 acres of the City Property (the “**Initial Parcel**”), pursuant to that certain Quitclaim Deed and Environmental Restriction Pursuant to Civil Code Section 1471 (the “**2004 Quitclaim Deed**”) recorded on April 29, 2004 as Instrument No. 2004000369376 in the Official Records and conveyed the personal property and utility distribution systems associated with the Initial Parcel and the Sublease Area (as defined below) pursuant to that certain Bill of Sale (the “**2004 Bill of Sale**”) delivered concurrently with the 2004 Quitclaim Deed, (2) City subleased to SOCCCD approximately 30.71 acres of the City Property (the “**Initial Sublease Area**”), pursuant to that certain Sublease between the City of Tustin and the South Orange County Community College District for a Portion of MCAS Tustin dated April 29, 2004 (the “**Original Sublease**”), a Short Form Notice of which was recorded in the Official Records on April 7, 2004 as Instrument No. 2004000373082 (the “**Original Notice of Sublease**”).

1.1.9 On March 24, 2008, by Resolution No. 0807 the Board of Trustees of SOCCCD (the “**Board of Trustees**”) approved the Short-Range Plan required by the Original Agreement.

1.1.10 On November 12, 2008, by Resolution No. 08-35, the Board of Trustees approved the Long-Range Plan required by the Original Agreement.

1.1.11 On March 24, 2009, by Resolution No. 09-06, the Board of Trustees approved Concept Plan 3A for portions of the Initial Parcel and the Sublease Area. Pursuant to Zoning Administrator Action 10-002 adopted on July 26, 2010, the Zoning Administrator of the City approved Concept Plan 09-001 for Phase 3A of the ATEP Site (“**Concept Plan 3A**”).

1.1.12 The Initial Specific Plan, after its adoption, was amended by a series of Ordinances as follows: Ordinance Nos. 1294, 1295, 1296 and 1297 adopted March 7, 2005; Ordinance No. 1299 June 5, 2005; Ordinance No. 1311 adopted April 17, 2006; Ordinance No. 1335 adopted June 5, 2007, Ordinance No. 1379 adopted March 2, 2010; and Ordinance No. 1426 adopted March 5, 2013. The Initial Specific Plan as so amended is hereinafter called the “**Current Specific Plan.**”

1.1.13 In addition, the City Council adopted an amendment to the Current Specific Plan by Ordinance No. 1406 on October 18, 2011 (the “**2011 SP Amendment**”), which

amendment was not immediately effective. The purpose of the 2011 SP Amendment is to accommodate an exchange of real property (the “**County-SOCCCD Land Exchange**”) pursuant to that certain Agreement for the Exchange of Real Property between the County of Orange and South Orange County Community College District dated February 7, 2012 as amended by Amendment No. 1 thereto dated April 28, 2012, Amendment No. 2 thereto dated June 26, 2012 and Amendment No. 3 thereto dated May 16, 2013 (as so amended, the “**County-SOCCCD Land Exchange Agreement**”). The 2011 SP Amendment, by its terms, shall only become effective upon the close of escrow for the County-SOCCCD Land Exchange.

1.1.14 On May 13, 2013, the City Council adopted Resolution No. 13-33 approving an amendment to the Tustin General Plan (“**2013 GP Amendment**”) and conducted a first reading of proposed Ordinance No. 1432 approving an amendment to the Current Specific Plan (the “**2013 SP Amendment**”). On May 21, 2013, the City Council conducted a second reading and adopted Ordinance No. 1432, approving the 2013 SP Amendment. The 2013 GP Amendment and the 2013 SP Amendment are sometimes hereinafter collectively called the “**2013 Plan Amendments.**” The purpose of the 2013 Plan Amendments was to accommodate the terms of this Development Agreement as well as an exchange of real property (the “**City-SOCCCD Land Exchange**”) pursuant to that certain Agreement for the Exchange of Real Property between the City of Tustin and South Orange County Community College District (the “**City-SOCCCD Land Exchange Agreement**”) to which a form of this Development Agreement is attached as an Exhibit. On May 13, 2013, the City Council adopted Resolution No. 13-34 approving the City-SOCCCD Land Exchange Agreement.

1.1.15 The parties contemplate that at some point after the closing of the City-SOCCCD Land Exchange, at such time as the Navy conveys the County-SOCCCD Exchange Parcel (as defined below) to the City or as otherwise agreed by County and SOCCCD, the County-SOCCCD Land Exchange will be consummated. The real property which City will convey (or sublease) to SOCCCD pursuant to the County-SOCCCD Land Exchange is hereinafter called the “**County-SOCCCD Exchange Parcel,**” and the real property which SOCCCD will convey (or cause City to sublease) to the County pursuant to such exchange, is hereinafter called the “**SOCCCD-County Exchange Parcel.**” The County-SOCCCD Exchange Parcel is more particularly described on Exhibit A attached hereto, and the SOCCCD-County Exchange Parcel is more particularly described on Exhibits B-1 and B-2 attached hereto.

1.1.16 The Current Specific Plan as amended by the 2011 SP Amendment and the 2013 Plan Amendments and the portions of the Reuse Plan applicable to the SOCCCD Property are hereinafter collectively called the “**Specific Plan.**”

1.1.17 The Specific Plan conforms to and implements the Reuse Plan and the Tustin General Plan as amended. The Specific Plan includes all detailed planning, policies, regulations, and implementation strategies and procedures necessary to guide the reuse and development of all property located within MCAS Tustin. The Specific Plan is intended to serve as both policy-oriented and regulatory documents and contain the development and reuse regulations that will govern all development, construction, and use of property at Tustin Legacy, subject to the provisions of this Development Agreement.

1.1.18 Sections 65864 through 65869.5 of the California Government Code (the "**Development Agreement Laws**") authorize City to establish procedures to enter into binding development agreements with persons having legal or equitable interests in real property located within City for development of the property.

1.1.19 Section 65865 of the California Government Code allows cities to enter into development agreements with any person having a legal or equitable interest in real property for the development of the property under the Development Agreement Laws.

1.1.20 On April 23, 2013, City's Planning Commission held a duly noticed public hearing on this Development Agreement in accordance with Tustin City Code §9607 (the "**Development Agreement Ordinance**"), and determined that consideration of this Development Agreement complies with CEQA (as defined in Section 4.4 below) based on the Addendum dated April 2013 to the Final EIS/EIR ("**CEQA Document**") prepared in connection with City's consideration of this Development Agreement. In addition, at such meeting the Planning Commission (A) determined that (i) this Development Agreement is consistent with the Specific Plan; (ii) this Development Agreement is in conformity with public convenience, general welfare and good land use practice, will not be detrimental to the health safety and general welfare of the community and will not adversely affect the orderly development of property or the preservation of property values; (iii) this Development Agreement is needed by SOCCCD due to the complexity, cost and infrastructure requirements for the development, and (iv) this Development Agreement is advantageous to and benefits City; and (B) for these reasons recommended that the City Council approve and enact this Development Agreement in accordance with Tustin City Code §9614.

1.1.21 On May 13, 2013, the City Council introduced and conducted a first reading of proposed Ordinance No. 1433 enacting this Development Agreement, and held a duly noticed public hearing. Upon conclusion of the public hearing, the City Council determined that this Development Agreement and the 2013 Plan Amendments contemplated by this Development Agreement comply with CEQA, and found them to be consistent with the City's General Plan (as amended), Specific Plan and the Development Agreement Ordinance.

1.1.22 On May 21, 2013 (the "**Approval Date**"), the City Council conducted a second reading and adopted Ordinance No. 1433, approving this Development Agreement.

1.2 **Definitions; Attachments.** Capitalized terms used herein shall have the respective meanings specified in the text of this Development Agreement. Section references for all defined terms are provided in the Glossary attached hereto as Exhibit C. Unless otherwise indicated, references in this Development Agreement to sections, paragraphs, clauses, exhibits, attachments and schedules are those contained in or attached to this Development Agreement and all exhibits and schedules referenced herein are incorporated herein by this reference as though fully set forth in this Development Agreement.

### 1.3 **Purposes of This Development Agreement.**

1.3.1 The purpose of this Development Agreement is (a) to effectuate the Specific Plan, in accordance with the terms and conditions set forth in the Navy-City

Conveyance Agreement, the Federal Deed and the LIFOC, through the disposition and development of portions of Tustin Legacy as further described herein and (b) to provide for the conveyance to SOCCCD of the any remaining Sublease Area, for the maintenance of the SOCCCD Property by SOCCCD and the construction by SOCCCD of improvements on the SOCCCD Property consistent with this Development Agreement and the Specific Plan, including necessary infrastructure and other improvements as more particularly described herein.

1.3.2 This Development Agreement will ensure the implementation of the Specific Plan, eliminate uncertainty in planning, provide for the orderly development of the SOCCCD Property (as defined below), eliminate uncertainty about the validity of the application of the rules and regulations in the Specific Plan to the SOCCCD Property and SOCCCD, allow installation of necessary or desirable improvements, provide for public services appropriate to the development and use of the SOCCCD Property, and secure orderly fiscal benefits for public infrastructure and generally serve the public interest within City and the surrounding region.

1.3.3 The Parties acknowledge that the consideration to be received by City pursuant to this Development Agreement and the consideration to be received by SOCCCD hereunder constitute sufficient consideration to support the covenants and agreements of City and SOCCCD.

1.3.4 **Subsequent Closings.** Upon the closing of the City-SOCCCD Land Exchange, the Original Sublease will be amended pursuant to that certain Amendment No. 1 thereto in the form attached as an exhibit to the City-SOCCCD Land Exchange Agreement (the “**Sublease Amendment**”; the Original Sublease as modified by the Sublease Amendment shall be referred to herein as the “**Current Sublease**”). Pursuant to the Sublease Amendment, the Initial Sublease Area will be modified to remove certain parcels and add other parcels. The Initial Sublease Area as so modified consists of those portions of the SOCCCD Property (Exhibit D hereto) identified on the plat map attached as Schedule 1 to such Exhibit D as (a) those portions of “Area H1” marked as “Area 12B,” “Area 5,” “Area 11” and “Area D”; and (b) all of “Area H2” (collectively, the “**Current Sublease Area**”). The Current Sublease Area will be more particularly described in that certain Amendment No. 1 to Short Form Notice of Sublease in the form attached as an exhibit to the City-SOCCCD Land Exchange Agreement (the “**Notice of Sublease Amendment**”), which will be recorded in the Official Records upon the closing of the City-SOCCCD Land Exchange. In one or more subsequent closings (the “**Subsequent Closings**”), City will convey to SOCCCD the Current Sublease Area. The Subsequent Closings by City to SOCCCD shall occur upon satisfaction of the requirements set forth herein for such transfer. As of the Identification Date hereof, only the Initial Closing has taken place.

1.4 **Effective Date.** Notwithstanding the date on which this Development Agreement is recorded, it shall not become effective by its terms until the date (the “**Effective Date**”) that the close of escrow for the City-SOCCCD Land Exchange occurs. Such close of escrow shall be evidenced by the recordation in the Official Records of a Memorandum of Effective Date of Development Agreement, to be recorded upon the close of escrow of the City-SOCCCD Land Exchange. In the event that the Effective Date shall not have occurred on or before April 15, 2015, then this Development Agreement shall terminate and be of no further force or effect. Until the Effective Date, the Original Agreement shall remain unaffected and in



full force and effect and shall likewise remain in full force and effect if this Development Agreement terminates without ever having become effective.

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

1.6 **Local Requirements.**

1.6.1 **DSA.** Notwithstanding any other provision of this Development Agreement, in the event SOCCCD processes plans for any improvements or alterations of existing improvements with the California Division of the State Architect (the "**DSA**"), as required or permitted under Sections 81130-81149 of the California Education Code, as it may be amended from time to time (the "**Field Act**"), or by the DSA or another State of California agency under another applicable statute that concerns the review and approval of building plans for community college structures, then SOCCCD shall be exempt from processing such plans with City for such improvements.

1.6.2 **Normal Processing.** SOCCCD and City acknowledge that the foregoing provisions of this Section 1.6 do not limit City's right to exercise normal processing, review and approval rights, and collection of normal fees in connection therewith concerning matters not within DSA's authority; provided, however, that City shall exercise such authority only in conformity with the Effective Standards (as defined below) and this Development Agreement. For purposes hereof, "normal fees" shall be deemed to mean such fees imposed in connection with City's normal processing, review and approval rights as may be generally applicable, from time to time, to all property owners subject to the jurisdiction of the City.

1.6.3 **Courtesy Review.** As provided in Section 4.5 below, SOCCCD shall provide copies of all plans, documents and information being processed by SOCCCD with DSA ("**DSA Plans**") to City for City's courtesy review and comment.

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



## 2. DEVELOPMENT AGREEMENT.

2.1 **SOCCCD Property.** The real property governed by this Development Agreement from time to time is hereinafter called the “**SOCCCD Property.**”

2.1.1 **On Effective Date.** The term “**SOCCCD Property on Effective Date**” describes the property in Tustin Legacy that will be owned or subleased by SOCCCD on the Effective Date after the consummation of the City-SOCCCD Land Exchange. The SOCCCD Property on Effective Date is more particularly described in Exhibit D attached hereto.

2.1.2 **On Close of County-SOCCCD Land Exchange.** Notwithstanding the foregoing, upon the closing of the County-SOCCCD Land Exchange, the real property governed by this Development Agreement, and the meaning of the term “SOCCCD Property,” shall, automatically and without further action by either Party, be deemed to exclude the SOCCCD-County Exchange Parcel and to include the County-SOCCCD Exchange Parcel. A legal description of the SOCCCD Property as it will be constituted after the close of the County-SOCCCD Land Exchange (“**SOCCCD Property after County Exchange**”) is attached hereto as Exhibit E. Certain covenants of City relating to the County-SOCCCD Land Exchange are set forth in Section 17 below.

2.2 **Vested Rights.** SOCCCD shall have the vested right to develop the SOCCCD Property in accordance with the terms and conditions of this Development Agreement and the terms and conditions of the Specific Plan, including the 2013 Plan Amendments, in effect as of the Approval Date. Without limiting the generality of the foregoing, SOCCCD shall have the vested right to develop the maximum square footage of Building Area (as defined below) that is permitted by the number of ADT’s assigned to the SOCCCD Property pursuant to Section 5.3 below, calculated pursuant to the “Trip Generation Rate Schedule” attached hereto as Exhibit H. City shall have the right to control the development of the SOCCCD Property to the extent provided in Section 1.6.2 above in accordance with this Development Agreement, the Specific Plan, and City’s police powers.

2.2.1 **Applicable Standards.** The permitted uses of the SOCCCD Property, the density and intensity of use, the vehicle parking plan, the heights, sizes, design and construction methods of the proposed buildings and landscaping, the on-site and off-site public improvements, the development schedules and the general provisions for reservation or dedication of land for public purposes, and fees in lieu thereof, shall be vested in accordance with the Specific Plan and this Development Agreement.

2.2.2 **Building Area.** For purposes of this Development Agreement, “**Building Area**” shall mean the total horizontal floor area of all floors of buildings on the SOCCCD Property including the exterior walls thereof, measured in square feet; except that areas used in common such as, but not limited to, trash enclosures, covered malls, roofed patio areas, covered parking, covered driveways and covered loading areas shall not be included.

2.2.3 **No Restrictions.** Nothing contained herein shall restrict City’s discretion to approve, conditionally approve, or deny amendments or changes to the Specific Plan proposed

by SOCCCD so long as City's actions are consistent with applicable laws, including but not limited to the Development Agreement Laws.

2.3 **Right to Develop on Effective Date.** Subject to the provisions of this Development Agreement, City hereby grants to SOCCCD the vested right to develop and construct all improvements on the SOCCCD Property in accordance with the policies and development density regulations set forth herein and in the Specific Plan in effect as of the Effective Date of this Development Agreement. Except as otherwise provided in this Development Agreement, City shall not (i) impose on SOCCCD any future modifications to the Specific Plan, City's laws and ordinances (including the Tustin City Code) in effect as of the Approval Date (the "**Existing City Laws**") or this Development Agreement which purport to limit the uses, development density, design, parking plan, or schedule of development of the SOCCCD Property; or (ii) impose new fees, exactions, design features, or moratoria upon the development, occupancy or use of the SOCCCD Property. Notwithstanding the foregoing, City shall have the right to apply subsequently enacted standards in accordance with Section 2.7.3 below.

2.4 **Timing of Development.** The Parties acknowledge that SOCCCD cannot at this time predict when or the rate at which the SOCCCD Property will be developed. Such decisions depend upon numerous factors that are not within the control of SOCCCD, such as availability of funds, interest rates, competition and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that SOCCCD shall have the right to develop the SOCCCD Property in such order and at such rate and at such times as SOCCCD, in its sole and absolute discretion deems appropriate except as otherwise specifically provided in this Development Agreement and the Specific Plan.

2.5 **Vesting Tentative Map.** If any tentative or final subdivision map, or tentative or final parcel map, heretofore or hereafter approved in connection with development of the Property, is a vesting map under the Subdivision Map Act (Government Code Sections 66410, et seq.) and applicable Tustin City ordinances and if this Development Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to develop to SOCCCD, then and to that extent the rights and protections afforded SOCCCD under the laws and ordinances applicable to vesting maps shall supersede the provisions of this Development Agreement. Except as set forth immediately above, development of the Property under the Specific Plan shall occur only as provided in this Development Agreement, and the provisions in this Development Agreement shall be controlling over any conflicting provision of law or ordinance concerning vesting maps.

2.6 **SOCCCD Oversight.** SOCCCD shall oversee the implementation of the development of the SOCCCD Property. SOCCCD shall ensure compliance and consistency with the Specific Plan, and any applicable Environmental Mitigation. SOCCCD may enter into ground leases with separate entities to develop portions of the SOCCCD Property; however, SOCCCD shall be signatory on all applications, compliance letters and agreements with City, including onsite and offsite improvement agreements, insurance, bonds and contracts with City.

2.7 **Rules, Regulations, and Official Policies.**

2.7.1 **Existing Land Use Regulations.** “Existing Land Use Regulations” mean all ordinances, resolutions, codes, rules, regulations and official written policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the SOCCCD Property and in effect as of the Approval Date. The Existing Land Use Regulations shall include the 2013 Plan Amendments.

2.7.2 **Effective Standards.**

2.7.2.1 **Governance.** The Existing City Laws, the Existing Land Use Regulations and this Development Agreement (collectively, the “Effective Standards”) in force upon the Approval Date shall govern all future adjudicative and legislative decisions regarding the permitted uses of the SOCCCD Property, including those addressing the uses, intensity of use, design, improvement, construction, and building standards, occupancy and specifications applicable to SOCCCD Property and all public and private improvements, and appurtenances in connection therewith.

2.7.2.2 **Documentation.** Within thirty (30) days after the Approval Date, SOCCCD shall submit to City a compilation of the Effective Standards. City shall have a period of twenty (20) days to review and comment on such compilation. If the City disagrees with SOCCCD’s compilation, the Parties shall meet and confer in good faith in order to agree on a compilation of the Effective Standards satisfactory to both Parties. Once the content of the compilation of Effective Standards has been established, then SOCCCD shall cause the original compilation to be Bates-stamped. SOCCCD shall then cause one (1) copy to be made of the Bates-stamped compilation and two (2) copies in permanent, non-revisable electronic form on a compact disc. SOCCCD shall keep the original paper copy and one (1) copy in electronic form for its own records and shall deliver one (1) copy in each form to City.

2.7.3 **Application of Subsequently Enacted Standards.** The City may only apply to the SOCCCD Property such later enacted or modified Effective Standards that:

2.7.3.1 Are not in conflict with those in effect on the Approval Date and application of which would not delay or prevent the development of the SOCCCD Property or increase the costs of development or building; or

2.7.3.2 Are consistent with the most recent version of such codes as may affect public health and safety, including building codes, electrical codes and similar measures which shall be adopted from time to time by the State of California to the extent such codes have been incorporated into the Tustin City Code as revised to address local climatic, geographic, and/or topographic conditions; or

2.7.3.3 Are subsequent City-wide changes to construction or technical design standards or specifications for public improvements that are reasonably and directly related to durability or longevity of the public improvements; or

2.7.3.4 Are changes in City laws, regulations, policies, or plans, the terms of which are specifically mandated and required by changes in state or federal law or regional application thereof; or

2.7.3.5 Are necessary to avoid placing the occupants of the SOCCCD Property or adjacent areas in a condition dangerous to their health or safety, or both; or

2.7.3.6 Are subsequent City-wide changes with respect to the processing of applications or other procedural matters, including any changes to processing fees and any changes relating to hearing bodies or reports; or

2.7.3.7 Are otherwise unambiguously and expressly authorized in this Development Agreement.

2.7.4 **Subsequently Enacted Laws.** Upon discovery of a subsequently enacted federal or state law that may require changes to this Development Agreement, City and SOCCCD shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Development Agreement, in whole or in part, is necessary to comply with such federal or state law or regulation. In such conferences, City and SOCCCD agree to preserve the terms of this Development Agreement and the rights of SOCCCD as derived from this Development Agreement to the maximum extent possible while resolving the conflict. City and SOCCCD agree to cooperate in resolving the conflict in a manner that minimizes any financial impact on SOCCCD without substantially increasing the financial obligations of City under this Development Agreement, unless agreed to by City.

2.7.5 **Exigent Events.** With respect to the above, nothing in this Development Agreement shall be construed to be in derogation of City's police powers to protect the public health, safety, and welfare from an unexpected occurrence, involving a clear and imminent danger demanding immediate or interim action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services ("**Exigent Event**"). Upon discovery of an Exigent Event, City may suspend this Development Agreement for a period reasonably necessary to analyze, evaluate, and develop a proposed response to the Exigent Event. Promptly thereafter, City shall provide SOCCCD with written notice of the Exigent Event, and an explanation of City's proposed action for addressing the Exigent Event. City and SOCCCD shall promptly meet and confer in good faith in an attempt to determine whether a modification or suspension of this Development Agreement, in whole or in part, is necessary to address the Exigent Event. In such conferences, City and SOCCCD agree to preserve the terms of this Development Agreement and the rights of SOCCCD as derived from this Development Agreement to the maximum feasible extent. City and SOCCCD will cooperate in addressing the Exigent Event in a manner which minimizes the financial impact on SOCCCD without increasing the financial obligations of City under this Development Agreement, unless agreed to by City.

## 2.8 **Annual Review.**

2.8.1 **Annual Report.** SOCCCD shall submit to City, on an annual basis, not later than ninety (90) days before the anniversary of the Effective Date, an annual report (each, an "**Annual Report**") setting forth, as of the date of such Annual Report, the number of square

feet of Building Area devoted to Land Use Category 1 (including an indication of the number of square feet of Land Use Category 1 space that is devoted to Supportive Uses) and the number of square feet of Building Area devoted to Land Use Category 2. The Annual Report shall also include information concerning any Exempt Leases entered into since the date of the previous Annual Report as provided in Section 12.2.1.2(b) below.

2.8.2 **Actions.** City and SOCCCD shall meet once annually in order to review the Annual Report and all actions taken under to the terms of this Development Agreement as required by the Development Agreement Laws. Such meeting shall take place within sixty (60) days before the anniversary of the Effective Date during each year of the Term. If the Parties fail to have a review, that will not constitute a default under this Development Agreement.

## 2.9 **Section 2 Defaults and Remedies.**

2.9.1 **Section 2 Default.** For purposes of this Section 2 of this Development Agreement, the following shall constitute an event of default under this Section 2 (“**Section 2 Default**”): (i) the failure to make any payment provided for under Section 6 this Development Agreement within sixty (60) calendar days of when due; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant under Section 1.6, Section 2, Section 4 and Section 6 hereof and the continuation of such failure for a period of sixty (60) calendar days following a written notice of default and demand for compliance (a “**Notice of Section 2 Default**”); provided, however, that if a cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Section 2 Default if a cure is commenced within said sixty-day period and diligently prosecuted to completion thereafter. For purposes of this Section 2.9.1, City’s denial or refusal to approve SOCCCD’s application for a discretionary planning approval or request for a building permit does not constitute a Section 2 Default (unless the building permit is a ministerial permit and SOCCCD has satisfied all requirements for issuance of the building permit, including but not limited to the applicable building code and city code, and SOCCCD has paid all required permit fees). Furthermore, the parties understand and agree an administrative remedy is provided by statute and SOCCCD must exhaust the administrative remedy before initiating any legal action regarding an application for planning approval or a request for a building permit.

2.9.2 **Notice of Section 2 Default.** Prior to the initiation of any legal action for a Section 2 Default, the Party claiming default shall deliver to the other Party a Notice of Section 2 Default. The Notice of Section 2 Default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the Notice of Section 2 Default, then that Party, within twenty-one (21) calendar days of receipt of the Notice of Default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that a default has not occurred. The Parties shall meet to discuss resolution of the alleged Section 2 Default. If, after good faith negotiation, the Parties fail to resolve the alleged Section 2 Default within thirty (30) calendar days of the delivery of the notice of non-default, the Parties shall observe the procedures set forth below in Section 2.9.3 below before any legal action may be commenced with respect to such alleged Section 2 Default. The Parties may mutually agree in writing to extend the time periods set forth in this Section.

2.9.3 **Dispute Resolution.** In the event a dispute arises regarding a Section 2 Default, in addition and not by way of limitation to all other remedies available to the Parties under the terms of this Development Agreement, the Parties agree to follow the dispute resolution procedure in this Section 2.9.3 that is designed to expedite the resolution of such disputes before initiating any legal action.

2.9.3.1 **Referral.** The dispute shall initially be presented for resolution (a) by Planning Department staff to the Community Development Director, (b) by Department of Public Works staff to the Director of Public Works, or (c) by staff to the City Manager, whichever is appropriate. If the Community Development Director, Public Works Director, or City Manager, as appropriate, decides the dispute to SOCCCD's satisfaction, such decision shall be deemed to have resolved the matter. If the matter is not decided to SOCCCD's satisfaction within thirty (30) days after its referral as set forth above, the Parties agree to mediate the dispute as set forth in Section 2.9.3.2 below.

2.9.3.2 **Mediation.** The Party alleging the Section 2 Default shall give written notice of thereof to the other Party by personal or mail service as authorized by California Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 to the party to whom the Dispute is directed ("**Respondent**") describing the nature of the Dispute and any proposed remedy (the "**Dispute Notice**").

(a) **Mediation Notice.** Commencing on the date the Dispute Notice is delivered to the Respondent, either Party may submit the Dispute to mediation by delivering a request for mediation (a "**Mediation Notice**") in the same manner as allowed for delivery of the Dispute Notice. The Dispute shall be mediated pursuant to (a) the JAMS mediation procedures in existence when the Dispute Notice is delivered, as modified by this Section, or (b) the mediation procedures of any successor to JAMS in existence when the Dispute Notice is delivered, as modified by this Section, or (c) mediation procedures approved by the Parties of any entity offering mediation services that are acceptable to the Parties to the Dispute. Neither Party shall begin litigation regarding a Dispute without complying with this Section 2.9.3.2.

(b) **Selection of Mediator.** The mediator shall be selected within sixty (60) days after delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the Parties cannot agree on a mediator, the mediator shall be selected by the entity providing the mediation service. No person shall serve as a mediator in any Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of both Parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(c) **Position Letter; Pre-Mediation Conference.** No later than sixty (60) days after selection of the mediator, each Party shall submit a letter (a "**Position Statement**") containing (1) a description of the Party's position concerning the issues that need to be resolved, and (2) a suggested plan of redress, repair, remediation or correction. The mediator may schedule a pre-mediation conference. Representatives of both Parties with authority to resolve the Dispute shall attend unless otherwise mutually agreed. The mediation



shall be commenced within twenty (20) days after submittal of all Position Statements and shall be concluded within fifteen (15) days after the mediation began unless either (A) the mediator extends the mediation period, or (B) the Parties mutually agree to extend the mediation period. The mediation shall be held in the County or another place mutually acceptable to the Parties.

(d) **Conduct of Mediation.** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate to achieve the goal of settling the Dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. The mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the Parties agree to and do assume the expenses of obtaining such advice. The mediator shall not have the authority to impose a settlement on the Parties.

(e) **Parties Permitted at Mediation.** Persons other than the Parties, their liability insurers, attorneys for the Parties and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the mediator.

(f) **Record.** There shall be no stenographic, video or audio record of the mediation process.

(g) **Expenses.** Each Party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator shall be borne equally by each of the Parties, unless the Parties agree otherwise.

2.9.4 **Remedies; Tolling.** In the event of a Section 2 Default, the remedies available to a Party shall include specific performance of this Section 2 of this Development Agreement in addition to any other remedy available at law or in equity (subject to the limitation on damages set forth in Section 2.9.5 below). All applicable statutes of limitation or repose for filing any action at law or in equity with respect to any dispute concerning a Section 2 Default shall be tolled for a period commencing on the delivery of the Dispute Notice and continuing until the mediation of such dispute is concluded pursuant to the provisions of Section 2.9.3 above.

2.9.5 **No Recourse for Damages.** The Parties agree that, except as set forth in this Section 2.9, they would have not entered into this Development Agreement if either could be held liable for general, special or compensatory damages for any default or breach of this Development Agreement and that the Parties have adequate equitable remedies and remedies at law to secure the City's and SOCCCD's compliance with their obligations under this Development Agreement. Therefore, the Parties agree that neither the City nor SOCCCD nor their respective officers, agents or employees shall be liable for any general, special or compensatory damages to the other or to any successor or assignee or transferee of the other for any breach or default of this Development Agreement. Consequently, SOCCCD and City each covenants not to sue the other for or claim any compensatory damages under this Development Agreement except for claims arising out of the failure to pay or refund any portion of the Land Use Category 2 Backbone Contribution as described in Section 6.1.2 below. The recoverable

interest on claims arising out of Section 6.1.2 shall begin to accrue on the date on which the action or lawsuit is filed.

### 3. **DEED RESTRICTIONS / COVENANTS RUNNING WITH THE LAND.**

3.1 **Binding Effect.** This Development Agreement, and all of the terms, covenants, obligations, rights, standards, and conditions of this Development Agreement, shall run with the land comprising the SOCCCD Property and shall be binding upon and inure to the benefit of the Parties and their respective assigns, heirs, other successors-in-interest, lessees, and all other persons or entities acquiring the SOCCCD Property or any portion thereof or any interest therein. Nothing in this Development Agreement shall be construed as a dedication or transfer of any right or interest in the title to the SOCCCD Property, except as otherwise expressly provided in this Development Agreement. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable law, including, but not limited to, Section 1468 of the California Civil Code.

3.2 **Covenants.** The obligations of SOCCCD set forth in this Development Agreement shall be referenced as covenants running with the land in the Quitclaim Deed hereinafter defined and shall be binding upon SOCCCD and all subsequent owners of the SOCCCD Property or any part thereof. The Quitclaim Deed shall convey the SOCCCD Property subject to reservations, covenants and restrictions set forth in the quitclaim deed transferring the SOCCCD Property from the Navy to City, the Navy-City Conveyance Agreement and this Development Agreement.

### 4. **DEVELOPMENT AND REUSE.**

4.1 **Development General Requirements.** In addition to the Effective Standards, the development of the SOCCCD Property is subject to that certain Cooperative Agreement D02-119 between the City of Tustin, the Orange County Flood Control District and the County of Orange, as amended, and, as to Land Use Category 2 (as defined below), that certain Amendment to the Joint Exercise of Powers Agreement Between the City of Santa Ana and the City of Tustin Regarding the Tustin-Santa Ana Transportation System Improvement Authority, each of which is incorporated herein by reference and made a part hereof as though fully set forth herein.

4.2 **Major Improvements.** “Major Improvements” means any new improvements or any alterations of existing improvements that meet all of the following criteria:

4.2.1 Are visible from a public or private street (i.e., improvements that are confined to interiors of buildings shall be excluded);

4.2.2 Affect an aggregate of 10,000 square feet or more of land area;

4.2.3 Cost in excess of One Million Dollars (\$1,000,000); and

4.2.4 Are not merely maintenance, repairs or replacements of existing improvements.



4.3 **Development Approvals.** The Parties agree that City may require that SOCCCD, in connection with the development of any portion of the SOCCCD Property, obtain one or more of the following approvals (the “**Development Approvals**”) and that City may not require any approvals other than the Development Approvals set forth in this Section 4.3.

4.3.1 **DSA Review.** As provided in Section 1.6.1 above, to the extent that SOCCCD processes plans for any improvements or alterations of existing improvements with the DSA, then SOCCCD shall be exempt from processing such plans with City.

4.3.2 **Land Use Category 1.** For improvements intended for Land Use Category 1, as defined in Section 5.1.1 below (the “**Category 1 Improvements**”), the City may require:

4.3.2.1 **Grading Permit.** Grading Permit as required by the Effective Standards;

4.3.2.2 **Limited Site Plan Review.** For all Major Improvements intended for Land Use Category 1, Site Plan and Design Approval as described in Section 9272 of the Tustin Municipal Code except that such approval shall apply only (i) to Major Improvements as described above, (ii) to the following specific aspects of such Major Improvements and (iii) to the extent such Major Improvements are visible from a public or private street:

- (a) Height of buildings;
- (b) Setbacks from property lines;
- (c) Landscaping of setback areas; and
- (d) Site ingress/egress locations and design.

4.3.2.3 **Building Permit for Non-DSA Improvements.** For Major Improvements intended for Land Use Category 1 which are not subject to DSA review, Building Permit (inclusive of related permits; e.g., plumbing, electrical, etc.) as included in the Effective Standards.

4.3.3 **Land Use Category 2.** For improvements intended for Land Use Category 2 as defined in Section 5.1.12 below, the City may require, subject to Section 1.6.1, such review and approvals as are provided in the Effective Standards, including:

- (a) **Grading Permit.** Grading Permit;
- (b) **Site Plan and Design Approval.** Site Plan and Design Approval as provided in Section 9272 of the Tustin Municipal Code as provided in the Effective Standards; and
- (c) **Building Permit for Non-DSA Improvements.** For improvements which are not subject to DSA review,

Building Permit (inclusive of related permits; e.g., plumbing, electrical, etc.) as provided in the Effective Standards.

#### 4.3.4 Site Plan Review.

4.3.4.1 Development Processing Requirements. Prior to commencing the use of the SOCCCD Property or the construction or installation of any improvement on the SOCCCD Property and subject to the applicable provisions of this Development Agreement (including Section 1.6), SOCCCD shall comply with the Development Processing Requirements contained in Chapter 4 of the Specific Plan (the “**Development Processing Requirements**”), which includes Site Plan Review.

4.3.4.2 No Concept Plan Requirement. Notwithstanding the foregoing, SOCCCD shall not be required to submit any Concept Plan for the development of any portion of the SOCCCD Property.

4.3.4.3 LUAP. Attached hereto as Exhibit F, is a Land Use and Access Plan (“**LUAP**”) showing the general features of the development planned for the SOCCCD Property, including access points and land uses. The LUAP, which contains the information required in a Concept Plan under the Current Specific Plan, shall supersede and take the place of Concept Plan 3A, previously approved by the City.

4.3.4.4 No Amendment. The LUAP shall not require amendment at any time in the future. Rather, the LUAP shall be refined and elaborated by such Site Plans as may be approved by the City after the Effective Date pursuant to the Development Processing Requirements.

4.3.5 Timely Review. City agrees that all Development Approvals shall be subject to the provisions of the Permit Streamlining Act, California Government Code, Sections 65920 et seq. In any case, City shall review and comment on any application by SOCCCD for a Development Approval no later than thirty (30) days after SOCCCD’s submission of an application for a Development Approval or any revision thereof.

4.3.6 Conditions. City agrees that it will not impose any conditions on any Development Approval which would require SOCCCD to undertake any improvements or incur any expenses other than what is reasonably necessary to mitigate the impacts of SOCCCD’s proposed development.

4.4 CEQA. SOCCCD shall process all appropriate environmental documents for individual projects as required by CEQA and its implementing regulations. SOCCCD shall also notify City of all Major Improvements on the SOCCCD Property. “**CEQA**” means the California Environmental Quality Act and implementing regulations and guidelines, contained in California Public Resources Code Section 21000 et seq., and California Code of Regulations, title 14, Section 15000 et seq.

4.5 Courtesy Review. Subject to the applicable provisions of this Development Agreement (including Section 1.6), SOCCCD shall not construct or make or permit the

construction or making of any improvements on the SOCCCD Property based on DSA Plans without first providing the Community Development Director, as a courtesy, with such DSA Plans. Subject to the applicable provisions of this Development Agreement (including Section 1.6), SOCCCD shall provide the Community Development Director, as a courtesy, with the DSA Plans at each phase of the drafting process, or upon a reasonable request by the Community Development Director or his/her designated representative. The City may provide comments to any DSA Plans. SOCCCD agrees to give full consideration to any such comments provided that City shall have delivered the same to SOCCCD within thirty (30) days following receipt by the Community Development Director of the applicable DSA Plans. SOCCCD shall not begin construction of the improvements based on DSA Plans under review by City prior to the expiration of such thirty (30) day review period.

4.6 **Development Coordination.** During the planning and development of the SOCCCD Property, SOCCCD agrees to meet from time to time, at City's reasonable request, with City representatives, including the Community Development Director, and their representatives, to discuss planning, development, and operational issues of mutual concern. Such meetings shall serve as a forum for meaningful, timely and responsive exchange of information concerning the design and development of the SOCCCD Property as well as provide the opportunity for City to advise SOCCCD of other development issues which may affect the SOCCCD Property.

4.7 **Existing Habitable Structures.** SOCCCD agrees that it will not re-use any existing habitable structures on the SOCCCD Property. Subject to the requirements of Chapter 3 of the Specific Plan, SOCCCD shall, to the extent it has not already done so, demolish habitable structures on the SOCCCD Property existing at the time of transfer to SOCCCD.

## 5. LAND USES; TRIPS.

5.1 **Uses.** All buildings to be constructed on the SOCCCD Property shall be designed only for Land Use Category 1 and Land Use Category 2 uses as set forth below. In no event shall the Building Area exceed that permitted pursuant to allocation of ADT's described in Sections 5.3.1 and 5.3.2 below.

5.1.1 **Land Use Category 1 Uses.** Uses in "Land Use Category 1" are set forth below.

5.1.1.1 **Educational Uses.** Uses in Land Use Category 1 shall consist of uses that are education oriented, including all facilities normally found on college campuses, such as classrooms; labs; administration facilities; student support; cafeteria and food services; bookstore; photocopy services; dormitory and student housing; workforce center; maintenance/security/storage facilities and structures; security and guard houses, gates and other security facilities and structures; student health services; other uses which include facilities for traditional and non-traditional advanced education (extension and/or advanced degree opportunities), adult education, continuing education, vocational, job and educational training, and other education and training. The educational activities in buildings categorized as Land Use Category 1 may be undertaken by public, non-profit or for-profit educational institutions; provided, however, that it is the intent of the Parties that a substantial portion of the educational

activities in Land Use Category 1 Building Area will be conducted by public or non-profit educational institutions. Building Area devoted to uses in Land Use Category 1 which are not strictly educational (“**Service Uses**”), e.g., food services, may be conducted by for-profit entities under contract with educational institutions without affecting the character of such Building Area as Land Use Category 1. In addition, it is understood that educational institutions regularly agree to permit other entities to use facilities primarily devoted to education from time to time in exchange for a payment or other consideration. Such arrangements shall not affect the character of the Building Area involved as Land Use Category 1.

5.1.1.2 **Supportive Uses.** Also within Land Use Category 1 shall be other uses (“**Supportive Uses**”) that are accessory and subordinate with the educational uses above and which support the educational purpose of the uses described in Section 5.1.1.1 above, provided they do not exceed more than ten percent (10%) of the total Building Area developed under Land Use Category 1 including but not limited to the following: minor support commercial, office and retail service uses; a post office, medical/dental clinics; laboratories and office facilities used for basic and applied research, testing and consulting; industrial/commercial business incubators which support educational programs or provide educational opportunities, or commercial studios (i.e. sound stages and their support facilities, such as mill shops, technical production facilities, and production offices). To the extent that Supportive Uses occupy Building Area in excess of that permitted under this Section, such uses may be accommodated in Building Area designated as Land Use Category 2.

5.1.2 **Land Use Category 2 Uses.** Uses in “**Land Use Category 2**” shall consist of non-educational, income producing uses, including private sector uses, provided that such uses shall not adversely impact the Trip Budget under the Specific Plan or other environmental impact category significant thresholds in the CEQA Document, or require a Specific Plan Amendment. No educational component shall need to be associated with the land uses authorized by Land Use Category 2. Any uses that are prohibited by the Specific Plan shall be prohibited in Land Use Category 2.

### 5.1.3 **Ratio of Land Use Category 1 to Land Use Category 2.**

5.1.3.1 **Minimum Land Use Category 1.** Up to one hundred percent (100%) of the Building Area on the SOCCCD Property may be dedicated to Land Use Category 1 uses. At build-out, at least fifty-one percent (51%) of the Building Area on the SOCCCD Property shall be devoted to Land Use Category 1 Uses. Prior to build-out, the minimum percentage of Building Area that must be devoted to Category 1 Uses is set forth in the table in Section 5.1.3.2 below. Nothing herein shall be deemed to require SOCCCD to construct the maximum Building Area permitted by this Development Agreement.

5.1.3.2 **Maximum Land Use Category 2.** At any point in time, the amount of gross square footage of Building Area of Land Use Category 2 space shall be limited and dependent upon the ratio of (a) the gross square footage of Building Area of Land Use Category 1 space (“**Land Use Category 1 Space Commenced**”) which is either (1) completed or (2) for which all necessary permits have been obtained and on which construction has commenced to (b) the gross square footage of Building Area of Land Use Category 2 space

authorized (“**Land Use Category 2 Space Authorized**”), as set forth in the **Table of Required Ratios** attached hereto as Exhibit G and incorporated herein by this reference.

5.1.4 **Designation of Land Use Category.** SOCCCD shall, at the time it submits plans for Courtesy Review under Section 4.2 or for approval under Section 4.3.1.3(b) shall designate whether the improvements contemplated by the plans are for Building Area in Land Use Category 1, including any Supportive Uses, or in Land Use Category 2. SOCCCD shall also at such time submit its calculation of the ratio of Land Use Category 1 Building Area to Land Use Category 2 Building Area (a) that prevails at the time of submission and (b) that will prevail upon the completion of the planned Building Area.

5.2 **Permitted Leases.** SOCCCD contemplates that all Land Use Category 2 space will be developed and constructed by Permitted Lessees as defined in Section 12.2.1.2, to which SOCCCD will lease portions of the SOCCCD property pursuant to Permitted Leases as defined in Section 12.2.1.2 in the form of long-term ground leases. SOCCCD itself does not intend to develop any Land Use Category 2 space for its own use.

5.3 **Trips.**

5.3.1 **Allocation.** The number of Average Daily Trips (“ADT’s”) assigned to the SOCCCD Property shall be Ten Thousand Four Hundred Seventy (10,470); provided however, that in the event that SOCCCD is in default (after expiration of all applicable notice and cure periods) of its obligations pursuant to that certain Infrastructure Construction and Payment Agreement (Bell Avenue) between City and SOCCCD (a form of which is attached as an exhibit to the City-SOCCCD Land Exchange Agreement), then the number of ADT’s assigned to the SOCCCD Property shall be reduced to Five Thousand Four Hundred Seventy (5,470).

5.3.2 **Trip Generation Rate Schedule.** Any uses constructed in the SOCCCD Property shall be deemed by the City to generate the number of ADT’s per 1,000 square feet of Building Area as set forth in the schedule (the “**Trip Generation Rate Schedule**”) attached hereto as Exhibit H.

5.4 **Dedications of No Effect.** Neither the square footage of development permitted by this Development Agreement nor the ratio of Land Use Category 1 to Land Use Category 2 development nor the number of trips assigned to the SOCCCD Property shall be affected by any dedication of any of the SOCCCD Property to City as right-of-way for Bell Avenue as contemplated by the City-SOCCCD Land Exchange Agreement, by any other dedications or transfers of any of the SOCCCD Property to City for any purpose or by any use of any of the SOCCCD Property for purposes of internal circulation.

6. **UTILITIES AND INFRASTRUCTURE.**

6.1 **Backbone Infrastructure Program.** SOCCCD acknowledges and agrees that the development of the SOCCCD Property, together with the development of the remainder of Tustin Legacy, will require the funding and construction of backbone infrastructure improvements located off the SOCCCD Property, including Tustin Legacy road improvements, traffic and circulation improvements, flood control channels and retention basins, and lighting

and landscaping as provided in the backbone infrastructure program adopted by City (“**City’s Tustin Legacy Backbone Infrastructure Program**”). The City’s Tustin Legacy Backbone Infrastructure Program provides for the payment of certain Tustin Legacy Infrastructure Fair Share Contributions (“**Fair Share Contributions**”) by developers of property in Tustin Legacy.

6.1.1 **Waiver for Land Use Category 1.** City hereby waives and agrees to relieve SOCCCD of its any obligation to pay Fair Share Contributions under City’s Tustin Legacy Backbone Infrastructure Program, whether funded by City Community Facilities District(s), by City Assessment District(s), or by City capital facilities fees for Land Use Category 1 Building Area.

6.1.1.1 **Lighting and Landscaping.** The foregoing waiver shall not apply to lighting and landscaping backbone infrastructure which may be funded by a City assessment district.

6.1.1.2 **No Opposition.** SOCCCD agrees not to oppose a determination by City to form an assessment district for lighting and landscaping, and to include the SOCCCD Property in such district, and agrees not to oppose the imposition of assessments on terms that do not discriminate against the SOCCCD Property as compared with other public agency property in the proposed district.

6.1.2 **Land Use Category 2 Backbone Contribution.**

6.1.2.1 **Obligation.** With respect to Land Use Category 2 Building Area, SOCCCD shall require that any Permitted Lessee make a Fair Share Contribution to City’s Tustin Legacy Backbone Infrastructure Program as set forth in this Section 6.1.2.

6.1.2.2 **Per-Foot Contribution Amount.** The amount of the Fair Share Contributions for Land Use Category 2 Building Area shall be equal to Nineteen and 38/100 Dollars (\$19.38) per square foot of Building Area (the “**Per-Foot Contribution Amount**”). The Per-Foot Contribution Amount shall be subject to periodic increases as set forth in Section 6.1.2.3 below. The Per-Foot Contribution Amount was calculated using the methodology set forth in the City’s Tustin Legacy Backbone Infrastructure Program: 2011 Update which was attached to the City’s Agenda Report dated February 7, 2012, and approved by the City Council on February 7, 2012.

6.1.2.3 **Periodic Increase.** The Per-Foot Contribution Amount shall be increased annually on each anniversary date of the Approval Date by three percent (3%), on a compounded basis. Thus, by way of example, on the fifth anniversary of the Approval Date, the Per-Foot Contribution Amount shall be one hundred fifteen and 94/100 percent (115.94%) of the initial Per-Foot Contribution Amount, or Twenty-Two and 47/100 (\$22.47) Dollars. If the Applicable Fair Share Contribution (as defined in Section 6.1.2.4 below) has been paid in advance for a certain Building Area but such Building Area is not constructed until after an escalation of the Per-Foot Contribution Amount, such escalation shall have no retroactive effect and no additional amounts shall be owing by SOCCCD towards the Applicable Fair Share Contribution for such Building Area.



6.1.2.4 **Method of Payment.** The “**Applicable Fair Share Contribution**” for any Land Use Category 2 building or buildings for which a building permit is sought (each, a “**Project**”) on the SOCCCD Property shall be an amount equal to the product of the then-effective Per-Foot Contribution Amount multiplied by the number of square feet of Building Area in the Project. At such time as a building permit to construct Land Use Category 2 Building Area is applied for, the Permitted Lessee or Lessees seeking such building permit shall pay, as a condition to its issuance, the Applicable Fair Share Contribution for such Project.

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

6.3 **Horizontal Improvements.** SOCCCD acknowledges and agrees that it shall be responsible for design, installation and construction of all Horizontal Improvements for development of the SOCCCD Property and as required by City or other utility providers pursuant to any entitlement conditions, Development Permit, the Specific Plan or any other governmental requirement, subject to the provisions of Section 1.6. “**Horizontal Improvements**” means the on-site and off-site infrastructure improvements and utilities and dedications, or any applicable payments in lieu of improvements, which are the full required obligation of SOCCCD and are required to be constructed or installed on or in connection with development of the SOCCCD Property, including all public and private streets, roadways, drives, alleyways, sidewalks and all utilities required for the development of the SOCCCD Property or to connect to off-site infrastructure (e.g., utility connections).

6.4 **Utilities.**

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

6.4.2 **Pre-existing Utility Systems.** SOCCCD acknowledges and agrees that pre-existing water, electric, sewer, natural gas, and storm drainage systems may have been present on the SOCCCD Property (“**Utility Systems**”) and that such Utility Systems were transferred to SOCCCD from City as related personal property by a Bill of Sale at the Initial Closing. The Utility Systems other than storm drainage systems are no longer in service for any

purpose and SOCCCD may alter or remove them at its discretion. SOCCCD shall not, however, alter, modify, repair, replace, or relocate any part of the storm drain systems without the prior written consent of City. Such consent is within the reasonable discretion of City and will not be granted where any such alteration, modification, repair, replacement, or relocation may interfere with the development or reuse of MCAS Tustin. SOCCCD shall be responsible for all costs related to such alteration, modification, repair, replacement, or relocation of such storm drain systems.

## 7. **CONSENT TO REGULATION AND FINANCING.**

Subject to the applicable provisions of this Development Agreement (including Sections 1.6, 2 and 4), SOCCCD acknowledges and consents to City's regulation of the development and the use of the SOCCCD Property, notwithstanding any other provision of state law or equity to the contrary, including any principle or right of sovereignty or preemption that may otherwise inure to the benefit of SOCCCD under the laws of the State of California. SOCCCD acknowledges that its compliance with the regulatory program as described in this Development Agreement is required by the Specific Plan and is a primary inducement in securing (1) the conveyance of the SOCCCD Property from the Government and (2) City's support and approval of such conveyance.

## 8. **ENVIRONMENTAL PROVISIONS.**

### 8.1 **As Is, Where Is, With All Faults.**

8.1.1 **Acknowledgment.** SOCCCD acknowledges and agrees that SOCCCD has examined the Subsequent Parcels and will accept the property in an "AS IS, WHERE IS, WITH ALL FAULTS" condition, in its present state and condition and with all faults, if any. SOCCCD further acknowledges and agrees, except as otherwise provided in this Development Agreement, that City has not made and does not make and specifically negates and disclaims any representations, warranties, promises, agreements or guarantees of any kind or character, whether express or implied, oral or written, past, present or future, whether by City or any of its agents, elected or appointed officials, or representatives or employees.

8.1.2 **Environmental Condition of SOCCCD Property; Restrictions.** SOCCCD acknowledges and agrees that the acquisition of the SOCCCD Property by SOCCCD has been and will be subject to other conditions, restrictions, and clauses contained in many of the environmental reports prepared for the City Property, including without limitation the Conveyance Agreement, the Environmental Baseline Study ("EBS"), the Finding of Suitability to Transfer ("FOST"), any quitclaim deed for the SOCCCD Property from the Navy, the Finding of Suitability to Lease ("FOSL"), and the Final EIS/EIR ("**Environmental Reports**"), and that City has provided, or provided access to, all such Environmental Reports known to City.

8.2 **Environmental Mitigation.** SOCCCD shall install, contribute, dedicate, improve, or otherwise provide all necessary Environmental Mitigation (as defined below in this Section) as applicable for the use and development of the SOCCCD Property. Such mitigation shall be fully installed or completed as identified in the CEQA Document. The Environmental Mitigation required for the SOCCCD Property is described in the CEQA Document and in the



Federal Deed conveying the City Property from the Government to City. “**Environmental Mitigation**” means the improvements, dedications, and applicable payments in lieu of improvements, and the implementation, installation or performance of measures or tasks attributed to the development and use of the SOCCCD Property that have been identified in the CEQA Document; or any subsequent required environmental documentation, as a mitigation measure which should or will be imposed as a condition of approval of any development on the SOCCCD Property.

8.3 **Adequacy of the CEQA Document.** SOCCCD acknowledges that the CEQA Document, is a legally adequate and sufficient document, prepared, certified, and approved in a manner consistent with all applicable provisions of federal and state law, and SOCCCD and City acknowledge that the CEQA Document is the controlling program environmental document governing this Development Agreement, but only to the extent SOCCCD uses the SOCCCD Property in the manner provided in Section 4 of this Development Agreement. SOCCCD acknowledges and agrees that it is also required to comply with all requirements of CEQA and its implementing regulations in adopting the program document and any additional required supplemental documentation for the acquisition of the SOCCCD Property and for individual projects on the SOCCCD Property.

## 9. **TRANSFER AND CONVEYANCE.**

9.1 **Initial and Subsequent Closing.** The City conveyed to SOCCCD the Initial Parcel in the Initial Closing on April 29, 2004. The City agrees to provide to SOCCCD a deed for the conveyance of the Current Sublease Area to SOCCCD in one or more Subsequent Closings no later than forty-five (45) days after City receives title from the Government of such Current Sublease Area.

9.2 **Escrow Instructions.** This Development Agreement shall constitute the joint escrow instructions of SOCCCD and City to Escrow Holder (First American Title) to open an escrow. Escrow Holder shall not prepare any further escrow instructions restating or amending this Development Agreement unless specifically so instructed by City and SOCCCD in writing. Any such supplemental escrow instructions must be in writing and signed by City and SOCCCD and accepted by the Escrow Holder as effective.

9.3 **Forms of City-SOCCCD Conveyances.** SOCCCD hereby approves the Form of Quitclaim Deed attached hereto as Exhibit I (“**Form of Quitclaim Deed**”) for use with the Subsequent Closings. SOCCCD acknowledges that the Navy may require modifications to the Form of Quitclaim Deed, which modifications may arise out of any conditions to the FOST for the Current Sublease Area which the Navy may have issued with respect to the Current Sublease Area. SOCCCD shall have the right to accept or reject any changes to the Form of Quitclaim Deed required by the Navy to be used to convey the Current Sublease Area, and agrees to be reasonable in the exercise of its discretion to accept or reject such modifications to the form of the Form of Quitclaim Deed; provided however, that if SOCCCD rejects such changes, then SOCCCD shall waive its right to receive fee title to such portion of the Current Sublease Parcels.

9.4 **Quitclaim Deed.** Subject to the provisions of Section 9.3 above, the SOCCCD Property shall be conveyed by one or more good and sufficient quitclaim deeds in substantially the form of the Form of Quitclaim Deed.

9.5 **Surveys and Title Insurance.** With respect to the Subsequent Closings, SOCCCD shall have the right to request and obtain an ALTA extended coverage owner's policy of insurance and any other title endorsements as SOCCCD deems necessary; provided that the issuance of an ALTA Policy shall not delay the Close of Escrow and shall not be a condition precedent to the Close of Escrow. Any title insurance that may be desired by SOCCCD shall be procured at its sole cost and expense. The City shall cooperate with SOCCCD or its authorized agent and shall permit examination and inspection of any documents relating to the title of the SOCCCD Property as it may have available. If such searches disclose title exceptions that appear to be in error to SOCCCD, City agrees to cooperatively work with SOCCCD to have the title exceptions removed, released, or insured over recognizing that the SOCCCD Property is being conveyed by City "As Is".

## 10. ESCROW CLOSING.

10.1 **Applicability.** The following provisions concerning escrow closings shall apply to any Subsequent Closing that occurs after the Effective Date.

10.2 **City Document Deliveries.** The City shall deliver to the Subsequent Closing or Closings, as appropriate, the following documents reasonably satisfactory to SOCCCD and in a form previously reviewed and approved by SOCCCD, duly authorized, executed, and notarized:

10.2.1 Quitclaim Deed substantially in the form of the Form of Quitclaim Deed conveying fee ownership of the SOCCCD Property to SOCCCD.

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

10.2.3 California's Real Estate Withholding Exemption Certificate Form 597-W.

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

10.2.5 Certificate confirming that City's representations in this Development Agreement are true and correct as of the date of the Closing in substantially the form set forth in Exhibit J.

10.2.6 Such other documents or instruments as Escrow Holder may reasonably request to consummate the transaction contemplated herein.

10.3 **SOCCCD Document Deliveries.** SOCCCD shall deliver to the Subsequent Closing or Closings, as appropriate, the following documents reasonably satisfactory to City and in a form previously reviewed and approved by City, duly authorized, executed, and notarized:

10.3.1 Quitclaim Deed substantially in the form of the Form of Quitclaim Deed conveying fee ownership of the SOCCCD Property to SOCCCD.

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

10.3.3 Certificate confirming that the SOCCCD representations in this Development Agreement are true and correct as of the date of the Closing in substantially the form set forth in Exhibit K.

10.3.4 Such other documents or instruments as Escrow Holder may reasonably request to consummate the transaction contemplated herein.

10.4 **Procedures for Conveyance of SOCCCD Property from City to SOCCCD.**

10.4.1 **Costs and Expenses.** All costs and expenses of Closing shall be the responsibility of SOCCCD.

10.4.2 **Other Actions of Escrow Holder.** At the Close of Escrow and subject to satisfaction or waiver by the benefited party of any of the document delivery requirements noted in Section 10.1 or 10.2, Escrow Holder shall promptly undertake the following in the manner indicated below:

10.4.2.1 **Funds.** Debit all expenses of escrow to SOCCCD to be deposited with the Escrow Holder by SOCCCD.

10.4.2.2 **Recording.** Cause the Quitclaim Deed and other documents which SOCCCD and City may mutually direct, or which may be required to be recorded by the terms of this Development Agreement, to be recorded in the Official Records, obtain conformed copies thereof and distribute same to SOCCCD and City.

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

10.4.2.4 **Delivery of Documents to SOCCCD and City.** Deliver to SOCCCD and City original counterparts (and conformed copies, if applicable) of the Quitclaim Deed, the FIRPTA Certificate, the California Form 597-W and other documents (or copies thereof) deposited into Escrow by SOCCCD or City pursuant hereto, and deliver to SOCCCD and City a certified copy of their respective Escrow closing statements.

10.4.2.5 **Other Actions.** Take such other actions as the SOCCCD and City direct pursuant to mutually executed supplemental escrow instructions.

10.5 **Amendment of Prior Instruments.** Any Quitclaim Deeds recorded and Bills of Sale delivered prior to the Effective Date hereof contain covenants, conditions and restrictions (“**Quitclaim CC&R’s**”) provisions concerning transfers and uses that are inconsistent with those contained in this Development Agreement. Such Quitclaim CC&R’s and Bills of Sale shall be amended to conform with this Development Agreement as provided in the City-SOCCCD Exchange Agreement.

## 11. COVENANTS AND RESTRICTIONS.

11.1 **Maintenance Covenant.** From and after the date of acquisition by SOCCCD of any portion of the SOCCCD Property, SOCCCD and its successors shall: (i) maintain the portions of the SOCCCD Property owned by it in a clean condition; (ii) abate weeds and other hazards or nuisances, (iii) maintain any improvements on the SOCCCD Property under construction consistent with construction industry practice; and (iv) upon completion of all or any portion of improvements, maintain improvements in the same aesthetic and same condition or better as the condition of the improvements at the time a certificate of occupancy (or its equivalent) is issued on the improvements, reasonable wear and tear excepted.

### 11.2 **Non-Discrimination and Equal Opportunity.**

11.2.1 **Employment Practices.** SOCCCD covenants and agrees, for itself and its successors, that (a) it shall not discriminate against any employee or applicant for employment on any basis prohibited by law and (b) it has received and read, understands and agrees to be bound with respect to the entirety of the SOCCCD Property by the Non-Discrimination Covenant contained in the Navy Deed. SOCCCD shall provide equal opportunity in all employment practices.

11.2.2 **Obligation to Refrain from Discrimination.** SOCCCD covenants and agrees for itself and its successors that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the use, occupancy, tenure, or enjoyment of the SOCCCD Property nor shall SOCCCD itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, subtenants, sublessees or vendees of the SOCCCD Property.

11.2.3 **Form of Nondiscrimination and Nonsegregation Clauses.** All deeds, leases or contracts that SOCCCD enters into that affect the SOCCCD Property shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

#### 11.2.3.1 In Deeds:

“The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or

group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

11.2.3.2 In Leases:

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

11.2.3.3 In Contracts:

“There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.”

12. **CHANGES TO OWNERSHIP AND CONTROL BY SOCCCD.**

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

12.2 **Restrictions on Transfer.** SOCCCD and its successors-in-interest shall not effect, or agree to effect, any transfer, sale, assignment, gift or other conveyance of all or any portion of the SOCCCD Property or any improvements thereon or any interest therein, or any

right or interest under this Development Agreement, whether voluntarily, involuntarily or by operation of law or otherwise (collectively, a “**Transfer**”), unless such Transfer is a Permitted Transfer as defined below.

12.2.1 **Permitted Transfers.** The following transactions shall be Permitted Transfers (each, a “**Permitted Transfer**”) and the transferee of each such Permitted Transfer shall be a “**Permitted Transferee**”:

12.2.1.1 **Easements.** Granting of easements or similar rights to public utilities or governmental or quasi-governmental entities in the ordinary course of development or operation of the SOCCCD Property in accordance with the provisions of this Development Agreement.

12.2.1.2 **Leases and Subleases.** Any lease or subleases (hereinafter, collectively “**Lease**”) for occupancy of the SOCCCD Property, provided that, as set forth below, either (a) City has approved the identity of the lessee or sublessee (hereinafter, collectively, “**Lessee**”) or (b) such Lessee is exempt from the requirement of City approval. A Lessee that has been approved by City pursuant to this Section 12.2.1.2 is herein sometimes called “**Permitted Lessee**” and the Lease entered into with a Permitted Lessee is herein sometimes called a “**Permitted Lease.**”

(a) **Approval of Lessee.** In the event SOCCCD desires to effect a Lease, SOCCCD shall not enter into any such Lease unless City shall have approved the identity of the Lessee under any such Lease in accordance with the terms of this Subsection 12.2.1.2(a), or such Lease shall not require City approval pursuant to Subsection 12.1.2(b) below.

(i) **Submission of Information.** SOCCCD shall first notify City of its desire to enter into a Lease of the SOCCCD Property. SOCCCD shall also submit to City in writing:

- (1) The name and address of the proposed Lessee;
- (2) The nature of the proposed Lessee’s business to be carried out in the premises covered by the Lease;
- (3) The commencement date, the term and the permitted uses under the proposed Lease;
- (4) Current financial statements to the extent existing (and if not, then other reasonable evidence of financial resources) to

demonstrate that the proposed Lessee is financially responsible;

- (5) The names of the persons or entities who manage or control the affairs of the proposed Lessee; and
- (6) Information regarding the experience of the proposed Lessee (and the persons managing or controlling such Lessee) in owning or operating enterprises such as or similar to the enterprises to be pursued under the proposed Lease.

(ii) **Approval or Disapproval.** Within twenty (20) Business Days after receipt of the relevant information reasonably requested by City, City shall give SOCCCD or its successor written notice of approval or disapproval of the proposed Lessee. Any such disapproval by City shall specify the reasons for the disapproval. Failure to give notice of disapproval the twenty-day period described above shall be deemed approval of the Lessee.

(iii) **Extent of Approval Rights.** The City's approval rights shall apply only to the identity of the Lessee and shall not apply to the terms of the Lease. City's approval of a Lessee shall not be unreasonably withheld.

(b) **Leases Not Requiring City Review.** Notwithstanding anything herein to the contrary, Lessees under the types of Leases described in this Section 12.2.1.2 (b) ("Exempt Leases") shall not require any City approval, and the Leases entered into with such Lessees shall be considered Permitted Transfers and Permitted Leases hereunder, and the Lessees thereof shall be considered Permitted Transferees and Permitted Lessees.

(i) **Land Use Category 1.** For Land Use Category 1 space, the following Leases shall be Exempt Leases:

- (1) Leases for a term of one (1) year or less;
- (2) Leases of Building Area (as opposed to Leases of land or ground), including any associated parking, of any duration for any Land Use Category 1 Uses;

(3) Leases of any portion of the SOCCCD Property of any duration for any use which is incidental or occasional; i.e., for a use which occurs no more frequently than twice per week;

(4) Leases of any portion of the SOCCCD Property to the Lessee under an existing Lease for purposes connected with, in furtherance of, or incidental to, such Lease, provided such Lessee shall have received City approval in connection with such existing Lease; and

(5) Leases which provide for the concurrent use with SOCCCD of Building Area for any Land Use Category 1 Use.

(ii) **Land Use Category 2.** Leases for a term of one (1) year or less for Land Use Category 2 space shall be Exempt Leases.

(iii) **Annual Report.** The Annual Report shall include a statement setting forth, with respect to each Exempt Lease entered into since the previous Annual Report: (A) the name of the Lessee, (B) the nature of the business conducted in the premises, (C) the square footage covered by the Exempt Lease, (D) the term of the Exempt Lease, and (E) a statement covering the following topics: (1) whether the use is occasional or continuous, (2) whether the use is shared or exclusive, (3) whether or not the Exempt Lease is in furtherance of an existing Lease.

(c) **Specific Plan.** Notwithstanding the provisions of Section 12.2.1.2(b) above, lessees and sublessees covered by such Section shall be subject to the applicable provisions of the Specific Plan requiring Conditional Use Permits, Temporary Use Permits, Outdoor Gathering Permits and similar permits, and SOCCCD shall so state in any writing evidencing any lease, sublease or license of any portion of the SOCCCD Property entered into with any such lessee or sublessee.

12.2.1.3 **Permitted Mortgages.** The granting of any mortgage, deed of trust and other encumbrance meeting the definition of a Permitted Mortgage as provided in Section 12.6 below.

12.2.1.4 **Foreclosures.** The foreclosure of any Permitted Mortgage (or any sale thereunder), whether by judicial proceedings or by virtue of any power contained in any such Permitted Mortgage, or any conveyance of any of the SOCCCD Property from SOCCCD to



any Permitted Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof (collectively, “**Permitted Foreclosures**”). The purchaser under any Permitted Foreclosure shall be deemed to be a Permitted Transferee hereunder. The effects of a Permitted Foreclosure are further discussed in Section 12.7 below.

12.2.1.5 **Certain Options.** Options to purchase or lease any portion of the SOCCCD Property if such option is not exercisable by the optionee until after the Term of this Agreement has expired.

12.2.1.6 **City Consent.** Any other Transfer as to which SOCCCD or its successor in interest receives the prior written consent of City, which consent may be withheld by City in its reasonable discretion.

12.2.2 **SNDA.** If requested by any of City, any Permitted Transferee or SOCCCD, the non-requesting parties shall execute in recordable form and deliver a Subordination, Non-Disturbance and Attornment Agreement (each, an “**SNDA**”) in substantially the form of Exhibit L attached hereto, provided that the requesting party shall also execute the same. The fully executed SNDA shall be recorded in the Official Records by the requesting party within thirty (30) days after its receipt of the executed SNDA from the non-requesting parties. The provisions of this Section 12.2.2 shall not apply to Permitted Mortgagees, which are granted other protections as provided in Section 12.6 below.

12.3 **Other Transfers.** For the purposes of this Development Agreement, “Transfer” also shall include any of the following:

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

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

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

12.4 **Improper Transfers.** If there is any Transfer that is not a Permitted Transfer, such Transfer shall be a Potential Default under this Development Agreement as of the date of the Transfer. In the event of a Transfer in violation of this Article 12, City shall have all remedies available to it at law and in equity, including the right to exercise the Right of Reversion as defined in Article 13 as to the portion of the SOCCCD Property so transferred.

12.5 Assignment to Holders of Permitted Mortgages. Nothing contained in this Development Agreement shall restrict the right of SOCCCD to conditionally or unconditionally assign its rights and obligations under this Development Agreement to the holder of a Permitted Mortgage (as defined below) if such assignment is required to obtain financing for development of any portion of the SOCCCD Property.

12.6 Mortgagee Protection.

12.6.1 Permitted Mortgages. Notwithstanding any other provision of this Development Agreement to the contrary, SOCCCD and any of its Permitted Lessees (each, a “**Borrower**”) shall have the right to encumber their respective interests in portions of the SOCCCD Property with a mortgage, deed of trust or other lien or a sale/leaseback transaction for financing purposes (collectively, a “**Mortgage**”) securing the repayment of money subject to compliance with the terms, conditions and limitations set forth in Section 12.6.2. The mortgagee, beneficiary or lienor of a Mortgage or a lessor in a sale/leaseback transaction is hereinafter called a “**Mortgagee.**” Liens complying with such terms and entered into by SOCCCD and Permitted Lessees are hereinafter sometimes called “**Permitted Mortgages**” and the mortgagees, beneficiaries or lienors thereof are hereinafter sometimes called “**Permitted Mortgagees.**”

12.6.2 Conditions to Permitted Mortgage Status. A Permitted Mortgage, in order to be deemed as such, shall comply with all of the following requirements:

12.6.2.1 First Priority. Permitted Mortgages shall be limited to Mortgages which are executed and delivered to obtain financing necessary to pay the cost of Horizontal Improvements or improvements to the SOCCCD Property permitted under the terms of this Development Agreement and which are prior and superior to any other lien given to secure the repayment of money.

12.6.2.2 No Cross-Collateralization. No portion of the SOCCCD Property shall be cross-collateralized to serve as additional security for any other loan by a Permitted Mortgagee, which is also secured by real property other than SOCCCD Property, the improvements thereon, any portion thereof or any interest therein, without City’s consent in its sole discretion; provided, however, that a Permitted Mortgagee which has made more than one loan secured by all or any portion of the SOCCCD Property and by no off-site property may cross-collateralize those loans.

12.6.2.3 City Review of Documents and Information. At least thirty (30) days prior to entering into any Mortgage, the Borrower shall deliver to City the proposed Mortgagee’s loan documents and such other information, including the name and current financial statements of the proposed Mortgagee, as may be reasonably necessary for City to confirm the matters described in this Section 12.6.2, and City shall have the right to review the loan documents to ascertain that they comply herewith. The Borrower shall also include the information called for by Section 12.6.2.5 below regarding whether the proposed Mortgagee is an Institutional Lender (as defined below) or not.

12.6.2.4 **Notice to City.** The loan documents shall include a provision requiring the Mortgagee to provide notice to City concurrently with the provision of any notice to the Borrower of any event which has occurred which is a default under the loan documents or which would trigger the commencement of any cure periods under the loan documents, and providing City with a right to cure any such default up to one week before the completion of any foreclosure.

12.6.2.5 **Institutional Lender.** The prospective Mortgagee shall either be an Institutional Lender or shall have been approved by City as provided below. For purposes hereof, an “**Institutional Lender**” shall mean a foreign or domestic commercial bank, trust company, savings bank, savings and loan association, life insurance company, real estate investment trust, pension trust, pension plan or pension fund, a public or privately-held fund engaged in real estate and/or corporate lending, or any other financial institution commonly known as an institutional lender (or any Affiliate thereof) having a minimum paid up capital (or net assets in the case of a pension fund) of One Hundred Million Dollars (\$100,000,000). In the event that a proposed Permitted Mortgagee is not an Institutional Lender, then the identity of such proposed Mortgagee shall be subject to approval by City as provided below.

- (a) The Borrower shall state in its submission to City whether the Borrower considers the proposed Mortgagee to be an Institutional Lender or not.
- (b) If the Borrower indicates in its submission that the proposed Mortgagee is not an Institutional Lender, the Borrower shall provide City with the following additional information: (i) the names of all Persons who own, directly or indirectly, a five percent (5%) or more interest in the proposed Mortgagee, (ii) a statement describing other real estate projects for which financing has been provided by the proposed Mortgagee in California over the preceding five (5) year period, the dates of involvement by the proposed mortgagee with such projects and the success of the projects, which statement shall be made under penalty of perjury by the manager, president or other person with appropriate authority from the proposed mortgagee to do so and (iii) such other relevant information that City may reasonably request.

12.6.2.6 **City Action Required.** No lien shall be a Permitted Mortgage and no lienor shall be a Permitted Mortgagee or be entitled to the protections provided to Permitted Mortgagees under this Development Agreement unless such proposed mortgagee and its mortgage have been reviewed and, if required, consented to, by City pursuant to this Section 12.5.2.

12.6.2.7 **City’s Acknowledgment of Permitted Mortgagee Status.** Within thirty (30) days following SOCCCD’s delivery of the loan documents and information required under Section 12.6.2.3, City shall acknowledge receipt of the name and address of any

mortgagee (or proposed mortgagee), and either (a) confirm to the Borrower and such mortgagee that such mortgagee is (or would be, upon closing of its loan) a Permitted Mortgagee and has (or would have) all the rights of a Permitted Mortgagee under this Development Agreement and is (or would be) an Institutional Lender, if applicable, or (b) if City determines that any proposed Mortgagee does not or would not qualify as an Institutional Lender and is unacceptable to City, give notice of such determination to the Borrower and the proposed lienor, which notice shall specify the basis for such determination. If a Mortgage is confirmed as a Permitted Mortgage pursuant to this Section 12.6.2.7, the Mortgagee thereof shall be deemed a Permitted Mortgagee and shall be entitled to the protections provided to Permitted Mortgagees under this Development Agreement.

**12.6.3 Delivery of Documents; No Changes.** The Borrower or the Permitted Mortgagee shall deliver to City copies of all the loan documents associated with a Permitted Mortgage in the form executed by the parties thereto within thirty (30) days after the execution thereof. Once City has approved loan documents as satisfying the requirements of Section 12.6.2, the Borrower shall not modify or agree to modify those loan documents in a manner affecting the requirements of Section 12.6.2 without the prior written approval of City in its reasonable discretion.

**12.6.4 Right of City to Cure Permitted Mortgage.** In the event of an uncured event of default by the Borrower under a Permitted Mortgage, City may at its option, but shall not be obligated to, cure the event of default up to one week prior to completion of any foreclosure. In such event, City shall be entitled to reimbursement by the Borrower of all direct and actual costs and expenses incurred by City in curing the default. Such reimbursement amount may be secured at City's option by a lien against the SOCCCD Property. Any such lien shall be subordinate and subject to existing Permitted Mortgages permitted pursuant to this Development Agreement.

**12.6.5 Protections Available to Permitted Mortgagees.** Permitted Mortgages and Permitted Mortgagees shall be entitled to the following protections:

**12.6.5.1 Permitted Mortgage Not a Transfer.** The recordation of a Permitted Mortgage shall not constitute an assignment or Transfer, under the terms hereof, of any of the SOCCCD Property, nor shall any Permitted Mortgagee, as such, or in the exercise of its rights under its Permitted Mortgage or this Development Agreement, be deemed to be an assignee or transferee or mortgagee in possession of any of the SOCCCD Property so as to require such Permitted Mortgagee to assume or otherwise be obligated to perform any of SOCCCD's obligations under this Development Agreement.

**12.6.5.2 Subordination of Right of Reversion.** City shall execute and deliver in recordable form such written instruments necessary or proper to confirm the subordination of its Right of Reversion to any prospective Permitted Mortgage as may reasonably be requested by the Permitted Mortgagee thereof.

**12.6.5.3 No Impact on Lien.** This Development Agreement shall be superior and senior to all liens placed upon the SOCCCD Property or portion thereof after the Effective Date hereof. Notwithstanding the foregoing, no breach of any of the covenants,

conditions, restrictions, or reservations contained in this Development Agreement shall defeat or render invalid the lien of any Permitted Mortgage made in good faith and for value as to the SOCCCD Property or any portion of the SOCCCD Property or interest therein. Unless otherwise herein provided, the terms, conditions, covenants, restrictions and reservations of this Development Agreement shall be binding and effective against the Permitted Mortgagee and any owner of the SOCCCD Property, or any portion of the SOCCCD Property, whose title thereto is acquired by foreclosure, trustee's sale, deed-in-lieu of foreclosure or otherwise.

12.6.5.4 **Notice to Permitted Mortgagees of Default Hereunder.** A Permitted Mortgagee under any Permitted Mortgage or a Permitted Lessee under any Permitted Lease affecting a portion of the SOCCCD Property shall be entitled to receive concurrent notice (“**Notice of General Default**”) of any Section 2 Default or any Material Default (collectively, a “**General Default**”) by either Party hereto subject to the further provisions of this Section 12.6.5.4.

- (a) **Request for Notice.** In order to be entitled to a Notice of General Default, a Permitted Mortgagee shall have delivered written request for same to the Party from whom the Permitted Mortgagee wishes to receive such notice of default, specifying both the Permitted Mortgagee's name and address and the name of the Party as to whose default the Permitted Mortgagee wishes to receive such notice.
- (b) **Effect of Failure to Give Notice.** Failure of a Party to deliver a concurrent copy of such Notice of General Default to the Permitted Mortgagee shall not affect in any way the validity of the Notice of General Default as it relates to the defaulting Party, but in any subsequent proceedings arising from the Notice of General Default without the requested concurrent notice to the Permitted Mortgagee, the interest of the Permitted Mortgagee and its lien or interest upon the affected Parcel shall not be affected in any way until such time as it has received proper notice and all cure periods with respect thereto have expired.
- (c) **Manner of Giving Notice.** Any such Notice of General Default to a Permitted Mortgagee shall be given in the same manner as provided in Section 19. The giving of any Notice of General Default or the failure to deliver a copy to any Permitted Mortgagee shall in no event create any liability on the part of the Person so declaring a General Default.

12.6.5.5 **Permitted Mortgagees' Rights to Cure.** Permitted Mortgagees shall have the right, but not the obligation, as further provided herein, at any time and without payment of any penalty, (a) to pay any amounts due to City, (b) to do any other act or thing

required of SOCCCD under this Development Agreement, (c) to do any act or thing which may be necessary or proper to be done in the performance and observance of this Development Agreement to prevent termination of Section 2 of this Development Agreement or any other provisions hereof, or (d) otherwise to cure or remedy any General Default. Notwithstanding any other provision of this Development Agreement to the contrary, if any General Default shall occur which, pursuant to any provision of this Development Agreement, entitles City to exercise any rights arising hereunder or at law or equity, the City shall not be entitled to exercise such rights unless (i) City, following the expiration of any periods of time given to SOCCCD in this Development Agreement to cure such General Default, shall have given Notice of General Default to each Permitted Mortgagee stating City's intent to exercise such rights of City, and (ii) within ninety (90) days after delivery of such notice, such Permitted Mortgagee shall fail to either:

- (a) If the General Default consists of the nonperformance by SOCCCD of any covenant or condition of this Development Agreement requiring the payment of money by SOCCCD to City, to perform or cause the performance of all of such covenants and conditions requiring the payment of money; or
- (b) If the General Default does not involve a covenant or condition of this Development Agreement requiring the payment of money by SOCCCD to City, either, in Permitted Mortgagee's sole discretion, (a) cure such non-monetary General Default, or (b) commence, or cause any trustee under the Permitted Mortgage to commence, within ninety (90) days after the provision of written notice by City to the Permitted Mortgagee as provided above, to cure such non-monetary General Default and thereafter use commercially reasonable efforts to pursue such cure. In the event that a Permitted Mortgagee or Foreclosure Transferee (as defined below) is unable to cure a non-monetary General Default, such non-monetary General Default shall be deemed cured if such Permitted Mortgagee shall have diligently pursued to completion steps and proceedings to foreclose on its lien or shall have obtained a deed in lieu of foreclosure under the Permitted Mortgage.

12.6.5.6 **Extension of Time to Foreclose.** If any Permitted Mortgagee is prohibited from commencing or prosecuting Foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Borrower, the times specified in Section 12.6.5.5 above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

12.6.5.7 **Amendment; Termination.** No amendment or modification to this Development Agreement made without the consent of any Permitted Mortgagee of any

Parcel shall be binding upon such Permitted Mortgagee or its successors in interest. SOCCCD shall not terminate this Development Agreement as to any portion of the SOCCCD Property which is subject to any Permitted Mortgage without first obtaining the prior written consent of all Permitted Mortgagees whose Permitted Mortgages encumber that portion of the SOCCCD Property.

12.6.5.8 **Condemnation Proceeds; Insurance Proceeds.** Except as otherwise expressly set forth in this Development Agreement, the rights of any Permitted Mortgagee, pursuant to its Permitted Mortgage, to receive condemnation or insurance proceeds which are otherwise payable to such Permitted Mortgagee or to a Party which is its mortgagor shall not be impaired.

12.6.5.9 **Modification of Article; Conflicts.** No Party shall unreasonably withhold its consent to such modifications of this Development Agreement as are reasonably requested by a Permitted Mortgagee, provided that the rights of any such Party will not be materially impaired, diminished, limited or delayed, nor the obligations of such Party increased in any material respect as a result of such modifications.

12.6.6 **No Estoppel.** No Permitted Mortgagee shall have the right to use the failure of City to provide notice to any other Permitted Mortgagee as a claim, defense or estoppel to application of these provisions with respect to its Permitted Mortgage.

## 12.7 **Permitted Foreclosures.**

12.7.1 **Consent Not Required.** No Permitted Foreclosure shall require the consent of City or constitute a breach of any provision of, or a Potential Default or a Material Default under, this Development Agreement.

12.7.2 **Purchasers in Permitted Foreclosures.** In the event of a Foreclosure, (a) all of the provisions contained in this Development Agreement shall be binding upon and benefit the purchaser or other transferee ("**Foreclosure Transferee**") who acquires title to all or any portion of the SOCCCD Property and (b) City shall recognize Foreclosure Transferee in connection therewith as in the place and stead of SOCCCD under this Development Agreement.

12.7.3 **Opportunity to Cure.** Notwithstanding anything to the contrary herein, any Foreclosure Transferee shall have the right, at any time within ninety (90) days from and after the date of that such Foreclosure Transferee acquired title to a portion of the SOCCCD Property, to cure any General Default (as defined below) in accordance with the following:

12.7.3.1 If the General Default consists of the nonperformance by SOCCCD of any covenant or condition of this Development Agreement requiring the payment of money by SOCCCD to City, to perform or cause the performance of all of such covenants and conditions requiring the payment of money; or

12.7.3.2 If the General Default does not involve a covenant or condition of this Development Agreement requiring the payment of money by SOCCCD to City and the General Default affects or is affected by the real property acquired in the Permitted Foreclosure, in Foreclosure Transferee's sole discretion, use commercially reasonable efforts either (a) to cure



such non-monetary General Default, or (b) to commence to cure such non-monetary General Default and thereafter pursue such cure to completion. If the provisions of Section 12.6.5.5 above regarding incurable defaults shall have applied to such General Default prior to Foreclosure, then such non-monetary General Default shall be deemed to have been cured and the Foreclosure Transferee shall have no obligation to cure the same.

12.7.4 **Stay of Reversion.** Notwithstanding anything to the contrary herein, if any Permitted Mortgagee has commenced and diligently prosecuted to completion foreclosure proceedings in accordance with Section 12.6.5.5 regarding incurable defaults, then (i) City's right to exercise the Right of Reversion triggered by such Material Default shall be stayed for a period of three (3) years from the date upon which the Foreclosure Transferee obtains title to the Reversion Area, and (ii) thereafter may only be exercised with respect to that particular Material Default if such Foreclosure Transferee has not within such three (3) year period cured the Material Default.

12.7.5 **Bankruptcy Affecting SOCCCD.** If SOCCCD, as debtor in possession, or a trustee in bankruptcy for SOCCCD rejects this Development Agreement in connection with any proceeding involving SOCCCD under the United States Bankruptcy Code or any similar state or federal statute for the relief of debtors (a "**Bankruptcy Proceeding**"), then City agrees for the benefit of each and every Permitted Mortgagee that such rejection shall be deemed SOCCCD's assignment of the Development Agreement and the SOCCCD Property to SOCCCD's Permitted Mortgagee in the nature of an assignment in lieu of foreclosure. Upon such deemed assignment, this Development Agreement shall not terminate and each Permitted Mortgagee shall become SOCCCD hereunder as if the Bankruptcy Proceeding had not occurred, unless such Permitted Mortgagee shall reject such deemed assignment by written notice to City within thirty (30) calendar days after receiving notice of SOCCCD's rejection of this Development Agreement in Bankruptcy Proceedings.

12.7.6 **Maintenance Obligations.** Upon obtaining title to the SOCCCD Property or any portion thereof, and notwithstanding any other provision of this Development Agreement to the contrary, each Foreclosure Transferee, or its designee, as the case may be shall be obligated to perform the following with respect to the portion of the SOCCCD Property owned by it:

12.7.6.1 keep the real property taxes current;

12.7.6.2 abate weeds and other hazards and nuisances on the SOCCCD Property, in a commercially reasonable manner;

12.7.6.3 maintain liability insurance in commercially reasonable amounts;

12.7.6.4 erect and maintain barricades and fencing as reasonably necessary to protect the public; and

12.7.6.5 maintain in a commercially reasonable manner erosion control.

### 13. RIGHT OF REVERSION.

13.1.1 **Potential Defaults.** The following events, and only the following events, shall be a “**Potential Default**” under the terms of this Development Agreement:

13.1.1.1 **Violation of Transfer Restrictions.** SOCCCD, in violation of Section 12.1, Section 12.2 and Section 12.3 of Article 12 of this Development Agreement, assigns this Development Agreement, or any rights in this Development Agreement, or makes a Transfer, or suffers any involuntary Transfer, of the SOCCCD Property or any part thereof.

13.1.1.2 **Violation of Use Restrictions.** SOCCCD devotes the SOCCCD Property to uses in violation of the terms of Section 5 of this Development Agreement.

13.1.2 **Material Default.** A Potential Default shall become a “**Material Default**” in the event a Potential Default is not cured, at SOCCCD’s expense, (i) within twenty (20) Business Days after written notice of such Potential Default from the City, or (ii) if such cure cannot be reasonably accomplished within such twenty-day period, within ninety (90) days after receiving notice of the Potential Default, but only if SOCCCD has commenced such cure within such twenty (20) Business Day period and diligently pursues such cure to completion. The time periods set forth above to cure a Potential Default may be extended by Force Majeure events. Following written notice and failure to cure within the time periods set forth above, each Potential Default shall become a Material Default that shall be deemed to have occurred on the expiration of the applicable cure period.

13.2 **Rights of City.** The following remedies for a “Material Default” as defined above shall be available to City under the circumstances set forth below and shall be in addition to all other rights and remedies available to City under this Development Agreement, or at law or in equity. In the event of the occurrence of any of the events described in Section 13.1.1 above which become a Material Default of SOCCCD and the occurrence of the Reversion Conditions described in Section 13.3 below, City shall have the right (the “**Right of Reversion**”), in addition to its other rights as a result of the Material Default by SOCCCD, to terminate this Development Agreement as to those portions of the SOCCCD Property directly impacted by the Material Default (the “**Reversion Area**”). Upon such termination of this Development Agreement as to the Reversion Area, City shall have the right to re-enter the Reversion Area and revest in City the title in the Reversion Area or any portions thereof in accordance with the terms and subject to the conditions set forth in this Article 13. City shall have the right by notice delivered to SOCCCD and all Permitted Mortgagees holding Permitted Mortgages with respect to the Reversion Area a reasonable opportunity to address City Council at a public meeting. The termination of this Development Agreement as to the Reversion Area shall be effective as of the date that title to the Reversion Area is revested in City. In the event of such termination, this Development Agreement shall remain in full force and effect with respect to portions of the SOCCCD Property not so revested in City.

13.3 **Reversion Conditions.** Upon the occurrence of a Material Default, City shall be entitled to exercise its Right of Reversion with respect to the Reversion Area notwithstanding that the Reversion Area may be encumbered by one or more Mortgages or Permitted Mortgages, upon the occurrence of each of the conditions set forth in Sections 13.3.1.1, 13.3.1.2 and 13.3.1.3

below (collectively the “**Reversion Conditions**”) and the Parties agree that time is of the essence with respect to the dates and deadlines set forth in this Section and that such Reversion Conditions shall not be subject to extension for Force Majeure:

13.3.1.1 the occurrence of any of the events or omissions described in Section 13.1.1 becoming a Material Default of SOCCCD and the provision of written notice to SOCCCD and each Permitted Mortgagee as required by Section 13.1.2;

13.3.1.2 provision by City of notice in accordance with Sections 12.5.11 to each Permitted Mortgagee having a Permitted Mortgage on the Reversion Area, of a Material Default by SOCCCD remaining uncured after passage of the time periods set forth in this Development Agreement for cure thereof by SOCCCD; and

13.3.1.3 failure of any Permitted Mortgagee to cure such Material Default in accordance with Section 12.5.12.

13.3.2 **Effect of Satisfaction of Reversion Conditions**. The satisfaction of the Reversion Conditions with respect to each independent Material Default serves to trigger (or re-trigger) City’s Right of Reversion, subject in each case to the potential stay set forth in Section 13.3.2 above.

13.4 **Exercise of Right of Reversion**. So long as the Material Default triggering the Right of Reversion has not been cured as of the date of exercise of the Right of Reversion, City may exercise its Right of Reversion at any time within one (1) year after such Right of Reversion could first be exercised with respect to such Material Default. The City may exercise such right by delivery of notice to (a) SOCCCD if no Foreclosure has occurred, and (b) all Permitted Mortgagees holding Permitted Mortgages with respect to the Reversion Area or any portion thereof, provided that City Manager shall not exercise City’s Right of Reversion without first providing SOCCCD, if applicable, and all Permitted Mortgagees holding Permitted Mortgages with respect to the Reversion Area or any portion thereof a reasonable opportunity to address City Council at a public meeting. In the event of such termination of this Development Agreement, this Development Agreement shall remain in full force and effect with respect to portions of the SOCCCD Property not so revested in City, but the termination of this Development Agreement shall only be effective as of the date title to the Reversion Area is revested in City.

#### 14. **INDEMNIFICATION AND ENVIRONMENTAL PROVISIONS.**

14.1 **SOCCCD’s Indemnification**. SOCCCD shall indemnify, protect, defend, assume all responsibility for and hold harmless City and its appointed and elected officials, employees, contractors, representatives and agents (collectively referred to as the “**Indemnified Parties**”), with counsel reasonably acceptable to City, from and against any and all Claims resulting or arising from or in any way connected with the following, provided SOCCCD shall not be responsible for (and such indemnity shall not apply to the willful misconduct or to the negligent acts, errors or omissions of the Indemnified Parties:

14.1.1 SOCCCD's use of the SOCCCD Property in any way;

14.1.2 Any plans or designs for Improvements prepared by or on behalf of the SOCCCD, including any errors or omissions with respect to such plans or designs;

14.1.3 Any loss or damage to City resulting from any inaccuracy in or breach in any representation or warranty of SOCCCD, or resulting from any breach or default by SOCCCD under this Development Agreement; or

14.1.4 Any development or construction of improvements by SOCCCD, whether regarding quality, adequacy or suitability of the plans, any labor, service, equipment, or material furnished to the SOCCCD Property, any person furnishing the same or otherwise.

14.2 **Environmental Indemnification.** Effective as to the SOCCCD Property, upon SOCCCD's acquisition of the fee title to all or any portion thereof, SOCCCD shall, to the maximum extent permitted by law, indemnify, protect, defend, assume all responsibility for and hold harmless the Indemnified Parties from and against any and all Claims resulting or arising from or in any way connected with the existence, release, threatened release, presence, storage, treatment, transportation and/or disposal of any Hazardous Materials at any time on, in, under, from, about or adjacent to any portion or portions of the SOCCCD Property, regardless whether any such condition is known or unknown now or upon acquisition and regardless of whether any such condition pre-exists acquisition or is subsequently caused, created or occurring, provided, however, that SOCCCD shall not be responsible for (and such indemnity shall not apply) to the gross negligence or willful misconduct of the Indemnified Parties. This environmental indemnity shall be included in any recorded short form of this Development Agreement against said lands and shall be binding upon successors of SOCCCD owning all or any part thereof in accordance with Section 14.3 of this Development Agreement.

14.3 **Duration of Indemnities.** The indemnities set forth in this Section 14 shall survive any Closing or the termination of this Development Agreement, and shall be included in the Quitclaim Deed and continue to be binding and in full force and effect in perpetuity with respect to SOCCCD and its successors.

## 15. REPRESENTATIONS.

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

15.2 **SOCCCD.** SOCCCD hereby represents to City that on and as of the date of this Development Agreement and on and as of the Closing, SOCCCD has full capacity, right, power and authority to execute, deliver and perform this Development Agreement and all

documents to be executed by SOCCCD pursuant hereto, and all required action and approvals therefore have been duly taken and obtained for the Closing. The individuals signing this Development Agreement and all other documents executed or to be executed pursuant hereto on behalf of SOCCCD shall be duly authorized to sign the same on SOCCCD's behalf and to bind SOCCCD thereto. This Development Agreement and all documents to be executed pursuant hereto by SOCCCD are and shall be binding upon and enforceable against SOCCCD in accordance with their respective terms.

## 16. EFFECT OF CONVEYANCE.

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

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

### 16.3 **As Is, Where Is, With All Faults.**

16.3.1 **No Representations or Warranties.** Except as provided herein, the SOCCCD Property shall be conveyed "as is, where is, with all faults" and without any representation or warranty whatsoever and without any obligation on the part of City except as expressly provided for by this Development Agreement or the Quitclaim Deed.

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

16.3.3 **Release.** Save and except for the covenants, representations and warranties of City and any other "**Released Party**" (as defined below in this Section) under this Development Agreement, SOCCCD and any person claiming by, through or under SOCCCD, including all voluntary and involuntary successors of SOCCCD owning all or any portion of the SOCCCD Property ("**Releasing Party**"), hereby waives, as of the date of execution of this Development Agreement and as of the Closing Date, its right to recover from, and fully and irrevocably releases, City and its officers, elected officials, employees, agents, attorneys, affiliates, representatives, contractors, successors and assigns (individually, a "**Released Party**", collectively, the "**Released Parties**") from any and all Claims that SOCCCD may now have or hereafter suffer or acquire for any costs, losses, liabilities, damages, expenses, demands, actions or causes of action: (a) arising from any information or documentation supplied by any of the

Released Parties; (b) arising from any condition of the SOCCCD Property, known or unknown by any Releasing Party or any Released Party; (c) arising from any construction defects, errors, omissions or other conditions, latent or otherwise, including environmental matters, as well as economic and legal conditions on or affecting the SOCCCD Property, or any portion thereof; (d) arising from the existence, release, threatened release, presence, storage, treatment, transportation or disposal of any Hazardous Materials at any time on, in, under, from, about or adjacent to the SOCCCD Property or any portion thereof; (e) by any governmental authority or any other third party arising from or related to any actual, threatened, or suspected release of a Hazardous Material on, in, under, from, about, or adjacent to the SOCCCD Property, or any portion thereof, including any investigation or remediation at or about the SOCCCD Property; (f) arising from the Tustin Legacy Backbone Infrastructure Program, the cost or extent thereof, or the amount of the Fair Share Contribution; and/or (g) arising from the formation of any community facilities district in connection with the recoupment or payment of the Fair Share Contribution; provided, however, that the foregoing release by the Releasing Parties shall not apply to the extent that any Claim is the result of the willful misconduct or fraud of City or its officers, employees, representatives, agents or consultants arising after the Close of Escrow. **“Claim”** or **“Claims”** means any and all claims, actions, causes of action, demands, orders, or other means of seeking or recovering losses, damages, liabilities, costs, expenses (including attorneys’ fees, fees of expert witnesses, and consultants’ and court and litigation costs), fines, penalties, liens, taxes, or any type of compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen.

16.3.3.1 This release includes Claims of which SOCCCD is presently unaware or which SOCCCD does not presently suspect to exist which, if known by SOCCCD, would materially affect SOCCCD’s release to the Released Parties. SOCCCD specifically waives the provision of California Civil Code Section 1542, which provides as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.”

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

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

17. **CLOSE OF COUNTY-SOCCCD LAND EXCHANGE AGREEMENT.**

17.1 **Definition of SOCCCD Property Herein.** Pursuant to Section 2.1.2 above, upon the close of escrow of the County-SOCCCD Land Exchange, the real property governed by this Development Agreement, and the definition of "SOCCCD Property" herein, shall be deemed to exclude the SOCCCD-County Exchange Parcel and to include the County-SOCCCD Exchange Parcel.

17.2 **Covenants of City.**

17.2.1 **Consent of City.** Effective upon the release by County to the U.S. Department of Education of the "Withdrawal Letter" as defined in the County-SOCCCD Land Exchange Agreement, the City hereby consents to the conveyance of the SOCCCD-County Exchange Parcel to County.

17.2.2 **Conveyances.** Under the Navy-City Conveyance Agreement, the County-SOCCCD Exchange Parcel will, upon the issuance of the FOST, be conveyed to City. City hereby agrees that at such time as City's consent as set forth in Section 17.2.1 above is effective, and upon the conveyance to City of fee title to the County-SOCCCD Exchange Parcel, City shall execute and deliver to the escrow established for the close of the County-SOCCCD Land Exchange such quitclaim deeds, bills of sale and other instruments, in recordable form if applicable, as may be reasonably required to effectuate the close of the County-SOCCCD Land Exchange. The form of quitclaim deed to be used to convey the County-SOCCCD Exchange Parcel by City to SOCCCD shall conform to the requirements set forth above for the form of quitclaim deed to be used to convey Subsequent Parcels.

17.3 **City Obligations.** The Federal Deed conveying the City Property to City was recorded prior to the recordation of the 2004 Quitclaim Deed conveying the SOCCCD-County Exchange Parcel from the City to SOCCCD. The Federal Deed placed certain obligations ("City Obligations") on City with regard to the environmental condition of the SOCCCD-County Exchange Parcel. In turn, in the 2004 Quitclaim Deed, SOCCCD acknowledged and assumed the City Obligations. Upon the conveyance of the SOCCCD-County Exchange Parcel to County, City hereby (a) acknowledges that SOCCCD's assumption of the City Obligations is terminated; and (b) forever releases SOCCCD from the City Obligations; provided, however, that SOCCCD shall remain liable for any breach of the City Obligations during the period in which SOCCCD had ownership and possession of the SOCCCD-County Exchange Parcel.

18. **TERM.**

This Development Agreement shall automatically expire on April 29, 2034, except for those provisions which shall survive termination as expressly set forth herein.

19. **SHORT FORM NOTICE OF AGREEMENT.**

On or about April 7, 2004, City and SOCCCD executed and caused to be recorded in the Official Records the Short Form Notice of Agreement as Instrument No. 2004000373082 with respect to the Original Agreement. This Development Agreement shall supersede and replace



the Short Form Notice of Agreement, and the Short Form Notice of Agreement shall be automatically terminated and of no further force or effect upon the Effective Date.

20. **NOTICES.**

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

If to City: City of Tustin  
300 Centennial Way  
Tustin, CA 92780  
Attn: City Manager & Assistant City Manager

City of Tustin  
300 Centennial Way  
Tustin, CA 92780  
Attn: Community Development Director

With a copy to: David Kendig, Esq.  
Woodruff, Spradlin & Smart  
555 Anton Boulevard  
Suite 1200  
Costa Mesa, California 92626  
(714) 415-1088

If to SOCCCD: Gary L. Poertner, Chancellor  
South Orange County Community College District  
28000 Marguerite Parkway  
Mission Viejo, CA 92692

With a copy to: South Orange County Community College District  
28000 Marguerite Parkway  
Mission Viejo, CA 92692  
Attention: Vice Chancellor of Business Operations

And to: Andrew P. Bernstein, Esq.  
Jackson DeMarco Tidus & Peckenpaugh  
2030 Main Street  
12th Floor  
Irvine, CA 92614

21. **MISCELLANEOUS PROVISIONS.**

21.1 **Business Days.** “Business Day(s)” means any day on which City Hall is open for business and shall specifically exclude Fridays when City Hall is officially closed, Saturday, Sunday or a legal holiday. No amendment, change, modification or supplement to this

Development Agreement shall be valid and binding on any of the Parties unless it is represented in writing and signed by each of the Parties hereto.

21.2 **Survival of Close of Escrow.** The covenants, representations and warranties contained in this Development Agreement shall survive for the term specified herein notwithstanding any closing of the transactions contemplated hereby.

21.3 **Additional Actions.** The Parties shall fully cooperate with each other in attaining the purposes of this Development Agreement and shall take any additional acts or sign any additional documents as may be necessary or appropriate as related thereto.

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

21.5 **Waivers.** No waiver of any provision of this Development Agreement shall be deemed or shall constitute a waiver of any other provision whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be deemed a waiver and no waiver shall be binding unless executed in writing by the Party making the waiver.

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

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

21.8 **Exhibits.** All attachments to this Development Agreement, including all Exhibits and the Reuse Plan, are incorporated as a part of this Development Agreement.

21.9 **Recitals.** Each of the Recitals is incorporated into this Development Agreement.

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

21.11 **Integration.** This Development Agreement, together with the exhibits attached hereto and the Specific Plan, is intended by the Parties to be the final expression of their agreement with respect to the subject matter of this Development Agreement and the complete and exclusive statement of the terms of this Development Agreement between the Parties, and supersedes any prior understandings between the Parties, whether oral or written.

21.12 **Approvals; Failure to Insist.** All approvals which may be granted pursuant to this Development Agreement, and all approvals that have been or may be issued or granted by City with respect to the SOCCCD Property, constitute independent actions and approvals by City. If any provision of this Development Agreement or the application of any provision of this Development Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or this Development Agreement is terminated for any reason, such invalidity, unenforceability or termination of this Development Agreement or any part hereof shall not affect the validity or effectiveness of any approvals or other land use approvals. In such cases, such approvals will remain in effect pursuant to their own terms, provisions and conditions. The failure of either Party to insist, in any one or more instances, upon strict performance of any of the terms of this Development Agreement shall not be construed as a waiver or relinquishment of such Party's right to future performance of this Development Agreement, but the obligations of the other Party with respect to such future performance shall continue in full force and effect. Whenever the terms of this Development Agreement call for one Party to approve an action or make a determination before the other Party may undertake or perform such action, said approval or determination shall not be unreasonably denied or delayed.

21.13 **Severability.** In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void, or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

21.14 **Estoppel Certificate.** Within ten (10) days after receiving a written request from SOCCCD, City will execute and deliver to SOCCCD an estoppel certificate stating whether (i) to City's knowledge SOCCCD or the SOCCCD Property is in violation of the provisions of this Development Agreement, specifically including, but not limited to Section 5.1 and Article 12, and if City believes SOCCCD or the SOCCCD Property is in violation of any part of this Development Agreement, describing such violation with reasonable detail, and (ii) in City's belief a particular existing or proposed use or transaction described by SOCCCD in reasonable detail in its request for such estoppel certificate will violate Section 5.1 or Article 12 of this Development Agreement (and, if City believes such proposed use or transaction will constitute such a violation, then describing the reason(s) for City's belief with reasonable detail).

21.15 **Defense of Actions.** In the event that any judicial or electoral challenge to this Development Agreement is brought by a third party ("a **Third Party Challenge**"), then SOCCCD and City agree to cooperate in the defense of such Third Party Challenge. SOCCCD and City shall meet and confer in good faith to agree upon a joint defense of such Third Party Challenge. Each Party shall engage its own counsel in connection with such Third Party Challenge and shall pay the attorneys' fees charged by its own counsel unless the Parties agree otherwise.

21.16 **Attorneys' Fees.** In the event of any legal action or other proceeding between the Parties regarding this Development Agreement, any of the documents attached hereto as exhibits, or the SOCCCD Property, the Parties shall be responsible for their own attorneys' fees, court costs and litigation expenses.

*[Signatures Included on Following Pages]*

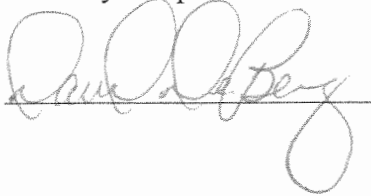
The Parties have each executed this Development Agreement as of the date first written above.

**CITY OF TUSTIN,  
a California municipal corporation**

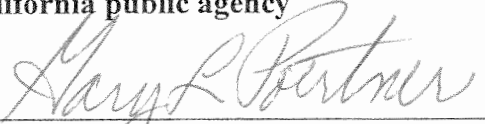


Name: Jeffrey C. Parker  
Title: City Manager

Approved as to Form:  
City Attorney or Special Counsel

By: 

**SOUTH ORANGE COUNTY  
COMMUNITY COLLEGE DISTRICT,  
a California public agency**

By: 

Name: Gary L. Poertner  
Title: Chancellor

Approved as to Form:  
SOCCCD Council

Jackson, DeMarco, Tidus & Peckenpaugh

By:   
Andrew P. Bernstein, Esq.

STATE OF CALIFORNIA  
COUNTY OF Orange

On May 22, 2013, before me, Vera R. Tiscareno  
(here insert name and title of the officer)

personally appeared **Jeffrey C. Parker** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Vera R. Tiscareno



STATE OF CALIFORNIA  
COUNTY OF Orange

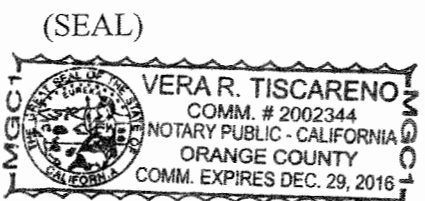
On May 22, 2013, before me, Vera R. Tiscareno  
(here insert name and title of the officer)

personally appeared **Gary L. Poertner** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Vera R. Tiscareno



**Exhibit A**

**Legal Description**

**of**

**County-SOCCCD Exchange Parcel**

**(Area 15)**

**Legal Description**  
**Exhibit "A"**  
**Parcel IV-K-2**  
**(Reuse Plan Disposal Site 2; portion of Carve-Out 5)**

1 In the City of Tustin, County of Orange, State of California, being that portion of Block 10  
2 of Irvine's Subdivision as shown on the map filed in Book 1, Page 88 of Miscellaneous  
3 Record Maps, and as shown on a map filed in book 165, pages 31 through 39 inclusive of  
4 Records of Survey, both of the records of said County, described as follows:

5  
6 For the purpose of this description the following Control Line is hereby established:

7  
8 **Control Line "A"**

9 Beginning at the intersection of the centerline of Red Hill Avenue with the centerline of  
10 Valencia Avenue as shown on said Record of Survey, the centerline of Red Hill Avenue  
11 having a bearing of South 40°37'39" West between Valencia Avenue and Warner Avenue;  
12 thence South 49°20'07" East 106.23 feet to the beginning of a curve concave southwesterly  
13 having a radius of 1400.04 feet; thence southeasterly along said curve 134.49 feet through  
14 a central angle of 5°30'14"; thence South 43°49'53" East 101.77 feet to the beginning of a  
15 curve concave northeasterly having a radius of 1400.04 feet; thence southeasterly along  
16 said curve 134.40 feet through a central angle of 5°30'01"; thence South 49°19'54" East  
17 586.96 feet to the beginning of a curve concave northeasterly having a radius of  
18 1400.04 feet; thence southeasterly and easterly along said curve 733.69 feet through a  
19 central angle of 30°01'33"; thence South 79°21'27" East 309.99 feet to a point hereinafter  
20 referred to as Point "A".

21  
22 **Control Line "B"**

23 Beginning at said Point "A"; thence South 15°38'31" West 74.21 feet to the beginning of a  
24 curve concave northwesterly having a radius of 1400.04 feet; thence southerly and  
25 southwesterly along said curve 828.04 feet through a central angle of 33°53'13" to a point



**Legal Description**  
**Exhibit "A"**  
**Parcel IV-K-2**  
**(Reuse Plan Disposal Site 2; portion of Carve-Out 5)**

1 hereinafter to be referred to as Point "D"; thence continuing southwesterly and westerly  
2 along said curve 441.51 feet through a central angle of 18°04'06"; thence  
3 South 67°35'50" West 139.46 feet to the beginning of a curve concave southeasterly  
4 having a radius of 1400.04 feet; thence westerly and southwesterly along said curve  
5 694.50 feet through a central angle of 28°25'19".  
6

7 **Parcel IV-K-2**

8 Beginning at the hereinbefore described Point "D" ; thence leaving said Control Line "B"  
9 North 40°28'16" West 46.00 feet to the **True Point of Beginning**, said point being the  
10 beginning of a non-tangent curve concave northwesterly, having a radius of 1354.04 feet,  
11 said curve also being concentric with and 46.00 feet northwesterly of said Control Line  
12 "B", a radial line to said beginning bears South 40°28'16" East; thence southwesterly and  
13 westerly along said concentric curve 427.00 feet through a central angle of 18°04'06" to a  
14 line parallel with and 46.00 feet northwesterly of said Control Line "B"; thence along said  
15 parallel line South 67°35'50" West 139.46 feet to the beginning of a curve concave  
16 southeasterly having a radius of 1446.04 feet, said curve being concentric with and  
17 46.00 feet northwesterly of said Control Line "B"; thence southwesterly along said  
18 concentric curve 184.05 feet through a central angle of 07°17'33"; thence leaving said  
19 concentric curve North 49°21'14" West 459.00 feet; thence North 40°38'46" East  
20 486.27 feet; thence South 77°38'59" East 256.30 feet; thence North 71°36'25" East  
21 351.77 feet; thence South 15°49'01" East 382.89 feet to the **True Point Of Beginning**.  
22

23 Containing 436,043 square feet or 10.01 acres, more or less  
24  
25

**Legal Description**  
**Exhibit "A"**  
**Parcel IV-K-2**  
**(Reuse Plan Disposal Site 2; portion of Carve-Out 5)**

1 As shown on Exhibit "B" attached hereto and by this reference made a part hereof.

2

3 Prepared under my supervision

4

5

6

7

*Peter J. Fitzpatrick 10/28/11*

8

Peter J. Fitzpatrick, PLS 6777 Date

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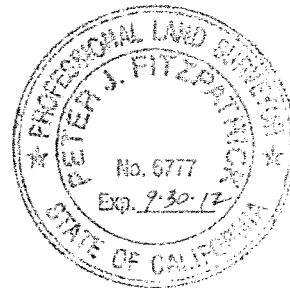
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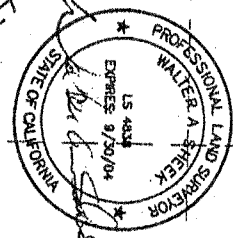
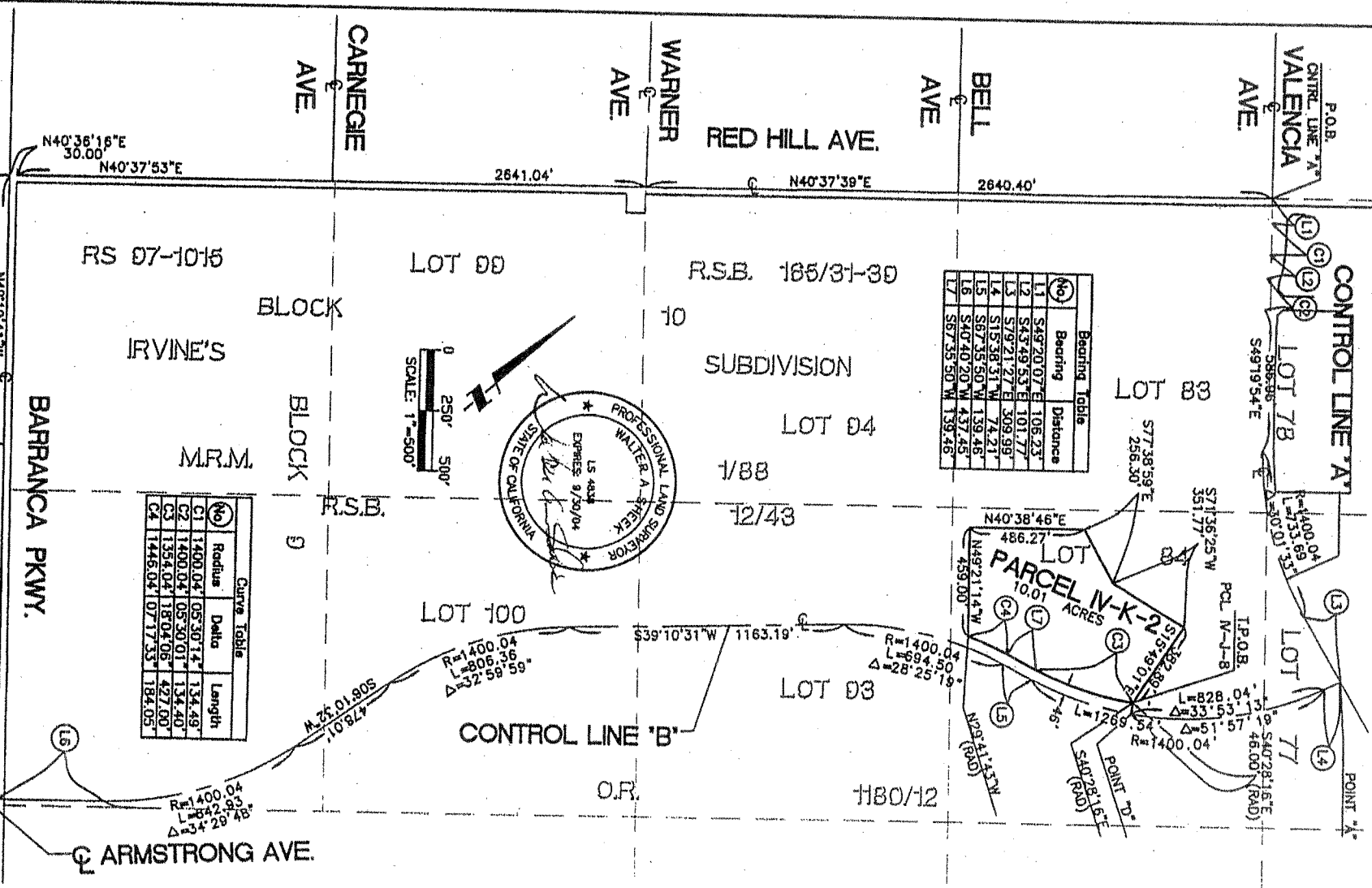
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25

26



# EXHIBIT B



MCAS-TUSTIN

DESCRIPTION: P-K-2 (Phase) Plan Dependent Site & portion of Curve-Out (S)

SCALE 1"=500'

SHEET OF 1

DATE JULY, 2002

CHECKED WAS

DATE

REVISION 2705010200

**Exhibit B-1**

**Legal Description**

**of**

**SOCCCD-County Exchange Parcel**

**(Fee)**

**Legal Description**  
**County Property**  
**(SOCCCD EXCHANGE PARCEL-FEE PORTION)**  
**(Being a portion of Parcel I-E1.1, Inst. No. 2004000369376, O.R.)**

In the City of Tustin, County of Orange, State of California, being that portion of Block 10 of Irvine's Subdivision as shown on the map filed in book 1, page 88 of Miscellaneous Record Maps, and as shown on a map filed in Book 165, Pages 31 through 39 inclusive of Records of Surveys, all of records of said County, described as follows:

For the purpose of this description the following two Control Lines are hereby established:

**Control Line "A"**

Beginning at the intersection of the centerline of Red Hill Avenue with the centerline of Valencia Avenue as shown on said Record of Survey, the centerline of Red Hill Avenue having a bearing of North  $40^{\circ}37'39''$  East between Valencia Avenue and Warner Avenue; thence South  $49^{\circ}20'07''$  East 106.23 feet to the beginning of a curve concave southwesterly having a radius of 1400.04 feet; thence southeasterly along said curve 134.49 feet through a central angle of  $05^{\circ}30'14''$ ; thence South  $43^{\circ}49'53''$  East 101.77 feet to the beginning of a curve concave northeasterly having a radius of 1400.04 feet; thence southeasterly along said curve 87.02 feet through a central angle of  $03^{\circ}33'41''$ ; thence continuing along said curve 47.38 feet through a central angle of  $01^{\circ}56'20''$ ; thence South  $49^{\circ}19'54''$  East 424.17 feet; thence continuing South  $49^{\circ}19'54''$  East 162.79 feet to the beginning of a curve concave northeasterly having a radius of 1400.04 feet; thence southeasterly and easterly along said curve 733.69 feet through a central angle of  $30^{\circ}01'33''$ ; thence South  $79^{\circ}21'27''$  East 309.99 feet to its intersection with Control Line "B".

**Control Line "B"**

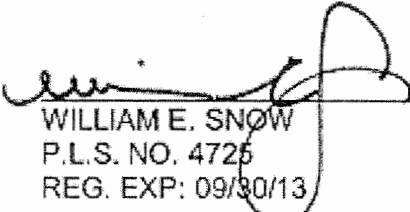
Beginning at its intersection with Control Line "A"; thence South  $15^{\circ}38'31''$  West 74.21 feet to the beginning of a curve concave northwesterly having a radius of 1400.04 feet; thence southwesterly along said curve 828.03 feet through a central angle of  $33^{\circ}53'13''$ ; thence continuing southwesterly along said curve 441.51 feet through a central angle of  $18^{\circ}04'06''$ ; thence South  $67^{\circ}35'50''$  West 139.46 feet to the beginning of a curve concave southeasterly having a radius of 1400.04 feet; thence southwesterly along said curve 694.50 feet through a central angle of  $28^{\circ}25'19''$ ; thence South  $39^{\circ}10'31''$  West 177.54 feet to a point hereinafter to be referred to as Point "A"; thence continuing South  $39^{\circ}10'31''$  West 985.65 feet to the beginning of a curve concave southeasterly having a radius of 1400.04 feet; thence southwesterly and southerly along said curve 806.36 feet through a central angle of  $32^{\circ}59'59''$ ; thence South  $6^{\circ}10'32''$  West 478.01 feet to the beginning of a curve concave northwesterly having a radius of 1400.04 feet; thence southerly and southwesterly along said curve 842.93 feet through a central angle of  $34^{\circ}29'48''$ ; thence South  $40^{\circ}40'20''$  West 437.45 feet to the intersection of the centerline of Barranca Parkway with the centerline of Armstrong Avenue as shown on said Record of Survey.

**Legal Description  
County Property  
(SOCCCD EXCHANGE PARCEL-FEE PORTION)**

Commencing at the hereinabove described Point "A", thence leaving said Control Line "B" North 33°57'12" West 48.07 feet to the most southerly corner of Parcel IV-J-6 as shown on a document recorded May 14, 2002 as Instrument No. 2002040590, Official Records; thence continuing North 33°57'12" West 70.07 feet to the southwesterly corner of said Parcel IV-J-6; thence along the westerly line of said Parcel IV-J-6, North 09°21'06" East 300.94 feet to the **TRUE POINT OF BEGINNING**; thence leaving said westerly line, North 50°49'29" West 398.40 feet; thence South 40°39'15" West 88.79 feet to a point on the northerly line of Parcel II-F-2 as shown on the aforementioned Instrument No. 2002040590, Official Records; thence North 50°08'15" West 157.68 feet; thence South 39°51'45" West 231.82 feet; thence North 49°20'45" West 213.37 feet; thence North 40°39'15" East 636.73 feet; thence South 50°48'31" East 572.74 feet to the westerly line of aforementioned Parcel IV-J-6; thence South 09°21'06" West 372.54 feet along said westerly line to the TPOB.

Containing 6.82 acres, more or less

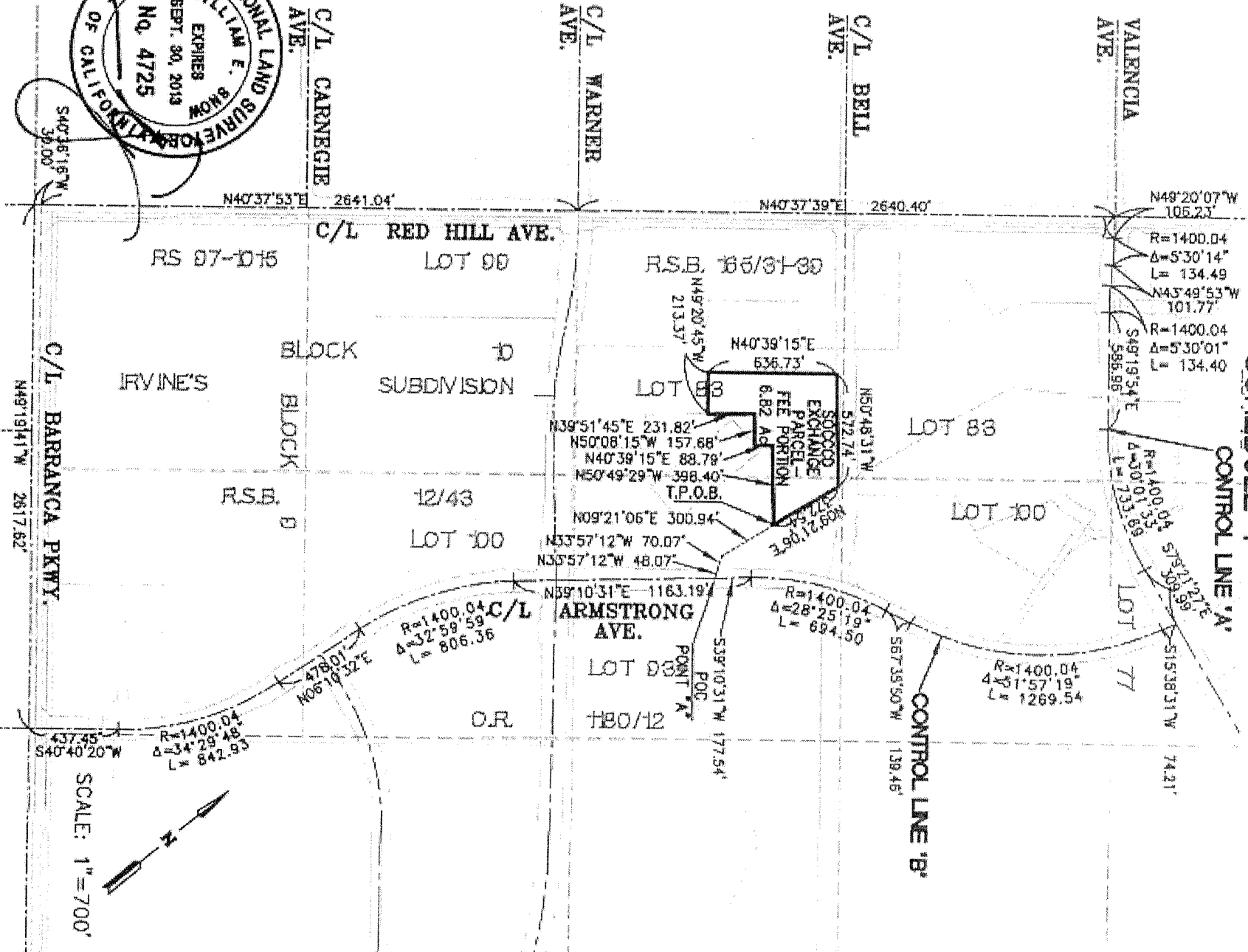
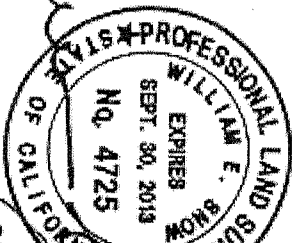
Schedule "1 and 2" attached and by this reference made a part hereof.

 05/08/13  
WILLIAM E. SNOW                      DATE  
P.L.S. NO. 4725  
REG. EXP: 09/30/13





**PENCO ENGINEERING, INC.**  
 Civil Engineering  
 Planning  
 Surveying  
 18842 Von Korman  
 Suite 500  
 Irvine, California 92606  
 (949) 753-8111



**SCHEDULE "A"**  
 CONTROL LINE "A"

**SCHEDULE "B"**  
 CONTROL LINE "B"

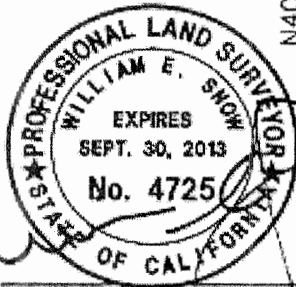
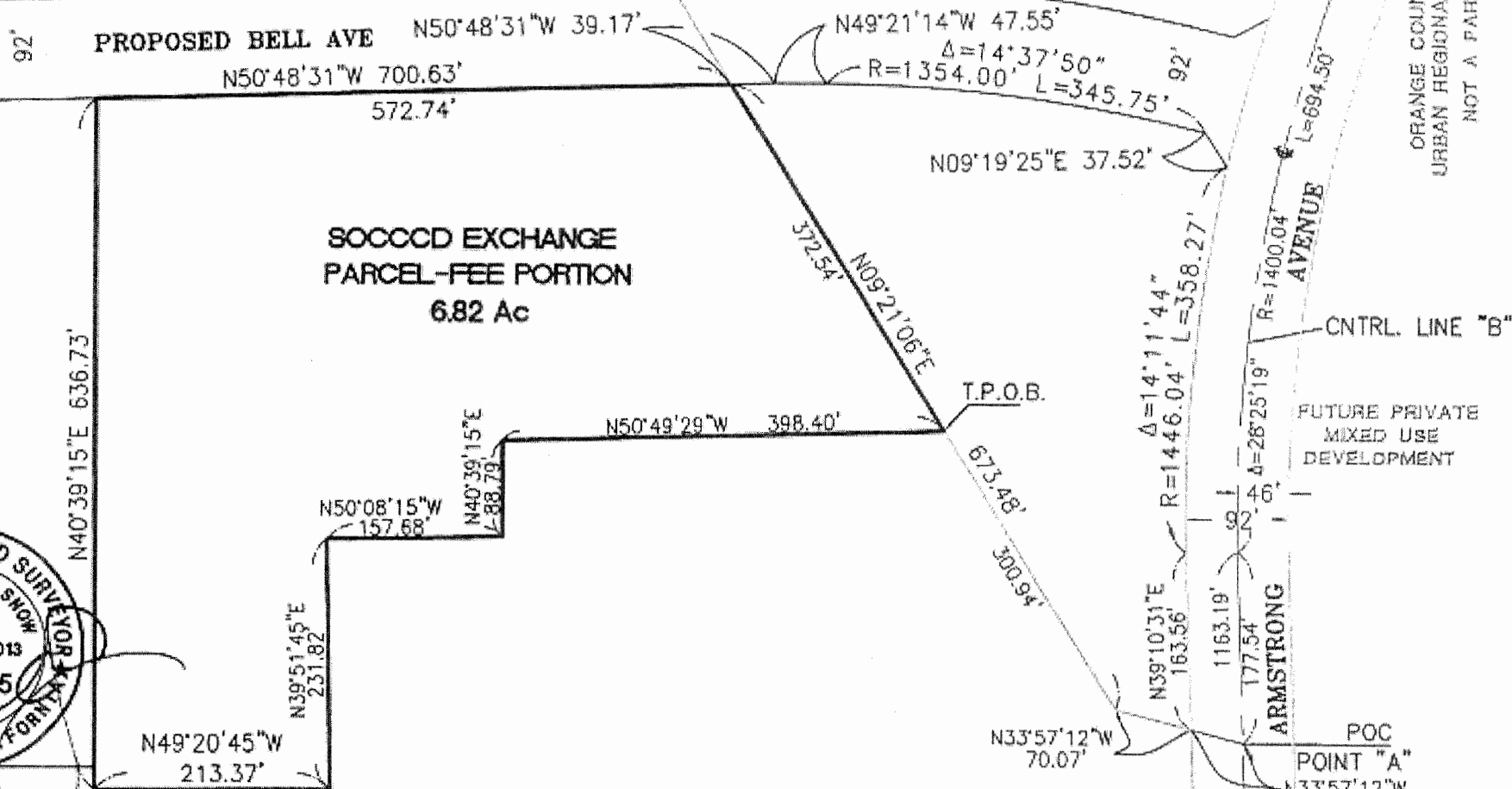
SCALE: 1"=700'

**SCHEDULE "1"**  
 PLAT ACCOMPANY LEGAL DESCRIPTION  
**COUNTY PROPERTY**  
**(SOCCCD EXCHANGE**  
**PARCEL -**  
**FEE PORTION)**

SCALE: AS-SHOWN
DRAWN BY: REP
CHECKED BY: WES
DATE: 04/24/13
JOB NO. 03353.03



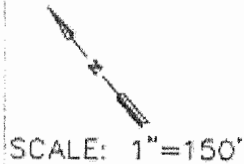
SCHEDULE "2"



**PENCO ENGINEERING, INC.**  
 Civil Engineering  
 Planning  
 Surveying  
 26842 Von Karman  
 Suite 150  
 Irvine, California 92606  
 (949) 753-8111

SCHEDULE "2"  
 PLAT TO ACCOMPANY LEGAL DESCRIPTION  
**COUNTY PROPERTY  
 (SOCCCD EXCHANGE  
 PARCEL-FEE PORTION)**

SCALE: AS-SHOWN  
 DRAWN BY: REP  
 CHECKED BY: WES  
 DATE: 04/24/13  
 JOB No. 03353.03



**Exhibit B-2**

**Legal Description**

**of**

**SOCCCD-County Exchange Parcel**

**(Sublease)**

**Legal Description**  
**County Property**  
**(SOCCCD EXCHANGE PARCEL-SUBLEASE PORTION)**  
**(Being a portion of Parcel IV-J-6, Inst. No. 20020404590, O.R.)**

In the City of Tustin, County of Orange, State of California, being that portion of Block 10 of Irvine's Subdivision as shown on the map filed in book 1, page 88 of Miscellaneous Record Maps, and as shown on a map filed in Book 165, Pages 31 through 39 inclusive of Records of Surveys, all of records of said County, described as follows:

For the purpose of this description the following two Control Lines are hereby established:

**Control Line "A"**

Beginning at the intersection of the centerline of Red Hill Avenue with the centerline of Valencia Avenue as shown on said Record of Survey, the centerline of Red Hill Avenue having a bearing of North 40°37'39" East between Valencia Avenue and Warner Avenue; thence South 49°20'07" East 106.23 feet to the beginning of a curve concave southwesterly having a radius of 1400.04 feet; thence southeasterly along said curve 134.49 feet through a central angle of 05°30'14"; thence South 43°49'53" East 101.77 feet to the beginning of a curve concave northeasterly having a radius of 1400.04 feet; thence southeasterly along said curve 87.02 feet through a central angle of 03°33'41"; thence continuing along said curve 47.38 feet through a central angle of 01°56'20"; thence South 49°19'54" East 424.17 feet; thence continuing South 49°19'54" East 162.79 feet to the beginning of a curve concave northeasterly having a radius of 1400.04 feet; thence southeasterly and easterly along said curve 733.69 feet through a central angle of 30°01'33"; thence South 79°21'27" East 309.99 feet to its intersection with Control Line "B".

**Control Line "B"**

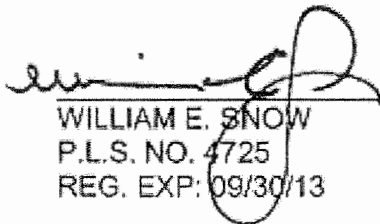
Beginning at its intersection with Control Line "A"; thence South 15°38'31" West 74.21 feet to the beginning of a curve concave northwesterly having a radius of 1400.04 feet; thence southwesterly along said curve 828.03 feet through a central angle of 33°53'13"; thence continuing southwesterly along said curve 441.51 feet through a central angle of 18°04'06"; thence South 67°35'50" West 139.46 feet to the beginning of a curve concave southeasterly having a radius of 1400.04 feet; thence southwesterly along said curve 694.50 feet through a central angle of 28°25'19"; thence South 39°10'31" West 177.54 feet to a point hereinafter to be referred to as Point "A"; thence continuing South 39°10'31" West 985.65 feet to the beginning of a curve concave southeasterly having a radius of 1400.04 feet; thence southwesterly and southerly along said curve 806.36 feet through a central angle of 32°59'59"; thence South 6°10'32" West 478.01 feet to the beginning of a curve concave northwesterly having a radius of 1400.04 feet; thence southerly and southwesterly along said curve 842.93 feet through a central angle of 34°29'48"; thence South 40°40'20" West 437.45 feet to the intersection of the centerline of Barranca Parkway with the centerline of Armstrong Avenue as shown on said Record of Survey.

**Legal Description  
County Property  
(SOCCCD EXCHANGE PARCEL-SUBLEASE PORTION)**

Commencing at the hereinabove described Point "A", thence leaving said Control Line "B" North 33°57'12" West 48.07 feet to the **TRUE POINT OF BEGINNING** and the most southerly corner of Parcel IV-J-6 as shown on a document recorded May 14, 2002 as Instrument No. 2002040590, Official Records; thence continuing North 33°57'12" West 70.07 feet to the southwesterly corner of said Parcel IV-J-6; thence along the westerly line of said Parcel IV-J-6, North 09°21'06" East 673.48 feet; thence leaving said westerly line, South 50°48'31" East 39.17 feet; thence South 49°21'14" East 47.55 feet to the beginning of a curve concave southwesterly having a radius of 1,354.00 feet; thence southeasterly along said curve 345.75 feet through a central angle of 14°37'50"; thence South 09°19'25" West 37.52 feet to the beginning of a non tangent curve concave southeasterly having a radius of 1,446.04 feet, a radial line of said curve to said point bearing North 36°37'45" West, said curve being concentric with and 46.00 feet northwesterly of said Control Line "B"; thence southwesterly along said curve 358.27 feet through a central angle of 14°11'44"; thence tangent to said curve, along a line parallel with and 46.00 feet northwesterly of said Control Line "B" South 39°10'31" West 163.56 feet to the **POINT OF BEGINNING**.

Containing 3.18 acres, more or less

Schedules "1 and 2" attached and by this reference made a part hereof.

  
WILLIAM E. SNOW      05/08/13  
P.L.S. NO. 4725      DATE  
REG. EXP: 09/30/13



**SCHEDULE "1"**

**CONTROL LINE "A"**

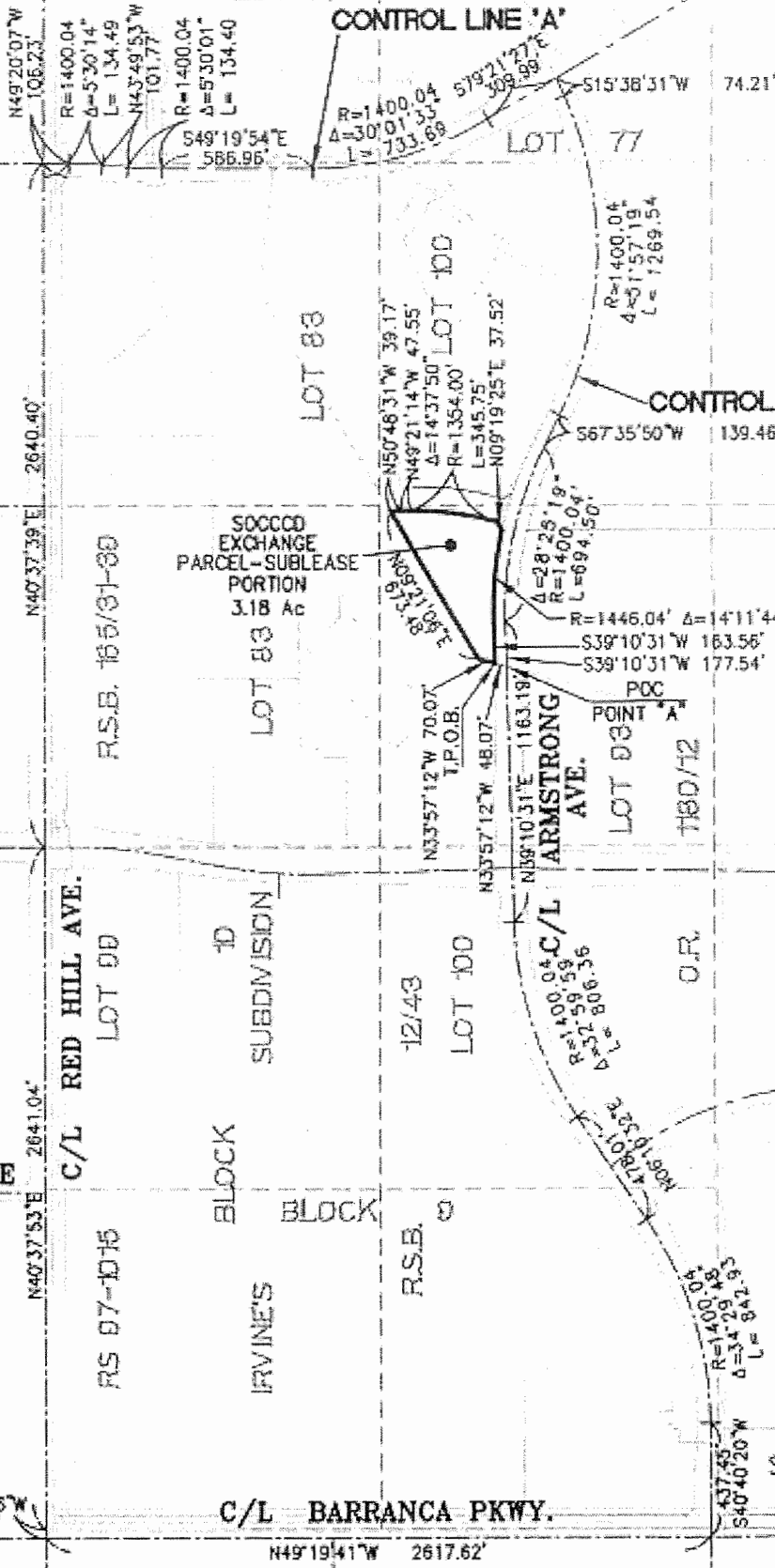
VALENCIA  
AVE.

C/L BELL  
AVE.

C/L WARNER  
AVE.

C/L CARNEGIE  
AVE.

C/L BARRANCA PKWY.



PROFESSIONAL LAND SURVEYOR  
WILLIAM E. SNOW  
EXPIRES  
SEPT. 30, 2013  
No. 4725  
STATE OF CALIFORNIA

F:\JOB\2011\03353\XSurvey\Legal\LegalDescriptions\Legal Schedule-2.dwg 4/23/2013 10:40:02 AM PDT

**PENCO ENGINEERING, INC.**  
Civil Engineering  
Planning  
Surveying  
16842 Van Karman  
Suite 100  
Irvine, California 92606  
(949) 753-8111

SCHEDULE "1"  
PLAT TO ACCOMPANY LEGAL DESCRIPTION  
**COUNTY PROPERTY  
(SOCCCD EXCHANGE  
PARCEL-  
SUBLEASE PORTION)**

SCALE: AS-SHOWN  
DRAWN BY: REP  
CHECKED BY: WES  
DATE: 04/18/13  
JOB No. 03353.03

SCHEDULE "2"

PROPOSED BELL AVE

N50°48'31"W 39.17'  
S50°48'31"E 700.63'

SOC CCD EXCHANGE  
PARCEL  
SUBLEASE PORTION  
3.18 Ac

N49°21'14"W 47.55'  
Δ=14°37'50"  
R=1354.00' L=345.75'

N09°19'25"E 37.52'

372.54'  
N09°21'06"E 673.48'  
N55°16'36"E RAD  
Δ=14°11'44"  
R=1446.04' L=358.27'

N50°49'29"W 398.40'

N50°08'15"W 157.68'

N39°51'45"E 231.82'

N40°39'15"E 88.79'

N33°57'12"W 70.07'

T.P.O.B

N39°10'31"E 163.56'

Δ=14°11'44"  
R=1446.04' L=358.27'

1163.19'

Δ=28°25'19"  
R=1400.04' L=694.50'

177.54'

C/L ARMSTRONG AVENUE

POC POINT "A"

N33°57'12"W 48.07'

N39°10'31"E 985.65'

SCALE: 1"=150'

CNTRL LINE "B"

FUTURE PRIVATE MIXED USE DEVELOPMENT

N36°37'45"W RAD

ORANGE COUNTY  
URBAN REGIONAL PARK  
NOT A PART



**PENCO ENGINEERING, INC.**

Civil Engineering  
Planning  
Surveying

16842 Von Korman  
Suite 150  
Irvine, California 92606  
(949) 753-8111

SCHEDULE "2"

PLAT TO ACCOMPANY LEGAL DESCRIPTION  
**COUNTY PROPERTY  
(SOC CCD EXCHANGE  
PARCEL -  
SUBLEASE PORTION)**

SCALE: AS-SHOWN

DRAWN BY: REP

CHECKED BY: WES

DATE: 04/18/13

JOB No. 03353.03

**Exhibit C**

**Glossary of Defined Terms**

## Glossary of Defined Terms

<u>Defined Term</u>	<u>Section Reference</u>
2004 Bill of Sale	Section 1.1.8
2004 Quitclaim Deed	Section 1.1.8
2011 SP Amendment	Section 1.1.13
2013 GP Amendment	Section 1.1.14
2013 Plan Amendments	Section 1.1.14
2013 SP Amendment	Section 1.1.14
ADT's	Section 5.3
Annual Report	Section 2.8.1
Applicable Fair Share Contribution	Section 6.1.2.4
Approval Date	Section 1.1.22
Bankruptcy Proceeding	Section 12.7.5
Base Closure Law	Section 1.1.1
Board of Trustees	Section 1.1.9
Borrower	Section 12.6.1
Building Area	Section 2.2.2
Business Day(s)	Section 21.1
Category 1 Improvements	Section 4.3.2
CEQA	Section 4.4
CEQA Document	Section 1.1.20
City Council	Section 1.1.2
City Obligations	Section 17.3



<u>Defined Term</u>	<u>Section Reference</u>
City Property	Section 1.1.5
City's Tustin Legacy Backbone Infrastructure Program	Section 6.1
City-SOCCCD Land Exchange	Section 1.1.14
City-SOCCCD Land Exchange Agreement	Section 1.1.14
Concept Plan 3A	Section 1.1.11
County-SOCCCD Exchange Parcel	Section 1.1.15
County-SOCCCD Land Exchange	Section 1.1.13
County-SOCCCD Land Exchange Agreement	Section 1.1.13
Current Specific Plan	Section 1.1.12
Current Sublease	Section 1.3.4
Current Sublease Area	Section 1.3.4
Development Agreement	Introductory Paragraph
Development Agreement Laws	Section 1.1.18
Development Agreement Ordinance	Section 1.1.20
Development Approvals	Section 4.3
Development Processing Requirements	Section 4.3.4.1
DSA	Section 1.6.1
DSA Plans	Section 1.6.3
EBS	Section 8.1.2
EDC	Section 1.1.5
Effective Date	Section 1.4
Effective Standards	Section 2.7.2.1
Environmental Mitigation	Section 8.2
Environmental Reports	Section 8.1.2

<b><u>Defined Term</u></b>	<b><u>Section Reference</u></b>
Exempt Leases	Section 12.2.1.2 (b)
Exigent Event	Section 2.7.5
Existing City Laws	Section 2.3
Existing Land Use Regulations	Section 2.7.1
Federal Deed	Section 1.1.5
Field Act	Section 1.6.1
Final EIS/EIR	Section 1.1.3
Fair Share Contribution	Section 6.1
Foreclosure Transferee	Section 12.7.2
Form of Quitclaim Deed	Section 9.3
FOSL	Section 8.1.2
FOST	Section 8.1.2
General Default	Section 12.6.5.4
Government	Section 1.1.1
Horizontal Improvements	Section 6.3
Identification Date	Introductory Paragraph
Indemnified Parties	Section 14.1
Initial Closing	Section 1.1.8
Initial Parcel	Section 1.1.8
Initial Specific Plan	Section 1.1.2
Initial Sublease Area	Section 1.1.8
Institutional Lender	Section 12.6.2.5
Land Use and Access Plan (“LUAP”)	Section 4.3.4.3
Land Use Category 1	Section 5.1.1

**Defined Term****Section Reference**

Land Use Category 2	Section 5.1.2
Land Use Category 1 Space Commenced	Section 5.1.3.2
Land Use Category 2 Space Authorized	Section 5.1.3.2
Lease	Section 12.2.1.2
LIFO	Section 1.1.5
LRA	Section 1.1.1
Major Improvements	Section 4.2
Material Default	Section 13.1.2
MCAS Tustin	Section 1.1.1
Mortgage	Section 12.6.1
Mortgagee	Section 12.6.1
Navy	Section 1.1.3
Navy-City Conveyance Agreement	Section 1.1.6
Notice of General Default	Section 12.6.5.4
Notice of Section 2 Default	Section 2.9.1
Notice of Sublease Amendment	Section 1.3.4
Official Records	Introductory Paragraph
Original Agreement	Introductory Paragraph
Original Navy-City Conveyance Agreement	Section 1.1.5
Original Notice of Sublease	Section 1.1.8
Original Sublease	Section 1.1.8
Other Entities' Tustin Backbone Infrastructure Program	Section 6.2
Party; Parties	Introductory Paragraph
Per-Foot Contribution Amount	Section 6.1.2.2

<b><u>Defined Term</u></b>	<b><u>Section Reference</u></b>
Permitted Foreclosures	Section 12.2.1.4
Permitted Lease	Section 12.2.1.2
Permitted Lessee	Section 12.2.1.2
Permitted Mortgagees	Section 12.6.1
Permitted Mortgages	Section 12.6.1
Permitted Transferee	Section 12.2.1
Released Party; Released Parties	Section 16.3.3
Releasing Party	Section 16.3.3
Reuse Plan	Section 1.1.2
Reversion Area	Section 13.2
Reversion Conditions	Section 13.3
Right of Reversion	Section 13.2
Section 2 Default	Section 2.9.1
Service Uses	Section 5.1.1.1
SOCCCD	Introductory Paragraph
SOCCCD-County Exchange Parcel	Section 1.1.15
SOCCCD Property after County Exchange	Section 2.1.2
SOCCCD Property on Effective Date	Section 2.1.1
Specific Plan	Section 1.1.16
Sublease Amendment	Section 1.3.4
Subsequent Closings	Section 1.3.4
Supportive Uses	Section 5.1.1.2
Transfer	Section 12.2
Tustin Legacy	Section 1.1.2

**Defined Term**

Utilities

Utility Systems

**Section Reference**

Section 6.4.1

Section 6.4.2

**Exhibit D**

**Legal Description**

**of**

**SOCCCD Property on Effective Date**

**(Area H)**

SOCCCD Property on Effective Date w/ ROW

Tustin, CA

AREA H

Portion of APN: 430-283-16, 430-283-18, and 430-282-11  
And all of 430-283-10, 430-283-09 and 430-282-10

Real property situated in the City of Tustin, County of Orange, State of California, described as follows:

Being a portion of PARCEL I-E-1.1 and all of PARCEL I-E-4, as said parcels are described in that certain document entitled, "QUITCLAIM DEED AND ENVIRONMENTAL RESTRICTION PURSUANT TO CIVIL CODE SECTION 1471", filed for record on April 29, 2004 in Document No. 2004000369376,

And a portion of PARCEL IV-J-4 and PARCEL IV-J-6 and all of PARCEL IV-J-5 and PARCEL IV-J-7, as said parcels are described in that certain document entitled "SHORT FORM NOTICE OF LEASE IN FURTHERANCE OF CONVEYANCE", filed for record on May 14, 2002 in Document No. 20020404590,

And a portion of PARCEL I-E-2 as said parcel is described in that certain document entitled "QUITCLAIM DEED E AND ENVIRONMENTAL RESTRICTION PURSUANT TO CIVIL CODE SECTION 1471", filed for record on May 14, 2002 in Document No. 20020404595, Records of Orange County, more particularly described as follows;

**AREA H1:**

COMMENCING at the most northwesterly corner of said PARCEL 1-E-2;

Thence along the northwesterly line of said PARCEL I-E-2, the following five (5) courses:

1. North 40°37'39" East, 50.00 feet;
2. South 49°22'21" East, 12.00 feet;
3. North 40°37'39" East, 180.00 feet;
4. North 49°22'21" West, 12.00 feet;
5. North 40°37'39" East, 343.98 feet the TRUE POINT OF BEGINNING;

Thence continuing along said northwesterly the following ten (10) courses:

1. North 40°37'39" East, 376.02 feet;
2. North 49°22'21" West, 5.00 feet;
3. North 40°37'39" East, 797.89 feet;

4. South 49°22'21" East, 131.81 feet to the beginning of a tangent curve concave to the northeast, having a radius of 25.00 feet;
5. Along said curve, through a central angle of 31°01'38", for an arc length of 13.54 feet;
6. South 80°23'59" East, 76.58 feet;
7. South 86°54'41" East, 259.66 feet to the beginning of a tangent curve, having a radius of 14.50 feet;
8. Easterly and northerly along said curve, through a central angle of 86°28'53", for an arc length of 21.89 feet to the beginning of a reverse curve, having a radius of 362.00 feet;
9. Northerly and northeasterly along said reverse curve to the right through a central angle of 33°53'18", for an arc length of 214.11 feet;
10. North 40°29'44" East, 235.84 feet to the southwesterly line of said PARCEL I-E-4;

Thence leaving last said line and along said southwesterly line, North 49°19'54" West, 351.89 feet to the northwesterly line of said PARCEL I-E-4;

Thence leaving last said line and along said northwesterly line North 40°37'39" East, 59.07 feet to the northeasterly line of said PARCEL I-E-4;

Thence leaving last said line and along said northeasterly line to the following thirteen (13) courses:

1. North 85°38'32" East, 36.79 feet;
2. South 49°20'07" East, 3.18 feet to the beginning of a tangent curve concave to the southwest, having a radius of 1,348.04 feet;
3. Along said curve, through a central angle of 01°54'51", for an arc length of 45.04 feet to the beginning of a compound curve, having a radius of 42.00 feet;
4. Southeasterly along said compound curve through a central angle of 16°18'19", for an arc length of 11.95 feet;
5. South 31°06'57" East, 31.73 feet to the beginning of a tangent curve concave to the northeast, having a radius of 58.00 feet;
6. Along said curve, through a central angle of 12°42'56", for an arc length of 12.87 feet;
7. South 43°49'53" East, 61.09 feet to the beginning of a tangent curve concave to the northeast, having a radius of 58.00 feet;
8. Southeasterly along said curve, through a central angle of 14°09'14", for an arc length of 14.33 feet;



9. South 57°59'07" East, 36.66 feet to the beginning of a tangent curve concave to the southwest, having a radius of 42.00 feet;
10. Along said curve, through a central angle of 14°09'17", for an arc length of 10.38 feet;
11. South 43°49'50" East, 9.46 feet to the beginning of a tangent curve concave to the northeast, having a radius of 1,452.04 feet;
12. Along said curve, through a central angle of 02°32'29", for an arc length of 64.40 feet;
13. South 02°51'08" East, 23.41 feet;

Thence continuing along last said northeasterly line and along the northeasterly line of said PARCEL I-E-1.1, South 47°19'39" East, 56.04 feet;

Thence continuing along last said northeasterly line of said PARCEL I-E-1.1, the following four (4) courses:

1. North 85°40'06" East, 24.04 feet;
2. South 49°19'54" East, 9.97 feet to the beginning of a tangent curve concave to the northeast having a radius of 3,108.59 feet;
3. Southeasterly along said curve, through a central angle of 02°18'05", for an arc length of 124.86 feet to the beginning of a reverse curve, having a radius of 3,092.59 feet;
4. Southeasterly along said reverse curve through a central angle of 02°18'05", for an arc length of 124.22 feet;

Thence continuing along said northeasterly line and the northeasterly line of said parcel IV-J-6, the following sixteen (16) courses:

1. South 49°19'54" East, 313.83 feet to the beginning of tangent curve concave to the northeast, having a radius of 1,447.04 feet;
2. Along said curve, through a central angle of 01°23'53", for an arc length of 35.31 feet;
3. South 04°58'49" East, 24.35 feet;
4. South 54°27'57" East, 56.24 feet;
5. North 83°15'15" East, 22.96 feet to the beginning of a non tangent curve concave to the northeast, having radius of 1,447.04 feet, to which point a radial line bears South 35°44'30" West;
6. Southeasterly along said curve, through a central angle of 11°53'59", for an arc length of 300.53 feet;
7. South 66°09'29" East, 52.51 feet;
8. South 21°09'25" East, 24.04 feet;

9. South  $68^{\circ}17'15''$  East, 62.36 feet;
10. Thence North  $64^{\circ}09'20''$  East, 23.85 feet to the beginning of a non tangent curve concave to the northeast, having a radius of 1,090.18 feet, to which point a radial line bears South  $19^{\circ}14'54''$  West;
11. Southeasterly along said curve, through a central angle of  $04^{\circ}56'38''$ , for an arc length of 94.07 feet to the beginning of a compound curve, having a radius of 1,464.04 feet;
12. Along said curve, through a central angle of  $00^{\circ}41'45''$ , for an arc length of 17.78 feet to the beginning of a reverse curve, having a radius of 142.00 feet;
13. Along said reverse curve through a central angle of  $11^{\circ}54'29''$ , for an arc length of 29.51 feet;
14. South  $64^{\circ}29'00''$  East, 15.88 feet to the beginning of a tangent curve concave to the northeast, having a radius of 158.00 feet;
15. Along said curve, through a central angle of  $14^{\circ}52'27''$ , for an arc length of 41.02 feet;
16. South  $79^{\circ}21'27''$  East, 218.54 feet to the southeasterly line of said PARCEL IV-J-6;

Thence leaving said line and along said southeasterly line the following eleven (11) courses:

1. South  $31^{\circ}20'58''$  East, 40.12 feet; to the beginning of a non tangent curve to the west, having a radius of 1,354.04 feet, to which point a radial line bears North  $73^{\circ}20'33''$  West;
2. Southerly along said curve, through a central angle of  $02^{\circ}02'49''$ , for an arc length of 48.37 feet to the beginning of a compound curve, having a radius of 42.00 feet;
3. Southwesterly, along said compound curve through a central angle of  $16^{\circ}11'24''$ , for an arc length of 11.87 feet;
4. South  $34^{\circ}53'40''$  West, 33.43 feet to the beginning of a tangent curve concave the east, having a radius of 58.00 feet;
5. Along said curve, through a central angle of  $13^{\circ}44'05''$ , for an arc length of 13.90 feet to the beginning of a reverse, having a radius of 1,3420.04 feet;
6. Southerly along said reverse curve to through a central angle of  $02^{\circ}27'21''$  for an arc length of 57.52 feet to the beginning of a reverse curve, having a radius of 58.00 feet;
7. Southerly, along said reverse curve through a central angle of  $13^{\circ}44'05''$ , for an arc length of 13.90 feet;
8. South  $09^{\circ}52'51''$  West, 33.43 feet to the beginning of a tangent curve concave to the northwest, having a radius of 42.00 feet;
9. Along said curve, through a central angle of  $16^{\circ}11'24''$ , for an arc length of 11.87 feet to the beginning of a compound curve, having a radius of 1,354.04 feet;

10. Along said compound curve through a central angle of  $23^{\circ}27'25''$ , for an arc length of 554.35 feet;

11. North  $15^{\circ}49'01''$  West, 382.89 feet to the southeasterly line of said PARCEL IV-J-7;

Thence leaving said southeasterly line of said PARCEL IV-J-6 and along the southeasterly line of said PARCEL IV-J-7, South  $71^{\circ}36'25''$  West, 351.77 feet;

Thence continuing along said southeasterly line of said PARCEL IV-J-7 and continuing along said PARCEL IV-J-6, North  $77^{\circ}38'59''$  West, 256.30 feet;

Thence along the southeasterly line of said PARCEL IV-J-6, the following four (4) courses:

1. South  $40^{\circ}38'46''$  West, 486.27 feet;
2. South  $49^{\circ}21'14''$  East, 459.00 feet to the beginning of a non tangent curve concave to the southeast, having a radius of 1,446.04 feet, to which point a radial line bears North  $29^{\circ}41'43''$  West;
3. Southwesterly along said curve, through a central angle of  $21^{\circ}07'46''$ , for an arc length of 533.27 feet;
4. South  $39^{\circ}10'31''$  West, 163.56 feet to the southwesterly line of said PARCEL IV-J-6;

Thence along last said southwesterly line, North  $33^{\circ}57'12''$  West, 70.07 feet to the westerly line of said PARCEL IV-J-6;

Thence leaving said southwesterly line and along said westerly line, North  $09^{\circ}21'06''$  East, 300.94 feet to the southeasterly line of said PARCEL I-E-1.1;

Thence along last said southeasterly line the following four (4) courses:

1. North  $50^{\circ}49'29''$  West, 398.40 feet;
2. South  $40^{\circ}39'15''$  West, 88.79 feet;
3. North  $50^{\circ}08'15''$  West, 157.69 feet;
4. South  $39^{\circ}51'45''$  West, 231.82 feet;

Thence leaving last said line, North  $49^{\circ}20'45''$  West, 213.37 feet;

Thence North  $40^{\circ}39'15''$  East, 20.88 feet;

Thence North  $49^{\circ}20'45''$  West, 718.34 to the TRUE POINT OF BEGINNING.

Containing 2,862,871 square feet or 65.722 acres, more or less.

AREA H2:

BEGINNING at the most northeasterly corner of said PARCEL IV-J-5;

Thence along the easterly line of said PARCEL IV-J-5, South 07°11'09" West, 236.11 feet to the southwesterly line of said PARCEL IV-J-5;

Thence along said southwesterly line of PARCEL IV-J-5 and PARCEL IV-J-4 the following five (5) courses:

1. North 73°31'26" West, 47.60 feet;
2. South 64°04'33" West, 24.04 feet to the beginning of a non tangent curve having a radius of 1,038.68 feet, to which point a radial line bears South 19°04'33" West;
3. Northwesterly along said curve, through a central angle of 05°27'40", for an arc length of 99.00 feet to the beginning of a compound curve, having a radius of 1,353.04 feet;
4. Along said curve northwesterly, through a central angle of 16°07'53" for an arc length of 380.94 feet;
5. North 49°19'54" West, 183.81 feet;

Thence leaving said southwesterly line, North 40°40'06" East, 325.27 feet to the northeasterly line of said PARCEL IV-J-4;

Thence along said northeasterly line of said PARCEL IV-J-4 and continuing along the northeasterly line of said PARCEL IV-J-5, South 49°10'56" East, 576.11 feet to the POINT OF BEGINNING.

Containing an area of 197,272 square feet, 4.529 acres more or less.

Containing a total area of 3,060,143 square feet, 70.251 acres more or less.

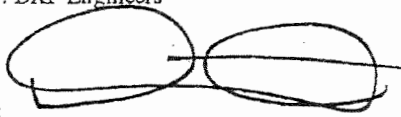
Being a portion of Assessor's Parcel Numbers: 430-283-16, 430-283-18, and 430-282-11

Being all of Assessor Parcel Numbers 430-283-10, 430-283-09 and 430-282-10

As shown on "Schedule 1" attached hereto and made a part hereof.

For: BKF Engineers

By:

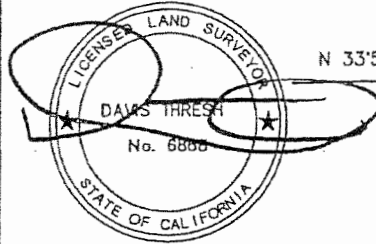
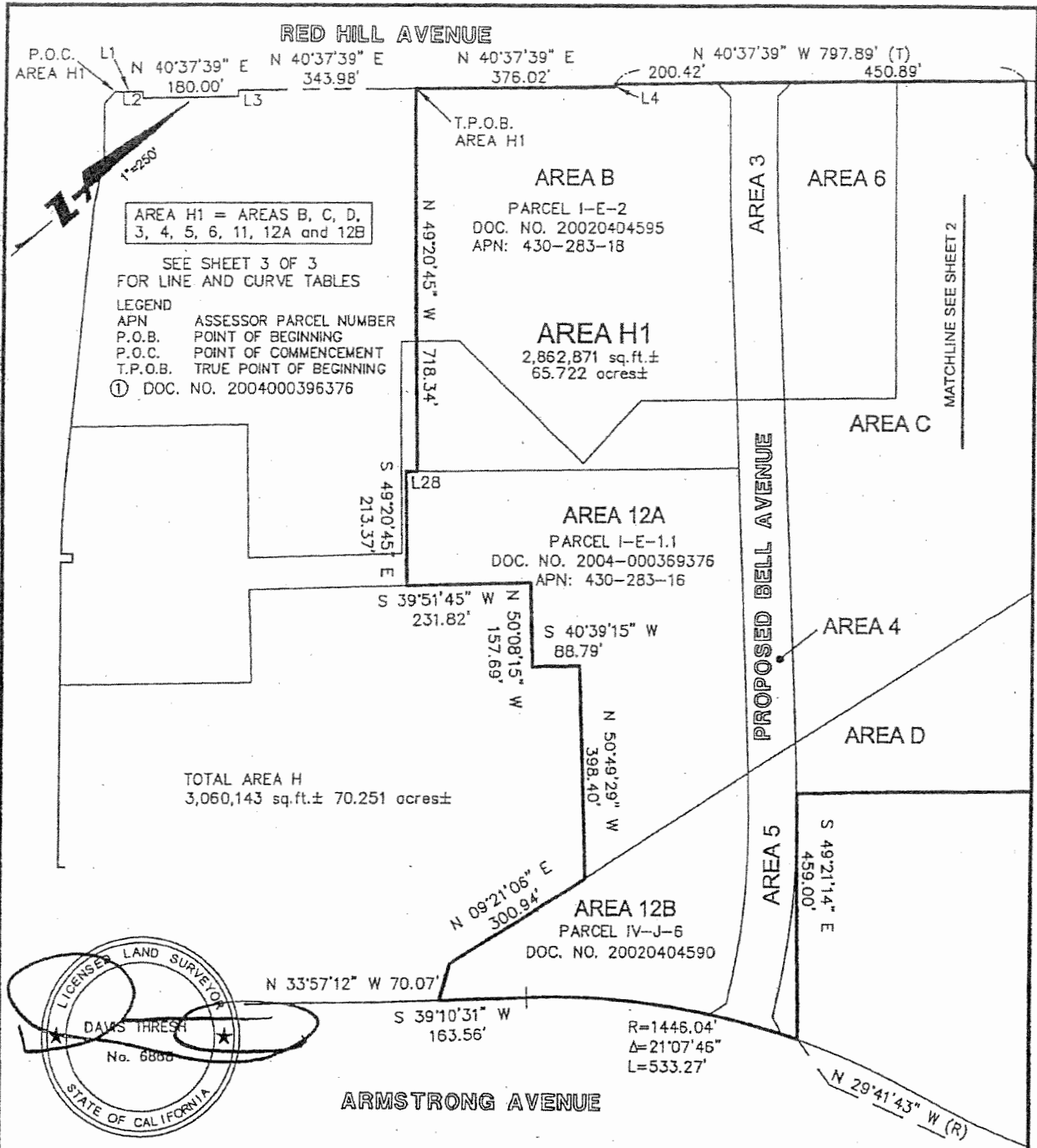
  
Davis Thresh, P.L.S. No. 6868  
License expires: 09-30-2014



Date:

5-15-2013

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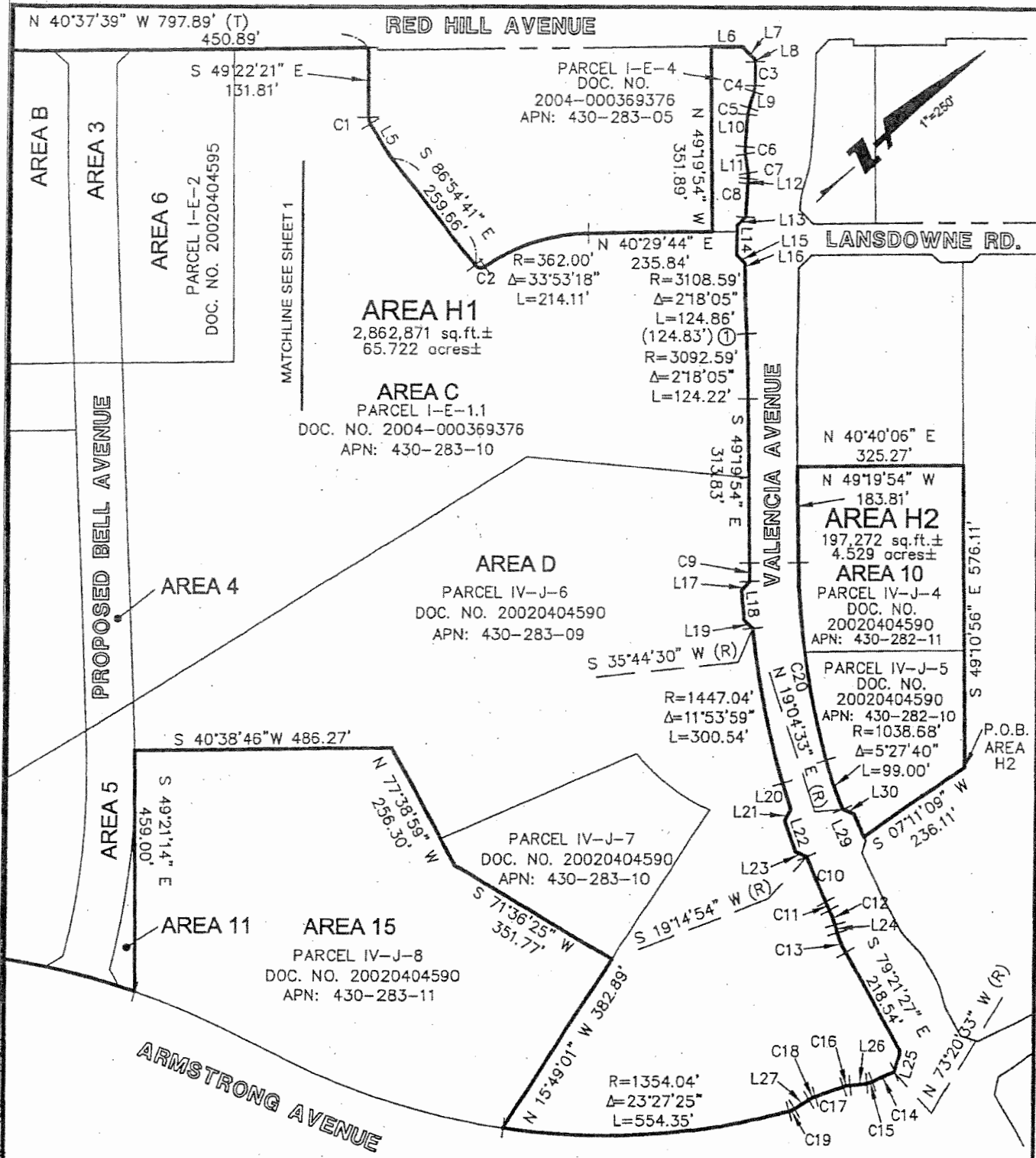
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PLAT TO ACCOMPANY LEGAL



600 SOUTH MAIN STREET  
 SUITE 920  
 ORANGE, CA 92868  
 714-415-0500  
 714-415-0599 (FAX)

Subject SCHEDULE 1  
AREA H  
 Job No. 20122006  
 By RL Date 5/7/13 Chkd. WS  
 SHEET 1 OF 3



600 SOUTH MAIN STREET  
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Subject SCHEDULE 1  
AREA H  
 Job No. 20122006  
 By RL Date 5/7/13 Chkd. WS  
 SHEET 2 OF 3

LINE TABLE		
LINE	BEARING	LENGTH
L1	N 40°37'39" E	50.00'
L2	S 49°22'21" E	12.00'
L3	N 49°22'21" W	12.00'
L4	N 49°22'21" W	5.00'
L5	S 80°23'59" E	76.58'
L6	N 40°37'39" E	59.07'
L7	N 85°38'32" E	36.79'
L8	N 49°20'07" W	3.18'
L9	S 31°06'57" E	31.73'
L10	S 43°49'53" E	61.09'
L11	S 57°59'07" E	36.66'
L12	S 43°49'50" E	9.46'
L13	S 02°51'08" E	23.41'
L14	S 47°19'39" E	56.04'
L15	N 85°40'06" E	24.04'
L16	S 49°19'54" E	9.97'
L17	S 04°58'49" E	24.35'
L18	S 54°27'57" E	56.24'
L19	N 83°15'15" E	22.96'
L20	S 66°09'29" E	52.51'
L21	S 21°09'25" E	24.04'
L22	S 68°17'15" E	62.36'
L23	N 64°09'20" E	23.85'
L24	S 64°29'00" E	15.88'
L25	S 31°20'58" E	40.12'
L26	S 34°53'40" W	33.43'
L27	S 09°52'51" W	33.43'
L28	S 40°39'15" W	20.88'
L29	N 73°31'26" W	47.60'
L30	S 64°04'33" W	24.04'

CURVE TABLE			
CURVE	RADIUS	DELTA	LENGTH
C1	25.00'	31°01'38"	13.54'
C2	14.50'	86°28'53"	21.89'
C3	1348.04'	1°54'51"	45.04'
C4	42.00'	16°18'19"	11.95'
C5	58.00'	12°42'56"	12.87'
C6	58.00'	14°09'14"	14.33'
C7	42.00'	14°09'17"	10.38'
C8	1452.04'	2°32'29"	64.40'
C9	1447.04'	1°23'53"	35.31'
C10	1090.18'	4°56'38"	94.07'
C11	1464.04'	0°41'45"	17.78'
C12	142.00'	11°54'29"	29.51'
C13	158.00'	14°52'27"	41.02'
C14	1354.04'	2°02'49"	48.37'
C15	42.00'	16°11'24"	11.87'
C16	58.00'	13°44'05"	13.90'
C17	1342.04'	2°27'21"	57.52'
C18	58.00'	13°44'05"	13.90'
C19	42.00'	16°11'24"	11.87'

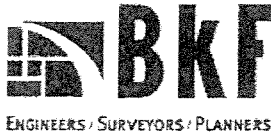


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 SHEET 3 OF 3

**Exhibit E**  
**Legal Description**  
**of**  
**SOCCCD Property after County Exchange**  
**(Area I)**





SOCCCD Property after County Exchange w/ROW

Tustin, CA

**AREA I**

Portion of APN: 430-283-16, 430-283-18, 430-283-09 and 430-282-11

And all of 430-283-10 and 430-10-11 and 430-282-10

Real property situated in the City of Tustin, County of Orange, State of California, described as follows:

Being a portion of PARCEL I-E-1.1 and all of PARCEL I-E-4, as said parcels are described in that certain document entitled, "QUITCLAIM DEED AND ENVIRONMENTAL RESTRICTION PURSUANT TO CIVIL CODE SECTION 1471", filed for record on April 29, 2004 in Document No. 2004000369376,

And a portion of PARCEL IV-J-4 and PARCEL IV-J-6 and all of PARCEL IV-J-5, PARCEL IV-J-7 and PARCEL IV-J-8 as said parcels are described in that certain document entitled "SHORT FORM NOTICE OF LEASE IN FURTHERANCE OF CONVEYANCE", filed for record on May 14, 2002 in Document No. 20020404590,

And a portion of PARCEL I-E-2 as said parcel is described in that certain document entitled "QUITCLAIM DEED E AND ENVIRONMENTAL RESTRICTION PURSUANT TO CIVIL CODE SECTION 1471", filed for record on May 14, 2002 in Document No. 20020404595, Records of Orange County, more particularly described as follows;

**AREA II:**

COMMENCING at the most northwesterly corner of said PARCEL I-E-2;

Thence along the northwesterly line of said PARCEL I-E-2, the following five (5) courses:

1. North 40°37'39" East, 50.00 feet;
2. South 49°22'21" East, 12.00 feet;
3. North 40°37'39" East, 180.00 feet;
4. North 49°22'21" West, 12.00 feet;
5. North 40°37'39" East, 343.98 feet the TRUE POINT OF BEGINNING;

Thence continuing along said northwesterly and continuing along the northwesterly liner of said PARCEL I-E-1.1 line the following ten (10) courses:

1. North 40°37'39" East, 376.02 feet;
2. North 49°22'21" West, 5.00 feet;
3. North 40°37'39" East, 797.89 feet;

4. South 49°22'21" East, 131.81 feet to the beginning of a tangent curve concave to the northeast, having a radius of 25.00 feet;
5. Along said curve, through a central angle of 31°01'38", for an arc length of 13.54 feet;
6. South 80°23'59" East, 76.58 feet;
7. South 86°54'41" East, 259.66 feet to the beginning of a tangent curve, having a radius of 14.50 feet;
8. Along said curve, through a central angle of 86°28'53", for an arc length of 21.89 feet to the beginning of a reverse curve, having a radius of 362.00 feet;
9. Along said reverse curve to the right through a central angle of 33°53'18", for an arc length of 214.11 feet;
10. North 40°29'44" East, 235.84 feet to the southwesterly line of said PARCEL I-E-4;

Thence leaving last said line and along said southwesterly line, North 49°19'54" West, 351.89 feet to the northwesterly line of said PARCEL I-E-4;

Thence leaving last said line and along said northwesterly line North 40°37'39" East, 59.07 feet to the northeasterly line of said PARCEL I-E-4;

Thence leaving last said line and along said northeasterly line to the following thirteen (13) courses:

1. North 85°38'32" East, 36.79 feet;
2. South 49°20'07" East, 3.18 feet to the beginning of a tangent curve concave to the southwest, having a radius of 1,348.04 feet;
3. Along said curve, through a central angle of 01°54'51", for an arc length of 45.04 feet to the beginning of a compound curve, having a radius of 42.00 feet;
4. Southeasterly along said compound curve through a central angle of 16°18'19", for an arc length of 11.95 feet;
5. South 31°06'57" East, 31.73 feet to the beginning of a tangent curve concave to the northeast, having a radius of 58.00 feet;
6. Along said curve, through a central angle of 12°42'56", for an arc length of 12.87 feet;
7. South 43°49'53" East, 61.09 feet to the beginning of a tangent curve concave to the northeast, having a radius of 58.00 feet;
8. Along said curve, through a central angle of 14°09'14", for an arc length of 14.33 feet;
9. South 57°59'07" East, 36.66 feet to the beginning of a tangent curve concave to the southwest, having a radius of 42.00 feet;

10. Along said curve, through a central angle of  $14^{\circ}09'17''$ , for an arc length of 10.38 feet;
11. South  $43^{\circ}49'50''$  East, 9.46 feet to the beginning of a tangent curve concave to the northeast, having a radius of 1,452.04 feet;
12. Along said curve, through a central angle of  $02^{\circ}32'29''$ , for an arc length of 64.40 feet;
13. South  $02^{\circ}51'08''$  East, 23.41 feet;

Thence continuing along last said northeasterly line and along the northeasterly line of said PARCEL I-E-1.1, South  $47^{\circ}19'39''$  East, 56.04 feet;

Thence continuing along last said northeasterly line of said PARCEL I-E-1.1 the following four (4) courses:

1. North  $85^{\circ}40'06''$  East, 24.04 feet;
2. South  $49^{\circ}19'54''$  East, 9.97 feet to the beginning of a tangent curve concave to the northeast having a radius of 3,108.59 feet;
3. Southeasterly along said curve, through a central angle of  $02^{\circ}18'05''$ , for an arc length of 124.86 feet to the beginning of a reverse curve, having a radius of 3,092.59 feet;
4. Southeasterly along said reverse curve through a central angle of  $02^{\circ}18'05''$ , for an arc length of 124.22 feet;

Thence continuing along said northeasterly line and the northeasterly line of said parcel IV-J-6, the following sixteen (16) courses:

1. South  $49^{\circ}19'54''$  East, 313.83 feet to the beginning of tangent curve concave to the northeast, having a radius of 1,447.04 feet;
2. Along said curve, through a central angle of  $01^{\circ}23'53''$ , for an arc length of 35.31 feet;
3. South  $04^{\circ}58'49''$  East, 24.35 feet;
4. South  $54^{\circ}27'57''$  East, 56.24 feet;
5. North  $83^{\circ}15'15''$  East, 22.96 feet to the beginning of a non tangent curve concave to the northeast, having radius of 1,447.04 feet to which point a radial line bears South  $35^{\circ}44'30''$  West;
6. Along said curve, through a central angle of  $11^{\circ}53'59''$ , for an arc length of 300.53 feet;
7. South  $66^{\circ}09'29''$  East, 52.51 feet;
8. South  $21^{\circ}09'25''$  East, 24.04 feet;
9. South  $68^{\circ}17'15''$  East, 62.36 feet;

10. Thence North  $64^{\circ}09'20''$  East, 23.85 feet to the beginning of a non tangent curve concave to the northeast, having a radius of 1,090.18 feet;
11. Southeasterly along said curve, through a central angle of  $04^{\circ}56'38''$ , for an arc length of 94.07 feet to the beginning of a compound curve, having a radius of 1,464.04 feet;
12. Along said curve, through a central angle of  $00^{\circ}41'45''$ , for an arc length of 17.78 feet to the beginning of a reverse curve, having a radius of 142.00 feet;
13. Along said reverse curve through a central angle of  $11^{\circ}54'29''$ , for an arc length of 29.51 feet;
14. South  $64^{\circ}29'00''$  East, 15.88 feet to the beginning of a tangent curve concave to the northeast, having a radius of 158.00 feet;
15. Along said curve, through a central angle of  $14^{\circ}52'27''$ , for an arc length of 41.02 feet;
16. South  $79^{\circ}21'27''$  East, 218.54 feet to the southeasterly line of said PARCEL IV-J-6;

Thence leaving said line and along said southeasterly line the following eleven (11) courses:

1. South  $31^{\circ}20'58''$  East, 40.12 feet; to the beginning of a non tangent curve to the west, having a radius of 1,354.04 feet, to which point a radial line bears North  $73^{\circ}20'33''$  West;
2. Southerly along said curve, through a central angle of  $02^{\circ}02'49''$ , for an arc length of 48.37 feet to the beginning of a compound curve, having a radius of 42.00 feet;
3. Southwesterly along said compound curve through a central angle of  $16^{\circ}11'24''$ , for an arc length of 11.87 feet;
4. South  $34^{\circ}53'40''$  West, 33.43 feet to the beginning of a tangent curve concave the east, having a radius of 58.00 feet;
5. Along said curve, through a central angle of  $13^{\circ}44'05''$ , for an arc length of 13.90 feet to the beginning of a reverse, having a radius of 1,3420.04 feet;
6. Southerly along said reverse curve to through a central angle of  $02^{\circ}27'21''$  for an arc length of 57.52 feet to the beginning of a reverse curve, having a radius of 58.00 feet;
7. Southerly, along said reverse curve through a central angle of  $13^{\circ}44'05''$ , for an arc length of 13.90 feet;
8. South  $09^{\circ}52'51''$  West, 33.43 feet to the beginning of a tangent concave to the northwest, having a radius of 42.00 feet;
9. Southwesterly along said curve, through a central angle of  $16^{\circ}11'24''$ , for an arc length of 11.87 feet; to the beginning of a compound curve, having a radius of 1,354.04 feet;
10. Southwesterly, along a compound curve through a central angle of  $41^{\circ}31'35''$ , for an arc length of 981.37 feet;

11. South  $67^{\circ}35'50''$  West 139.46 feet to the beginning of a tangent curve concave to the southeast, having a radius of 1,446.04 feet;

Thence leaving said southeasterly line, North  $09^{\circ}19'25''$  East, 37.52 feet to the beginning of a non tangent curve, having a radius of 1,354.00 feet, to which point a radial line bears North  $55^{\circ}16'36''$  East;

Thence along said curve, through a central angle of  $14^{\circ}37'50''$ , for an arc length of 345.75 feet;

Thence North  $49^{\circ}21'14''$  West, 47.55 feet;

Thence North  $50^{\circ}48'31''$  West, 611.91 feet;

Thence South  $40^{\circ}39'15''$  West, 615.85 feet;

Thence North  $49^{\circ}20'45''$  West, 718.34 feet to the POINT OF BEGINNING.

Containing 2,863,323.83 square feet or 65.733 acres, more or less.

**AREA I2:**

BEGINNING at the most northeasterly corner of said PARCEL IV-J-5;

Thence along the easterly line of said PARCEL IV-J-5, South  $07^{\circ}11'09''$  West, 236.11 feet to the southwesterly line of said PARCEL IV-J-5;

Thence along said southwesterly line of PARCEL IV-J-5 and PARCEL IV-J-4 the following five (5) courses:

1. North  $73^{\circ}31'26''$  West, 47.60 feet;
2. South  $64^{\circ}04'33''$  West, 24.04 feet to the beginning of a non tangent curve having a radius of 1,038.68 feet to which point a radial line bears South  $19^{\circ}04'33''$  West;
3. Northwesterly along said curve, through a central angle of  $05^{\circ}27'40''$ , for an arc length of 99.00 feet to the beginning of a compound curve, having a radius of 1,353.04 feet;
4. Along said curve northwesterly, through a central angle of  $16^{\circ}07'53''$  for an arc length of 380.94 feet;
5. North  $49^{\circ}19'54''$  West, 183.81 feet;

Thence leaving said southwesterly line, North  $40^{\circ}40'06''$  East, 325.27 feet to the northeasterly line of said PARCEL IV-J-4;

Thence along said northeasterly line of said PARCEL IV-J-4 and continuing along the northeasterly line of said PARCEL IV-J-5, South  $49^{\circ}10'56''$  East, 576.11 feet to the POINT OF BEGINNING.

Containing an area of 197,272 square feet, 4.529 acres more or less.


Containing a total area of 3,060,594 square feet, or 70.262 acres more or less.

Being a portion of Assessor Parcel Numbers: 430-283-16, 430-283-18, 430-283-09 and 430-282-11  
And all of Assessor Parcel Numbers 430-283-10 and 430-10-11 and 430-282-10

As shown on "Schedule 1" attached hereto and made a part hereof.

For: BKF Engineers

By:

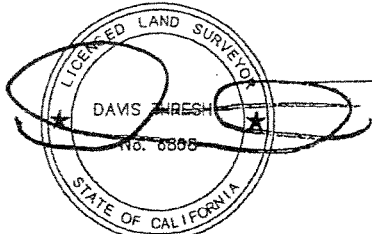
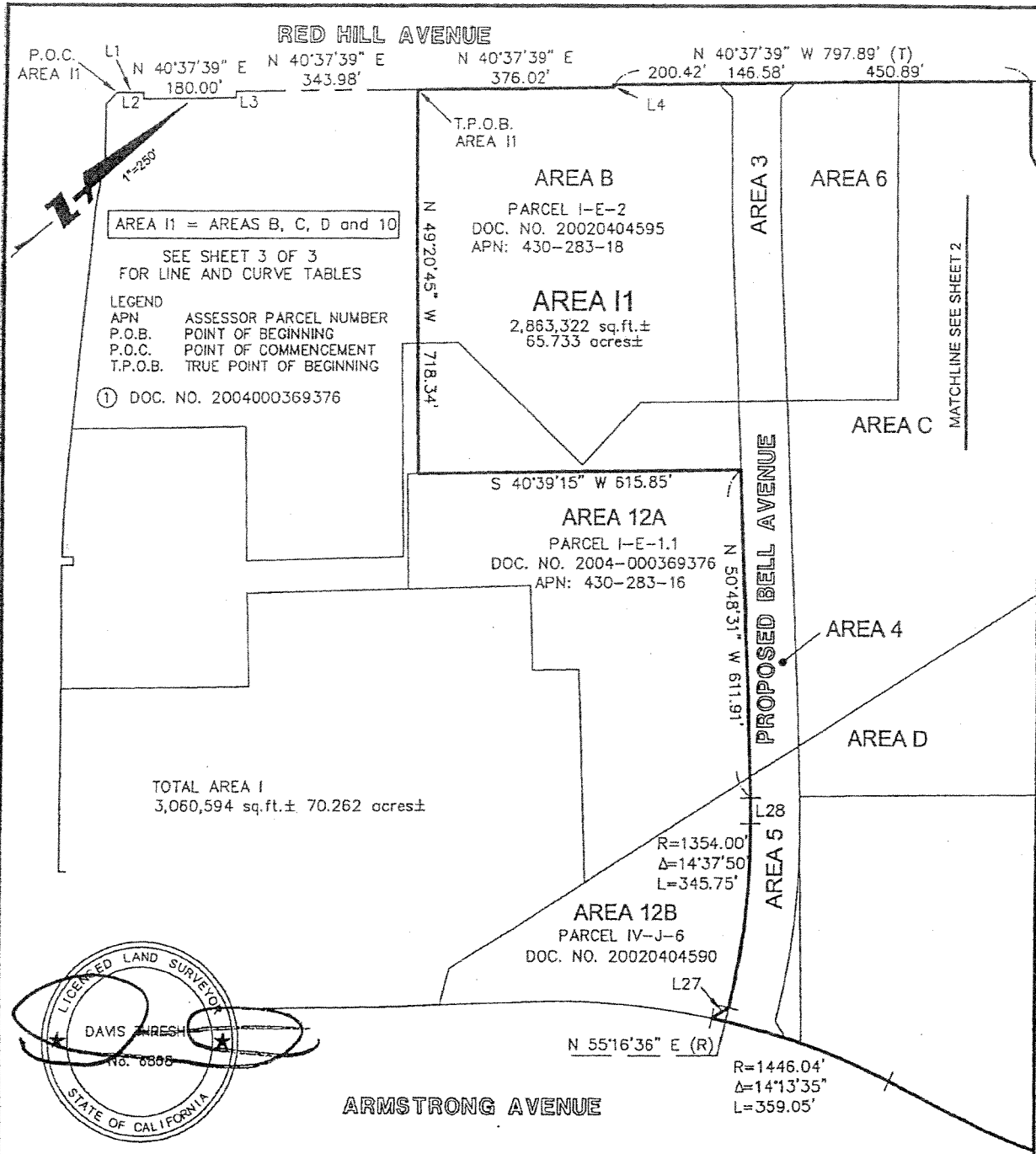
  
Davis Thresh, P.L.S. No. 6868  
License expires: 09-30-2014



Date:

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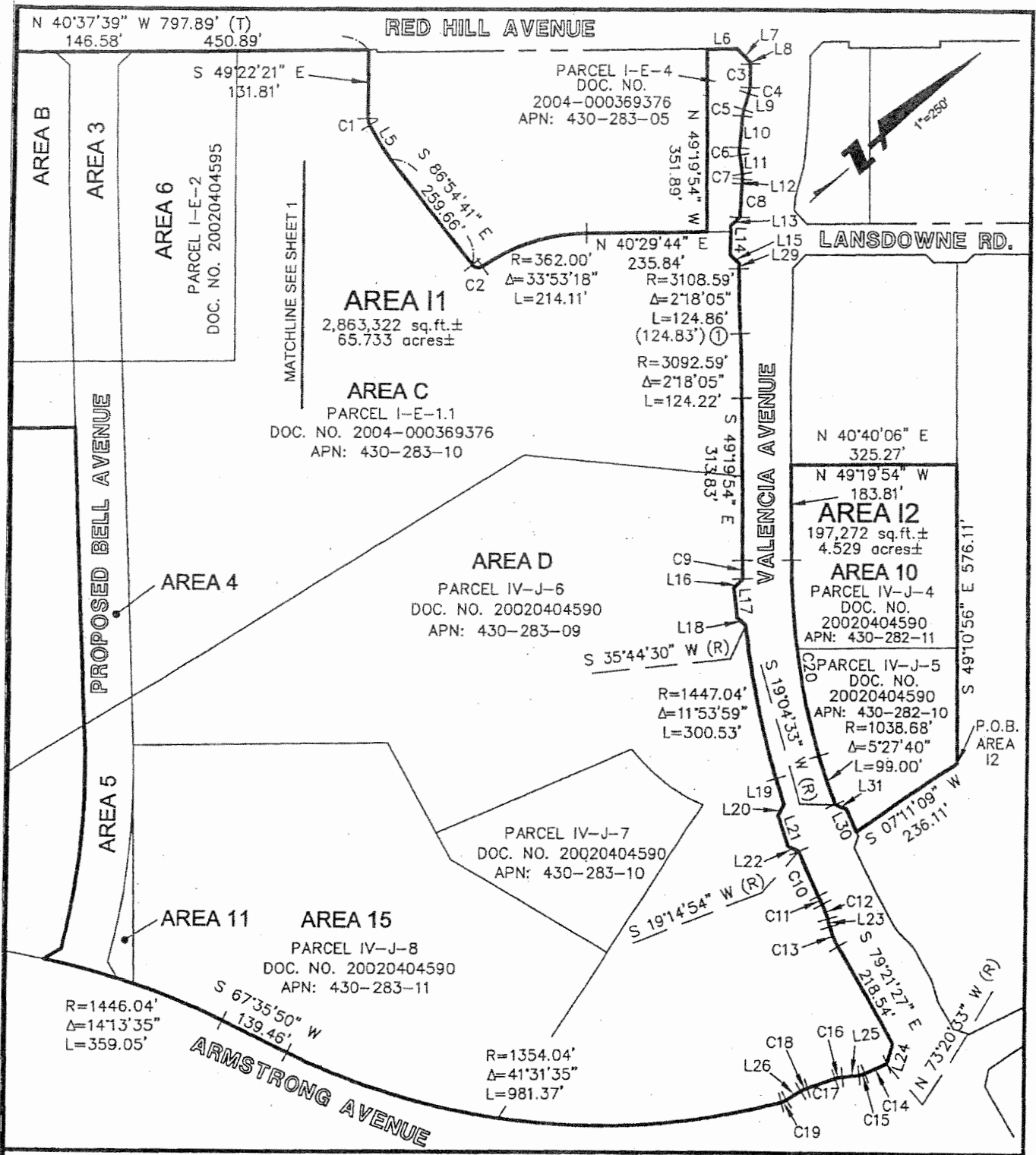
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PLAT TO ACCOMPANY LEGAL



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AREA I  
 Job No. 20122006  
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 SHEET 1 OF 3



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AREA I  
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 SHEET 2 OF 3



LINE TABLE		
LINE	BEARING	LENGTH
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L3	N 49°22'21" W	12.00'
L4	N 49°22'21" W	5.00'
L5	S 80°23'59" E	76.58'
L6	N 40°37'39" E	59.07'
L7	N 85°38'32" E	36.79'
L8	N 49°20'07" W	3.18'
L9	S 31°06'57" E	31.73'
L10	S 43°49'53" E	61.09'
L11	S 57°59'07" E	36.66'
L12	S 43°49'50" E	9.46'
L13	S 02°51'08" E	23.41'
L14	S 47°19'39" E	56.04'
L15	N 85°40'06" E	24.04'
L16	S 04°58'49" E	24.35'
L17	S 54°27'57" E	56.24'
L18	N 83°15'15" E	22.96'
L19	S 66°09'29" E	52.51'
L20	S 21°09'25" E	24.04'
L21	S 68°17'15" E	62.36'
L22	N 64°09'20" E	23.85'
L23	S 64°29'00" E	15.88'
L24	S 31°20'58" E	40.12'
L25	S 34°53'40" W	33.43'
L26	S 09°52'51" W	33.43'
L27	N 09°19'25" E	37.52'
L28	S 49°21'14" E	47.55'
L29	S 49°19'54" E	9.97'
L30	N 73°31'26" W	47.60'
L31	S 64°04'33" W	24.04'

CURVE TABLE			
CURVE	RADIUS	DELTA	LENGTH
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C4	42.00'	16°18'19"	11.95'
C5	58.00'	12°42'56"	12.87'
C6	58.00'	14°09'14"	14.33'
C7	42.00'	14°09'17"	10.38'
C8	1452.04'	2°32'29"	64.40'
C9	1447.04'	1°23'53"	35.31'
C10	1090.18'	4°56'38"	94.07'
C11	1464.04'	0°41'45"	17.78'
C12	142.00'	11°54'29"	29.51'
C13	158.00'	14°52'27"	41.02'
C14	1354.04'	2°02'49"	48.37'
C15	42.00'	16°11'24"	11.87'
C16	58.00'	13°44'05"	13.90'
C17	1342.04'	2°27'21"	57.52'
C18	58.00'	13°44'05"	13.90'
C19	42.00'	16°11'24"	11.87'
C20	1353.04'	16°07'53"	380.94'



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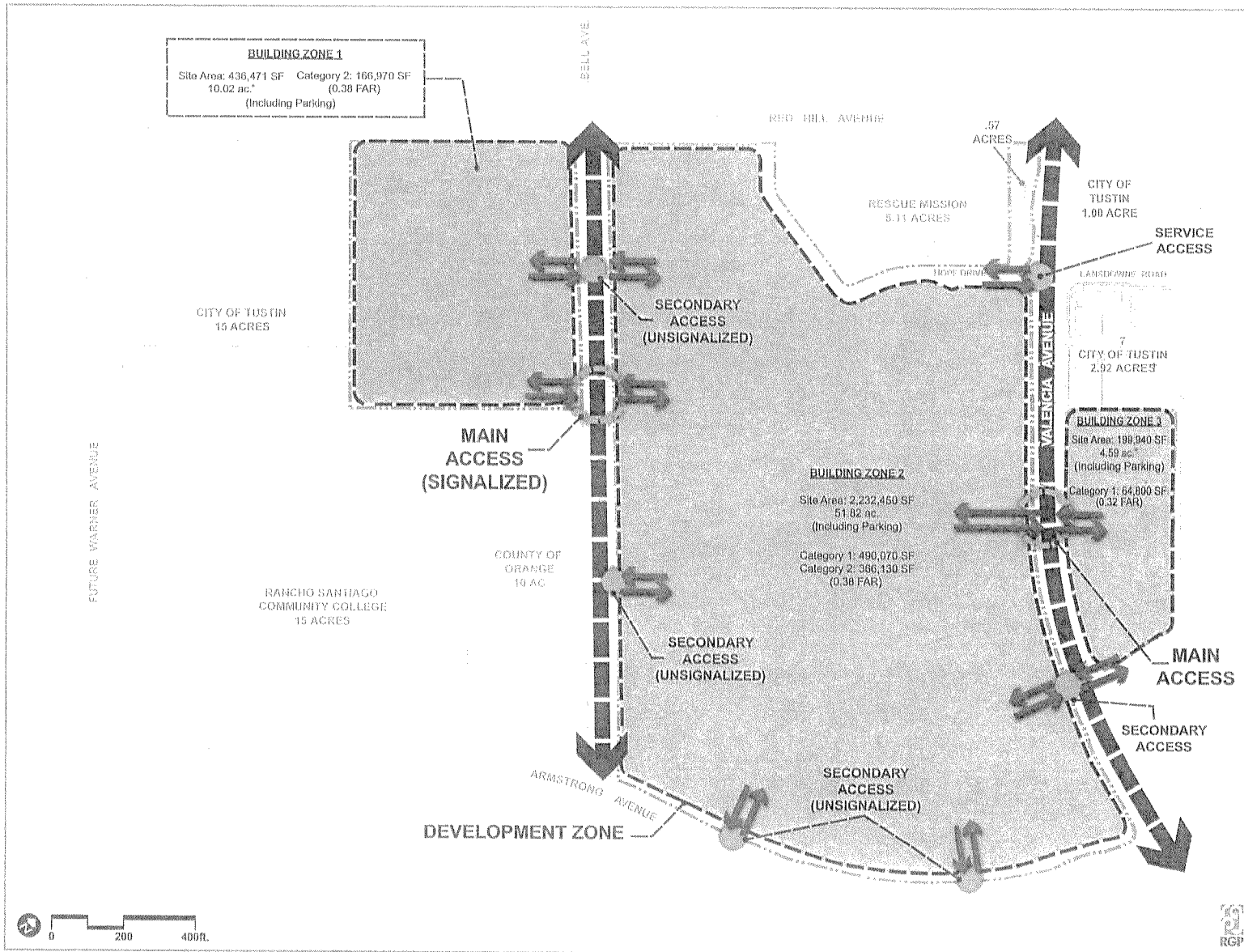
**Exhibit F**

**Land Use and Access Plan (“LUAP”)**



Advanced Technology & Education Park

TUSTIN, CALIFORNIA



**SUMMARY:**

Total Site: 66.43 ac.\*

Total Land Use Category 1  
Square Footage:  
554,860 SF

Total Land Use Category 2  
Square Footage:  
533,100 SF

Total Building Square Footage:  
1,087,960 SF

Total FAR: 0.38

\*Acreages are conceptual and for traffic analysis purposes only. SOCCCD authorization of acreages has not occurred.

**LAND USE - ACCESS & PARKING  
LAND USE CATEGORIES 1 & 2**

**Exhibit G**

**Table of Required Ratios**

**Land Use Category 1: Land Use Category 2**

## Table of Required Ratios

<u>Land Use Category 1 Space Commenced</u>		<u>Land Use Category 2 Space Authorized</u>		<u>Ratios</u>	
Required Square Footage	Required Cumulative Sq. Footage	Authorized Square Footage	Cumulative Authorized Sq. Footage	Category 1 SF To Total SF	Category 2 SF To Total SF
30,000	30,000	150,000	150,000	17%	83%
30,000	60,000	100,000	250,000	19%	81%
252,000	312,000	50,000	300,000	51%	49%

Notes: 1. All figures above refer to Building Area in square feet.

2. After 300,000 sq. ft. of Land Use Category 2 Building Area has been developed, then the ratio of Land Use Category 2 Space Authorized to the total square footage of all Building Area within the SOCCCD Property shall not exceed 49%.

3. The square footages set forth above are based on the assumption that the Land Use Category 1 uses are "Learning Center" as described in Exhibit H attached hereto, and that the Land Use Category 2 uses are "General Office" as described in Exhibit H. Nevertheless, the total amount of Land Use Category 2 square footage set forth in this chart may not be achievable depending on the actual uses and the availability of ADT's, as described in Section 5.3 of this Agreement and Exhibit H.

## Exhibit H

### Trip Generation Rate Schedule

**Trip Rate Generation Schedule**

Land Use Trip Categories	Allowed Uses Examples	Average Daily Trips (ADT) per 1,000 SF
<p><b>Land Use Category 1</b></p> <p><b>Learning Center</b></p>	<ul style="list-style-type: none"> <li>• Child Care or Nursery</li> <li>• Public School, community college, educational campus or other educationally oriented use</li> <li>• Private School</li> <li>• Support commercial, office, retail service uses</li> <li>• Museum, cultural center, interpretive center, and/or other educational and cultural facility</li> <li>• Live performance facility/ amphitheater</li> <li>• Art and cultural facilities</li> <li>• Other permitted uses per Sections 5.1.1.1 and 5.1.1.2 of this Agreement</li> </ul>	<p align="center"><b>6.12</b></p>
<p><b>Land Use Category 2</b></p> <p><b>Neighborhood Commercial</b></p>	<ul style="list-style-type: none"> <li>• Mix of commercial uses within a strip or smaller shopping center with a total size of approximately under 100,000 SF.</li> </ul>	<p align="center"><b>111.82</b></p>
<p><b>Land Use Category 2</b></p> <p><b>General Office</b></p>	<ul style="list-style-type: none"> <li>• Corporate headquarters/office</li> <li>• General offices for: advertising agency, economic consultant, insurance companies, escrow companies, interior decorator, real estate, public utilities, personnel agency, management consultant, collection agency</li> <li>• Medical clinics</li> <li>• Medical offices/healthcare centers</li> <li>• Professional offices for: architect, accountant, attorney, chiropractor, contractor, dentist, doctor, engineer, optometrist, land planner, and other similar professions</li> <li>• Corporate headquarters/office</li> </ul>	<p align="center"><b>13.27</b></p>
<p><b>Land Use Category 2</b></p> <p><b>Light Industrial/R&amp;D</b></p>	<ul style="list-style-type: none"> <li>• MCAS Tustin SP allowed uses as listed under "Industrial"</li> </ul>	<p align="center"><b>8.11</b></p>

**Exhibit I**

**Form of Quitclaim Deed**



NOTE: THE FOLLOWING FORM CITY-SOCCCD QUITCLAIM DEED IS BASED UPON A PREVIOUSLY EXECUTED NAVY FORM DOCUMENT AND THE BEST CURRENT INFORMATION RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY. THE FINAL FINDING OF SUITABILITY TO TRANSFER (FOST) MAY NECESSITATE DIFFERENT OR ADDITIONAL NOTICES OR RESTRICTIONS THAT WILL BE INCORPORATED IN THE FINAL CITY-SOCCCD QUITCLAIM DEED. ADDITIONALLY, NEW DOD RULES PROMULGATED SINCE THE DATE OF THE LAST NAVY CONVEYANCE THAT GOVERN THE TRANSFER AND CONVEYANCE OF (I) BASE CLOSURE PROPERTY, AND (II) PROPERTY CONVEYED PURSUANT TO AN ECONOMIC DEVELOPMENT CONVEYANCE, MAY NECESSITATE MINOR CHANGES TO THE FORM LANGUAGE.

**RECORDING REQUESTED BY:**

**AND WHEN RECORDED MAIL TO:**

City Manager  
The City of Tustin  
300 Centennial Way  
Tustin, California 92780

**Mail copy of Quitclaim Deed and Tax Statements to:**

Vice Chancellor, Business Services  
South Orange County Community College  
District  
28000 Marguerite Parkway  
Mission Viejo, California 92692-3635

Exempt from Recording Fees  
Per Government Code Section 6103

Space Above This Line Reserved for Recorder's Use

**QUITCLAIM DEED AND ENVIRONMENTAL  
RESTRICTION PURSUANT TO CIVIL CODE SECTION 1471  
FROM CITY TO SOCCCD  
(SUBSEQUENT CLOSINGS)**

**THIS DEED** is made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, by the **CITY OF TUSTIN, CALIFORNIA**, the recognized local redevelopment authority for Marine Corps Air Station Tustin ("**CITY**"), in favor of the **SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT ("**SOCCCD**")**.

**RECITALS:**

**WHEREAS**

A. CITY requested from the United States of America (hereinafter the "**Government**") conveyance of a portion of the former Marine Corps Air Station Tustin, ("**MCAS Tustin**") which was closed pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Pub. L No. 101-510; "**Base Closure Act**") and which is no longer required for military purposes;

B. The Government and CITY entered into that certain Agreement between the United States of America and the City of Tustin, California, for the Conveyance of a Portion of the Former Marine Corps Air Station Tustin, dated May 13, 2002 as amended by "Modification One (1)" dated April 10 2006, "Modification Two (2)" dated July 31, 2006 and "Modification Three (3)" dated December 19, 2011 (as so amended and modified, the "**Navy-City Conveyance Agreement**") which sets forth the terms and conditions of the conveyance of portions of MCAS Tustin from the Government to CITY;

C. Pursuant to the Agreement, the Government conveyed certain real property at the Marine Corps Air Station, Tustin ("**City Property**") to CITY on the same day as this instrument was recorded;

D. Pursuant to California Civil Code § 1471 and a Finding of Suitability to Transfer ("**FOST**"), the Government determined that it is reasonably necessary to impose certain restrictions on the use of the City Property to protect present and future human health or safety or the environment as a result of the presence of hazardous materials on portions of the City Property described hereinafter with particularity;

E. CITY and SOCCCD entered into that certain Agreement between the City of Tustin and the South Orange County Community College District for the Conveyance of a Portion of MCAS, Tustin and the Establishment of an Advanced Technology Educational Campus, dated April 22, 2004, (the "**City-SOCCCD Conveyance Agreement**") setting forth the terms and conditions of the conveyance of a portion of the City Property from CITY to SOCCCD;

F. Subsequently, CITY and SOCCCD entered into that certain Development Agreement and Amended and Restated 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 dated \_\_\_\_\_, 20\_\_ and recorded in the Official Records of the County Recorder of Orange County, California, on \_\_\_\_\_, 20\_\_\_\_ as Instrument No. \_\_\_\_\_(the "**Development Agreement**"), which, among other things, amends and restates the City-SOCCCD Conveyance Agreement in its entirety, and

G. The Development Agreement was recorded on \_\_\_\_\_, 20\_\_, as Instrument No. \_\_\_\_\_ in the Official Records of the County Recorder of Orange County, California.

**NOW THEREFORE**, CITY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby remise, release and forever quitclaim to SOCCCD, all of CITY's right, title and interest in and to that certain real property, comprising approximately \_\_\_\_\_ ( ) acres, more or less (hereinafter "**Subsequent Parcels**"), as more particularly described in Exhibit "A."

**TOGETHER WITH** all improvements on the Subsequent Parcels.

1. **EXCEPTING THEREOUT AND THEREFROM**, however, and reserving to CITY its successors and assigns, together with the right to grant and transfer all or a portion of the same, the following:

1.1 Any and all oil, oil rights, minerals, mineral rights, natural gas rights and other hydrocarbons by whatsoever name known, geothermal steam and all products derived from any of the foregoing, that may be within or under the Subsequent Parcels together with the perpetual right of drilling, mining, exploring for and storing in and removing the same from the Subsequent Parcels or any other land, including the right to whipstock or directionally drill and mine from lands other than the Subsequent Parcels, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Subsequent Parcels and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such well or mines; but without, however, the right to drill, mine, store, explore or operate through the surface of the Subsequent Parcels.

1.2 Any and all water, water rights or interests therein appurtenant or relating to the Subsequent Parcels or owned or used by CITY in connection with or with respect to the Subsequent Parcels (no matter how acquired by CITY), whether such water rights shall be riparian, overlying, appropriative, littoral, percolating, prescriptive, adjudicated, statutory or contractual, together with the perpetual right and power to explore, drill, redrill and remove the same from or in the Subsequent Parcels, to store the same beneath the surface of the Subsequent Parcels and to divert or otherwise utilize such water, rights or interests on any other property owned or leased by CITY; but without, however, any right to enter upon or use the surface of the Subsequent Parcels in the exercise of such rights.

1.3 A permanent non-exclusive easement in gross on, over, under or across the Subsequent Parcels within 10 feet from all property lines bordering on and parallel to any public street or future public street as identified on the MCAS Tustin Specific Plan/Reuse Plan adopted February 3, 2003, as subsequently amended (as amended, the "**MCAS Tustin Specific Plan/Reuse Plan**") for the construction, installation, emplacement, operation and maintenance of any new utility systems, without unreasonably interfering with SOCCCD's reasonable use and enjoyment thereof, and

1.4 **[Insert in Deed of Parcels IV-J-4 and IV-J-5 as applicable] AND FURTHER RESERVING THEREFROM UNTO CITY** the following non-exclusive easements: (a) an easement (the "**Construction Easement**") over that portion of the Property consisting of McCain Road as more particularly described in Exhibit B attached hereto ("**McCain Road**"), for purposes of constructing street, parking, utility and landscaping improvements in McCain Road (the "**McCain Improvements**") pursuant to improvement plans to be mutually approved by City and SOCCCD; and (b) an easement (the "**Permanent Easement**") over McCain Road for purposes of maintenance and operation of the McCain Improvements. The Permanent Easement shall be used by

members of the public for the purpose of pedestrian and vehicular access to and from that certain park site owned by City adjacent to McCain Road and more particularly described in Exhibit C attached hereto (the “**Park Site**”). The Construction Easement and the Permanent Easement shall be appurtenant to the Park Site and shall inure to the benefit of City and all successive owners of the Park Site. The burden of the Construction Easement and the Permanent Easement is intended to and shall run with McCain Road, and shall bind successive owners of McCain Road. The Construction Easement shall terminate upon the recordation in the Official Records of Orange County, California of a Notice of Completion of the McCain Improvements pursuant to California Civil Code Section 9204. The Permanent Easement shall be perpetual. City shall be responsible for maintaining the McCain Improvements at its sole cost and expense; provided however, that SOCCCD shall be responsible for maintaining any parking areas on the south side of McCain Road (as depicted on Exhibit D attached hereto).

**2. SUBJECT TO THE FOLLOWING NOTICES, COVENANTS, RESTRICTIONS, AND CONDITIONS,** which shall run with the land and be binding upon and enforceable as equitable servitudes against SOCCCD, its successors and assigns for such period of time as the Development Agreement prescribes:

2.1 Conditions:

2.1.1 Uses. The Subsequent Parcels shall be planned, developed, maintained and used solely for the purposes prescribed in the Development Agreement.

2.1.2 Effective Standards. The Subsequent Parcels shall be planned, developed and maintained in accordance with the Effective Standards as defined in the Development Agreement.

2.1.3 Major Improvements. SOCCCD shall not construct or make or permit the construction or making of any “Major Improvements” (as defined in the Development Agreement) on the Subsequent Parcels without complying with the provisions of the Development Agreement concerning CITY’S rights (a) to grant or deny “Development Approvals” and (b) to undertake courtesy review of the “DSA Plans” (as both such terms are defined in the Development Agreement).

2.2 Restrictions on Transfers:

2.2.1 Permitted Transfers. SOCCCD shall not effect, or agree to effect, any transfer, sale, assignment, gift or other conveyance of all or any portion of the Subsequent Parcels or any improvements thereon or any interest therein, whether voluntarily, involuntarily or by operation of law or otherwise except as provided in the Development Agreement.

2.2.2 Remedies For Improper Transfers. In the event of a Transfer in violation of this Section 2.2, CITY shall have all remedies available to it as provided in the Development Agreement, including the right to exercise the Right of Reverter contained in Article 13 of the Development Agreement.

2.2.3 Termination of Restrictions. The provisions of this Section 2.2 shall expire and be of no further force or effect on **April 29, 2034** (the “**Termination Date**”).

2.3 Covenants: The Development Agreement includes certain additional covenants by SOCCCD in favor of CITY. SOCCCD, by acceptance hereof, reaffirms its obligation to comply with such covenants, including, but not limited to, the following: Section 7 concerning City regulation, Section 12 concerning unauthorized transfers, the Release contained in Section 16.3.3, Section 11 concerning non-discrimination and maintenance of the City Exchange Property, and Section 21.14 concerning estoppel certificates.

2.4 Enforcement of Covenants, Conditions, and Restrictions: SOCCCD, its successors and assigns, shall reimburse CITY for all damages, claims, or liability whatsoever that CITY sustains as a result of a breach by SOCCCD of any of the conditions or any other terms and covenants of this Deed, including all costs and expense (including reasonable attorney’s fees and court costs) related to, or arising from CITY’s enforcement or restraint of a breach by SOCCCD of any of the conditions or any other terms and covenants of this Deed.

2.5 Encumbrances. SOCCCD agrees to accept conveyance of the Subsequent Parcels subject to all covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances of record.

2.6 Government Deed. The quitclaim deed from the Government conveying the City Property to CITY (“Government Deed”) was recorded prior to the recordation of this Deed. In its transfer of the City Property to CITY, the Government identified certain building(s) or portions of building(s) as being located on the Subsequent Parcels. CITY has no knowledge regarding the accuracy of such information. Additionally, in its transfer of the City Property to CITY, the Government identified certain building(s) or portions of building(s) as having, presumed to have, or requiring surveys for, friable and non-friable asbestos containing materials and lead based paint, and the presence of certain contaminants and hazardous materials. CITY has no knowledge regarding the accuracy of such information, and CITY makes no warranties regarding the condition of the building(s) on the Subsequent Parcels.

CITY makes no warranties regarding the environmental conditions on the Subsequent Parcels; CITY has no knowledge regarding the accuracy or adequacy of the Government’s remediation of the City Property as provided in the deed conveying the City Property to CITY, and CITY has taken no steps to abate any such conditions.

The italicized information below is copied verbatim (except as discussed below) from the Government deed conveying the City Property to CITY. To the extent applicable to the Subsequent Parcels conveyed hereunder, by acceptance of this Deed SOCCCD hereby acknowledges and assumes all responsibilities placed upon CITY, under the terms of the aforesaid Government deed to CITY. Within the italicized information only, the term “GRANTOR” shall mean the Government, and the term

“GRANTEE” shall mean CITY; to avoid confusion, the words “Government” have been added in parenthesis after the word “GRANTOR”, and “CITY” has been added in parenthesis after the word “GRANTEE”.

2.2 *A FOST has been completed and an Environmental Baseline Survey (“EBS”) report is referenced in the FOST. The FOST and EBS reference environmental conditions on the Property and on other property not subject to this Deed. GRANTEE (“CITY”) acknowledges that it has received copies of the EBS and the FOST and that all documents referenced therein have been made available to GRANTEE (“CITY”) for, inspection and copying.*

2.3 *Except as otherwise provided herein, or as otherwise provided by law, the GRANTEE (“CITY”) acknowledges that it has inspected, is aware of, and accepts the condition and state of repair of the Property, and that the Property is conveyed “as is” and “where is” without any representation, promise, agreement, or warranty on the part of the GRANTOR (“the Government”) regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs or additions. Except for the environmental remediation which may be required to be undertaken by GRANTOR (“the Government”) pursuant to paragraph. 2.6 below, the GRANTEE (“CITY”) further acknowledges that the GRANTOR (“the Government”) shall not be liable for any latent or patent defects in the Property except to the extent required by applicable law.*

#### 2.4 **Asbestos Containing Material.**

2.4.1 *GRANTEE (“CITY”) is hereby informed and does hereby acknowledge that hazardous materials in’ the form of asbestos or asbestos-containing materials (“ACM”) have been found and are otherwise presumed to exist in Buildings/Structures \_\_\_\_ and \_\_\_\_ on the Property. The EBS and FOST disclose the presence of known asbestos or ACM hazards in such buildings and structures on the Property.*

2.4.2 *GRANTEE (“CITY”) covenants, on behalf of itself, its successors and assigns, as a covenant running with the land, that it will prohibit occupancy and use of buildings and structures, or portions thereof containing known asbestos or ACM hazards prior to abatement of such hazards. In connection with its use and occupancy of the Property, including, but not limited to, demolition of buildings and structures containing asbestos or ACM, it will comply with all applicable federal, state and local laws relating to asbestos and ACM.*

2.4.3 *ACM surveys have not been conducted for Buildings/Structures, \_\_\_\_\_ on Parcel \_\_\_\_\_ on Parcel I-E-2; and \_\_\_\_\_ on Parcel \_\_\_\_\_. GRANTEE (“CITY”) shall prohibit occupancy and use of those buildings and structures and portions thereof until ACM surveys have been conducted by GRANTEE (“CITY”) or its successors and assigns, and any necessary abatement required under applicable federal, state and local laws relating to asbestos and ACM has been completed by GRANTEE (“CITY”) or its successors and assigns.*

2.4.4 The GRANTOR ("the Government") shall provide a notice of release, in recordable form, to the GRANTEE ("CITY") at such time as demolition of the buildings on the Property containing ACM has been completed and the appropriate government regulatory agency(s) have confirmed in writing to the GRANTEE ("CITY") that ACM has been removed from the buildings and any necessary soil remediation has been conducted in accordance with all applicable federal, state, and local laws and regulations. This notice of release shall be deemed to remove all notices and restrictions relating to ACM from the Property. The GRANTOR ("the Government") shall have no obligation under this subparagraph for the demolition of buildings or the removal of ACM or soil remediation related to such demolition or removal action.

## 2.5 **Lead Based Paint (LBP).**

2.5.1 The Property may include improvements that are presumed to contain LBP because they are thought to have been constructed prior to 1978. Buildings \_\_\_\_\_ are restricted from residential use and children are not allowed to occupy the buildings. When these buildings are demolished, Grantee ("CITY") or its successors and assigns, will be required to demolish the buildings in accordance with applicable laws and conduct post-demolition sampling and abatement of any soil-lead hazards related to the demolition prior to occupation of any newly constructed buildings. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Pursuant to 40 CFR Section 745.113 the following notice is provided; "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

2.5.2 The GRANTEE ("CITY") hereby acknowledges the required disclosure of the presence of any known LBP and/or LBP hazards in target housing constructed prior to 1978 in accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. Section 4852d (Title X). The GRANTEE ("CITY") acknowledges the receipt of available records and reports pertaining to LBP and/or LBP hazards and receipt of the Environmental Protection Agency (EPA) approved pamphlet "Protect Your Family from Lead in Your Home" (EPA 747-K-94-001). Furthermore, the GRANTEE ("CITY") acknowledges that it has read and understood the EPA pamphlet.

2.5.3 The GRANTEE ("CITY") covenants and agrees that, in any improvements on the Property defined as target housing by Title X and constructed prior to 1978, LBP hazards will be disclosed to potential occupants in accordance with Title X before use of such improvements as a residential dwelling (as defined in Title X). Further, the GRANTEE ("CITY") covenants and agrees that LBP hazards in target



housing will be abated in accordance with Title X before use and occupancy as a residential dwelling. "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six [6] years of age resides, or is expected to reside, in such housing) or any zero-bedroom dwelling.

2.5.4 The GRANTEE ("CITY") covenants and agrees that in its use and occupancy of the Property, it will comply with Title X and all applicable federal, state, and local laws relating to LBP. The GRANTEE ("CITY") acknowledges that the GRANTOR ("the Government") assumes no liability for damages for personal injury, illness, disability, or death to the GRANTEE ("CITY"), or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with LBP on the Property, arising after the conveyance of the Property from the GRANTOR ("the Government") to the GRANTEE ("CITY"), whether the GRANTEE ("CITY") has properly warned, or failed to properly warn, the persons injured.

2.5.5 The GRANTOR ("the Government") shall provide a notice of release, in recordable form, to the GRANTEE ("CITY") at such time as demolition of the buildings on the Property containing LBP has been completed and the appropriate government regulatory agency(s) have confirmed in writing to the GRANTEE ("CITY") that LBP has been removed from the buildings and any necessary soil remediation has been conducted in accordance with all applicable federal, state, and local laws and regulations. This Notice of Release shall be deemed to remove all notices and restrictions relating to LBP from the Property. The GRANTOR ("the Government") shall have no obligation under this subparagraph for the demolition of buildings or the removal of LBP or soil remediation related to such demolition or removal action.

## 2.6 Notices And Covenants.

2.6.1 **Notices: Hazardous Substance Notification.** Pursuant to 42 U.S.C. § 9620(h)(3)(A), and the provisions of 40 C.F.R. part 373, the GRANTOR ("the Government") hereby gives notice that hazardous substances were stored for one year or more, released or disposed of on the Property. The information contained in this notice is required by regulations promulgated under Section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund"), 42 U.S. C. § 9620(h). The GRANTOR has made a complete search of its files and records concerning the Property. Based on that search, the type and quantity of such hazardous substances, the time at which such storage, release or disposal took place, to the extent such information is available, and a description of the remedial action taken, if any, is contained in Exhibit "B."

2.6.2 **Grant of Covenant [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(ii)(I)].** The GRANTOR ("the Government") covenants and warrants that all remedial action necessary to protect human health and the environment with respect to



any hazardous substance remaining on the Property has been taken before the date of transfer.

**2.6.3 Additional Remediation Obligation [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(ii)(II)].** The GRANTOR ("the Government") covenants and warrants that GRANTOR ("the Government") shall conduct any additional remedial action found to be necessary after the date of transfer for any hazardous substance existing on the Property prior to the date of this Deed. This covenant shall not apply to the extent that the GRANTEE ("CITY") caused or contributed to any release or threatened release of any hazardous substance, pollutant, or contaminant.

**2.6.4 Access [CERCLA 42 U.S.C. Section 9620 (h)(3)(A)(iii)].** In connection with GRANTOR's ("the Government") covenant in 2.6.3 above and in connection with ongoing remediation on GRANTOR's ("the Government") property adjacent to the Property, GRANTEE ("CITY") agrees on behalf of itself its successors and assigns, as a covenant running with the land, that GRANTOR ("the Government"), or its officers, agents, employees, contractors and subcontractors, shall have the right, upon reasonable notice to GRANTEE ("CITY"), to enter upon the Property in any case in which a response or corrective action is found to be necessary at such property after the date of this deed, or such access is necessary to carry out a response action or corrective action on adjoining property. Neither GRANTEE ("CITY"), nor its successors and assigns, shall have any claim on account of such entries against the United States or any of its officers, agents, employees, contractors or subcontractors. The right to enter shall include the right to conduct tests, investigations and surveys, including, where necessary, drilling, test-pitting, boring and other similar activities. Such right shall also include the right to construct, operate, maintain or undertake any other response or corrective action as required or necessary, including, but not limited to monitoring wells, pumping wells, treatment facilities, and the installation of associated utilities. In exercising these rights of access, except in case of imminent and substantial endangerment to human health or the environment, the GRANTOR ("the Government") (1) shall give the GRANTEE ("CITY") reasonable notice of any action to be taken related to such remedial or corrective actions on the Property, and (2) make reasonable efforts to minimize interference with the on-going use of the Property. Furthermore, the GRANTOR ("the Government") and GRANTEE ("CITY") agree to cooperate in good faith to minimize any conflict between the necessary environmental investigation and remediation activities and the GRANTEE's ("CITY") use of the Property. Any inspection, survey, investigation or other response, corrective or remedial action undertaken by GRANTOR ("the Government") will, to the maximum extent practical, be coordinated with representatives designated by the GRANTEE ("CITY").

In connection with GRANTOR's ("the Government") remedial actions described above, GRANTEE ("CITY") agrees on behalf of itself, its successors and assigns, as a covenant running with the land, to comply with the provisions of any health or safety plan in effect during the course of any such action.

## 2.7 **Environmental Restriction.**

2.7.1 The following environmental covenants, conditions, and restrictions (hereinafter "environmental restrictions") regarding the use of the Property have been determined by the GRANTOR ("the Government") to be reasonably necessary to protect present or future human health or safety or the environment as provided by CERCLA and California Civil Code Section 1471. The environmental restrictions made and accepted herein by GRANTEE ("CITY") shall be for the benefit of and enforceable by the GRANTOR ("the Government") herein as provided under Civil Code Section 1471 and applicable Federal statutes and regulations, shall run with the land, and shall be binding on the GRANTEE ("CITY"), its successors and assigns. GRANTOR ("the Government") has installed monitoring and pumping wells, together with associated monitoring and other equipment on the Property. The approximate location of those wells and associated equipment is shown on Exhibit "C." GRANTEE ("CITY"), its successors and assigns, shall not alter, disturb or remove said wells or equipment without the prior written approval of GRANTOR ("the Government"), United States Environmental Protection Agency, California Department of Toxic Substance Control, and Regional Water Quality Board, Santa Ana Region (collectively "Cognizant Regulatory Agencies").

2.7.2 These environmental restrictions may be released at such time as the GRANTOR ("the Government") and the Cognizant Regulatory Agencies have determined that the restricted Property is protective of present or future human health or safety of the environment for the use that was formerly prohibited. Upon receipt of such written confirmation, the GRANTOR ("the Government") shall deliver to the GRANTEE ("CITY") in recordable form, a release (the "Release") relating specifically to the environmental use restrictions set forth in this deed. The execution of the Release by the GRANTOR ("the Government") shall remove all notices and restrictions relating to the remedy addressed by the restrictions from the title to the Property.

2.8 **Indemnification Regarding Transferees.** The GRANTOR ("the Government") hereby recognizes its obligations under Section 330 of the National Defense Authorization Act of 1993 (Pub. L. 102-484), as amended, regarding indemnification of transferees of closing Department of Defense property.

2.9 **Non-Discrimination.** GRANTEE ("CITY") covenants for itself its successors and assigns, that it will comply with all applicable provisions of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination in Employment Act of 1975 in the use, occupancy, sale or lease of the Property. The foregoing shall not be construed to prohibit the operation of federal or state approved programs focusing on the special needs of the homeless, veterans, victims of domestic violence and other classes of persons at risk; nor shall it be construed to prohibit employment practices not otherwise prohibited by law. The GRANTOR ("the Government") shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

3. **NO HAZARD TO AIR NAVIGATION:** GRANTEE ("CITY") covenants for itself its successors and assigns, that in connection with any construction or alteration on the Property, it will obtain a determination of no hazard to air navigation from the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, part 77, entitled "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

4. **THE CONDITIONS, RESTRICTIONS, RESERVATIONS, AND COVENANTS** set forth herein are a binding servitude on the Property, shall inure to the benefit of GRANTOR ("the Government") and GRANTEE ("CITY") and their respective successors and assigns, and will be deemed to run with the land in perpetuity, pursuant to California Civil Code sections 1462 and 1471 and other applicable authority.

The responsibilities and obligations placed upon the land by the Government shall run with the land and be binding on all subsequent owners of the Subsequent Parcels unless or until such responsibilities and obligations are released pursuant to the provisions set forth in the Government deed. CITY and its successors and assigns, respectively, shall not be liable for any breach of such responsibilities and obligations with regard to the Subsequent Parcels arising from any matters or events occurring after transfer of ownership of the Subsequent Parcels by CITY or its successors and assigns, respectively; provided, however, that each such party shall, notwithstanding such transfer, remain liable for any breach of such responsibilities and obligations to the extent caused by the fault or negligence of such party.

2.7 "As is, Where Is, With All Faults". SOCCCD acknowledges that it has examined the Subsequent Parcels and is acquiring the Subsequent Parcels from the CITY in an "AS IS, WHERE IS, WITH ALL FAULTS" condition, in its present state and condition and with all faults, which provisions shall survive the close of escrow related to this transaction and do not merge with this Deed.

3. **COVENANTS RUNNING WITH THE LAND.** The terms of this Deed, are hereby agreed and declared by SOCCCD and CITY and declared to be covenants running with the land and enforceable as restrictions and equitable servitudes against the Subsequent Parcels, and are hereby declared to be and shall be binding upon the Subsequent Parcels and SOCCCD and the successors and assigns of SOCCCD owning all or any portion of the Subsequent Parcels.

4. **NOTICES:** All notices, consents, demands, requests and other communications a party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set for below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated forty-eight (48) hours from the time of mailing if mailed as provided in this Section:

If to CITY:

City of Tustin  
300 Centennial Way  
Tustin, California 92780  
Attn: City Manager

With a copy to:

George R. Schlossberg, Esq.  
Kutak Rock LLP  
1101 Connecticut Avenue, N.W., Suite 1000  
Washington, DC 20036

If to SOCCCD:

Vice Chancellor, Business Services  
South Orange County Community College District  
8000 Marguerite Parkway  
Mission Viejo, CA 92692

With a copy to:

Andrew P. Bernstein, Esq.  
Jackson DeMarco Tidus & Peckenpaugh  
2030 Main Street, 12th Floor  
Irvine, California 92614

**[Signature Page Follows]**

IN WITNESS WHEREOF, CITY has caused its name to be signed to this Quitclaim Deed on the day first above written.

**CITY OF TUSTIN**

By: \_\_\_\_\_  
Name: Jeffrey C. Parker  
Title: City Manager

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

**Attest:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
City Clerk

**Approved as to Form:**

\_\_\_\_\_  
Name: \_\_\_\_\_, Esq.  
City Attorney

**ACKNOWLEDGEMENT OF SOCCCD'S COVENANTS**

**TO INDICATE ACCEPTANCE** of its covenants and agreements contained in this Quitclaim Deed and receipt of the documents described herein, SOCCCD has executed this document on the date written below.

**SOUTH ORANGE COUNTY  
COMMUNITY COLLEGE DISTRICT**

By: \_\_\_\_\_  
Name: Gary Poertner  
Title: Chancellor

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

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_\_, before me, \_\_\_\_\_  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person whose name is  
subscribed to the within instrument and acknowledged to me that he/she executed the  
same in his/her authorized capacity, and that by his/her signature on the instrument the  
person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

(SEAL)

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_\_, before me, \_\_\_\_\_  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person whose name is  
subscribed to the within instrument and acknowledged to me that he/she executed the  
same in his/her authorized capacity, and that by his/her signature on the instrument the  
person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

(SEAL)

**EXHIBIT A**

**Legal Description of Subsequent Parcels  
(attached)**

**To  
Quitclaim Deed and Environmental Restriction  
Pursuant to Civil Code Section 1471**

**[TO BE PREPARED UPON ISSUANCE OF FOST 9]**

**EXHIBIT B**

**Legal Description of McCain Easement  
(attached)**

**To  
Quitclaim Deed and Environmental Restriction  
Pursuant to Civil Code Section 1471**

[If City-SOCCCD Land Exchange Has Occurred: Area 14]

[If City-SOCCCD Land Exchange Has Not Occurred: Areas 13 and 14]





**LEGAL DESCRIPTION OF AREA NO. 14**  
**Tustin, CA**  
**Portion of APN: 430-282-11 and APN: 430-282-10**

Real property situated in the City of Tustin, County of Orange, State of California, described as follows:

Being a portion of PARCEL IV-J-4 and a portion of PARCEL IV-J-5 as said parcels are described in that certain document entitled "SHORT FORM NOTICE OF LEASE IN FURTHERANCE OF CONVEYANCE" filed for record on May 14, 2002 in Doc. No. 20020404590, Records of Orange County, more particularly described as follows:

BEGINNING at the most northerly corner of said PARCEL IV-J-5;

Thence along the northeasterly line of said PARCEL IV-J-5, South  $49^{\circ}10'56''$  West, 222.90 feet to the easterly line of said PARCEL IV-J-5;

Thence leaving said line and along said easterly line, South  $07^{\circ}11'09''$  West, 236.11 feet to the southerly line of said PARCEL IV-J-5;

Thence along said southerly line of PARCEL IV-J-5 the following two (2) courses:

1. North  $73^{\circ}31'26''$  West, 47.60 feet;
2. South  $64^{\circ}04'33''$  West, 3.61 feet;

Thence leaving said southerly line, North  $07^{\circ}11'09''$  East, 203.60 feet;

Thence North  $49^{\circ}10'56''$  West, 549.19 feet to the northwesterly line of said PARCEL IV-J-4;

Thence along said line North  $40^{\circ}40'06''$  East, 50.00 feet to the northeasterly line of said PARCEL IV-J-4;

Thence leaving said line and along said northeasterly line, South  $49^{\circ}10'56''$  East 353.21 feet to the POINT OF BEGINNING.

Containing an area of 39,068 square feet or 0.897 acres more or less.

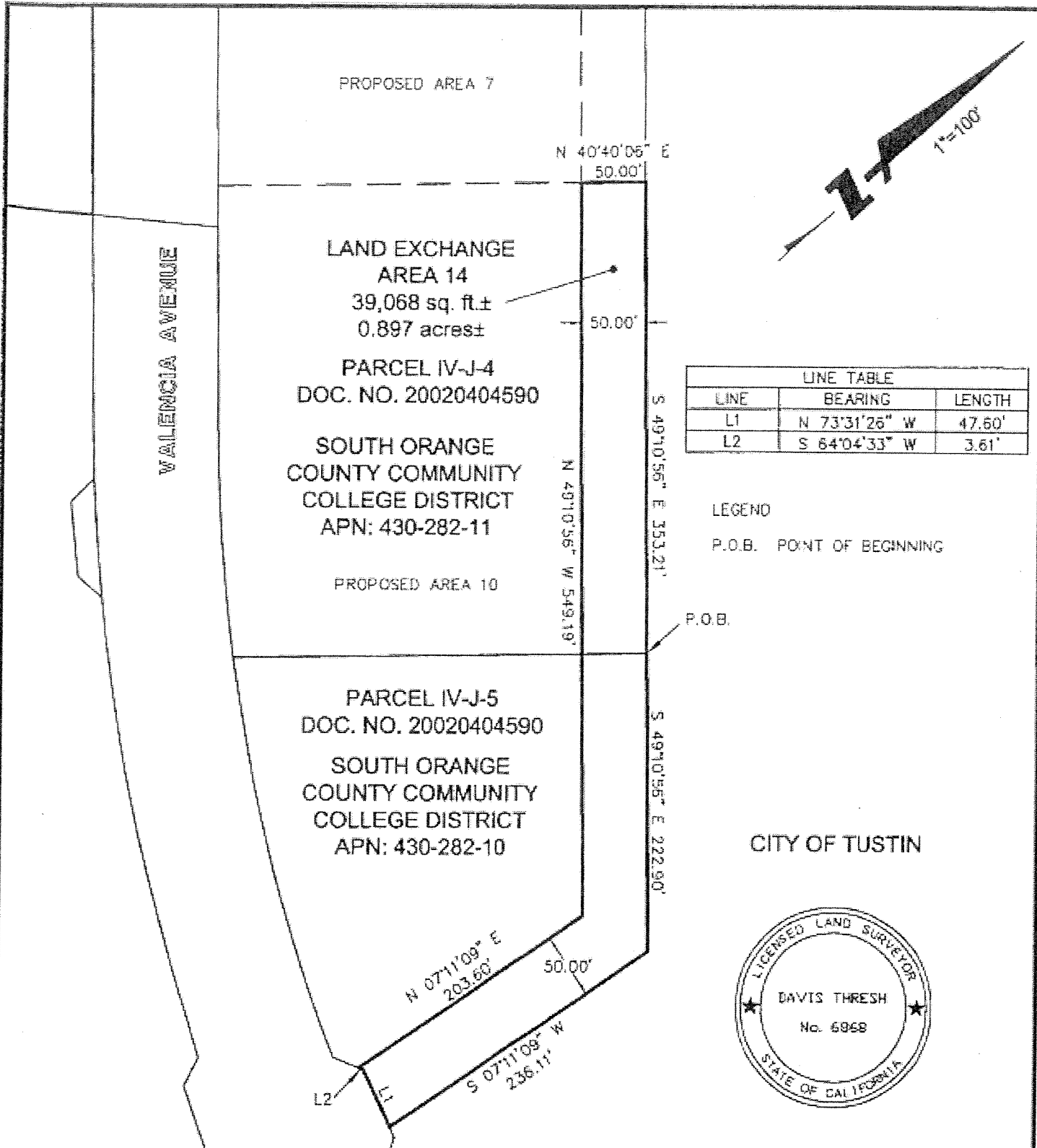
Being a portion of Assessor's Parcel Numbers 430-282-11 and 430-282-10

As shown on "Schedule 1" attached hereto and made a part hereof.

For: BKF Engineers

By: \_\_\_\_\_  
Davis Thresh, P.L.S. No. 6868  
License expires: 09-30-2014

Date: \_\_\_\_\_  
K:\Site\2012\2006.13 ATEP Land Swap Plans\DWG\MAIN\LEGALS\LAND EXCHANGE 14.doc



LINE TABLE		
LINE	BEARING	LENGTH
L1	N 73°31'26" W	47.60'
L2	S 64°04'33" W	3.61'

LEGEND

P.O.B. POINT OF BEGINNING

CITY OF TUSTIN



K:\SUR12\122006-13\PLATS\LAND SWAP 12.DWG

PLAT TO ACCOMPANY LEGAL DESCRIPTION



4670 WILLOW RD  
 SUITE 250  
 PLEASANTON, CA 94588  
 925-396-7700  
 925-396-7799 (FAX)

Subject SCHEDULE 1  
 LAND EXCHANGE AREA 14  
 Job No. 20102006-13  
 By RL Date 03/20/13 Chkd.WS  
 SHEET 1 OF 1



LEGAL DESCRIPTION OF AREA NO. 13

Tustin, CA  
Portion of APN: 430-282-11

Real property situated in the City of Tustin, County of Orange, State of California, described as follows:

Being a portion of PARCEL IV-J-4 as said parcel is described in that certain document entitled "SHORT FORM NOTICE OF LEASE IN FURTHERANCE OF CONVEYANCE" filed for record on May 14, 2002 in Doc. No. 20020404590, Records of Orange County, more particularly described as follows;

BEGINNING at the most northerly corner of said PARCEL IV-J-4;

Thence along the northeasterly line of said PARCEL IV-J-4, South 49°10'56" East, 389.01 feet;

Thence leaving said northeasterly line, South 40°40'06" West, 50.00 feet;

Thence North 49°10'56" West, 395.64 feet to the northwesterly line of said PARCEL IV-J-4;

Thence along said line the following two (2) courses:

1. North 85°40'05" East, 9.38 feet;
2. North 40°40'06" East, 43.35 feet to the POINT OF BEGINNING.

Containing an area of 19,472 square feet or 0.447 acres more or less.

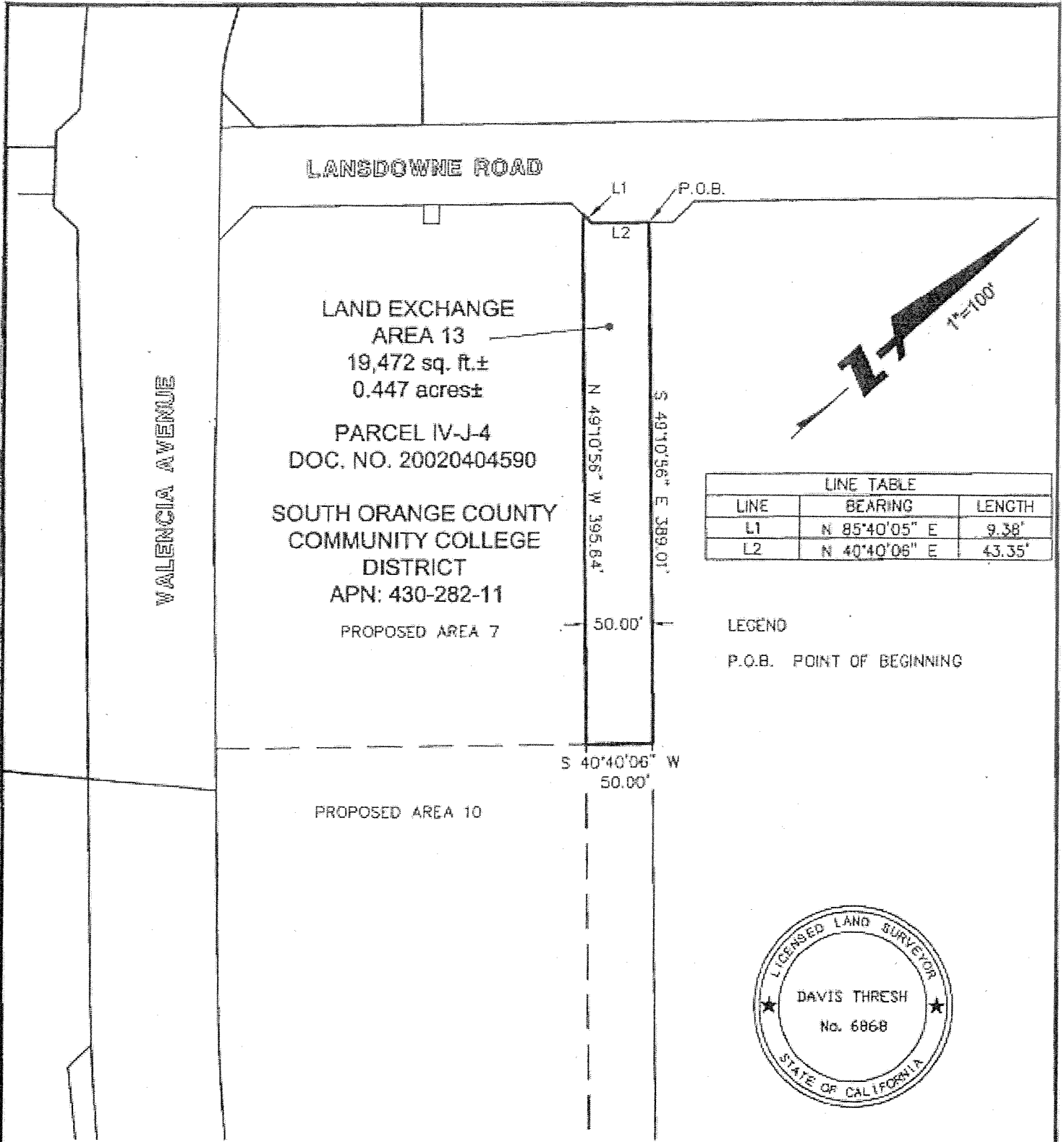
Being a portion of Assessor's Parcel Number 430-282-11

As shown on "Schedule 1" attached hereto and made a part hereof.

For: BKF Engineers

By: \_\_\_\_\_  
Davis Thresh, P.L.S. No. 6868  
License expires: 09-30-2014

Date: \_\_\_\_\_  
K:\S\12\22006.13 ATEP Land Swap Plat\DWG\MAIN\LEGAL\LAND EXCHANGE 13.doc



K:\SUR12\122006-13PLATS\LAND SWAP 13.DWG

PLAT TO ACCOMPANY LEGAL DESCRIPTION



4670 WILLOW RD  
SUITE 250  
PLEASANTON, CA 94588  
925-396-7700  
925-396-7799 (FAX)

Subject SCHEDULE 1  
LAND EXCHANGE AREA 13  
Job No. 20102006-13  
By RL Date 03/20/13 Chkd. WS  
SHEET 1 OF 1

**EXHIBIT C**

**Legal Description of City Park Site  
(attached)**

**To  
Quitclaim Deed and Environmental Restriction  
Pursuant to Civil Code Section 1471**

**[TO BE PROVIDED BY CITY]**

**EXHIBIT D**

**Depiction of Parking Areas South of McCain Road  
(attached)**

**To  
Quitclaim Deed and Environmental Restriction  
Pursuant to Civil Code Section 1471**

**[TO BE PREPARED AFTER CONSTRUCTION OF  
McCAIN SMITH ROAD]**

**Exhibit J**  
**City Certificate**



# City of Tustin

300 Centennial Way  
Tustin, CA 92780  
714.573.3010  
FAX 714.838.1602

## City Representations

\_\_\_\_\_, Chancellor  
South Orange County Community College District  
8000 Marguerite Parkway  
Mission Viejo, CA 92692

Dear Chancellor \_\_\_\_\_:

I have reviewed the Development Agreement and Amended and Restated Agreement Between the City of Tustin, California ("City") and the South Orange County Community College District ("SOCCCD") for Conveyance of a Portion of MCAS, Tustin and the Establishment of an Advanced Technology Educational Campus ("Development Agreement").

To the best of City's information, knowledge and belief, I certify that all representations of City set forth in the SOCCCD Agreement are true and correct as of the \_\_\_<sup>t</sup> day of \_\_\_\_\_, 20\_\_\_, the date of the Property Closing.

Sincerely,

\_\_\_\_\_  
City Manager

Cc: South Orange County Community College District,  
Assistant Chancellor for Business Operations

**Exhibit K**

**SOCCCD Certificate**

**SOCCCD Representations**

\_\_\_\_\_  
City Manager City of Tustin  
300 Centennial Way  
Tustin, CA 92780

Dear Mr. \_\_\_\_\_:

I have reviewed the Development Agreement and Amended and Restated Agreement Between the City of Tustin, California ("City") and the South Orange County Community College District ("SOCCCD") for Conveyance of a Portion of MCAS, Tustin and the Establishment of an Advanced Technology Educational Campus ("Development Agreement").

To the best of SOCCCD's information, knowledge and belief, I certify that all representations of SOCCCD set forth in the SOCCCD Agreement are true and correct as of the \_\_\_ day of \_\_\_\_, 20\_\_\_, the date of the Property Closing.

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_, Chancellor  
South Orange County Community College District  
8000 Marguerite Parkway  
Mission Viejo, CA 92692

**Exhibit L**

**Form of**

**Subordination, Non-Disturbance and Attornment Agreement**

RECORDING REQUESTED BY:

AND WHEN RECORDED  
RETURN TO:

---

*(Space above for Recorder's use only)*

SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMENT AGREEMENT

by and between

THE CITY OF TUSTIN, CALIFORNIA  
("City"),

---

("Permitted Lessee")

And

THE SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT  
("SOCCCD")

Dated: \_\_\_\_\_, 20\_\_

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made as of the \_\_\_\_ day \_\_\_\_\_ 20\_\_ by and between the CITY OF TUSTIN, a municipal corporation organized under the laws of the State of California ("**City**"), the SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT, a public agency ("**SOCCCD**"), and \_\_\_\_\_, a \_\_\_\_\_, ("**Permitted Lessee**").

### RECITALS:

A. Permitted Lessee is the holder of a leasehold estate in certain real property located in the City of Tustin, County of Orange, State of California, as more particularly described on Exhibit A (the "**Property**") under and pursuant to the provisions of a certain lease dated \_\_\_\_\_, 20\_\_ between SOCCCD, as landlord (herein, "**SOCCCD**" or "**Landlord**") and Permitted Lessee or its predecessor in interest, as tenant (as amended through the date hereof, the "**Lease**").

B. Permitted Lessee, City and SOCCCD desire to enter into this Agreement to set forth their respective rights with respect to the Property.

C. The Property is subject to that certain Development Agreement and Amended and Restated 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 dated \_\_\_\_\_, 20\_\_ (the "**Development Agreement**").

D. The Development Agreement was recorded on \_\_\_\_\_, 20\_\_, as Instrument No. \_\_\_\_\_ in the Official Records of the County Recorder of Orange County, California.

E. Under the Development Agreement, City has certain rights with respect to the Property, including the "Right of Reversion" as defined therein.

F. Permitted Lessee is a "Permitted Lessee" as defined in the Development Agreement.

### AGREEMENT:

NOW, THEREFORE, the parties hereto mutually agree as follows:

- 1 Subordination. Notwithstanding any provision of the Development Agreement to the contrary, the Lease shall be subject and subordinate in all respects to the terms of the

Development Agreement and to all renewals, modifications, consolidations, replacements and extensions thereof.

- 2 Nondisturbance. So long as Permitted Lessee pays all rents and other charges as specified in the Lease and is not otherwise in default (beyond applicable notice and cure periods) of any of its obligations and covenants pursuant to the Lease, City agrees for itself and its successors in interest, that Permitted Lessee's possession of the premises as described in the Lease will not be disturbed during the term of the Lease, as said term may be extended pursuant to the terms of the Lease or as said premises may be expanded as specified in the Lease, by reason of the exercise of City's Right of Reversion or any other right of City under the Development Agreement.
- 3 Attornment. Permitted Lessee agrees to attorn to, accept and recognize City as the landlord under the Lease pursuant to the provisions expressly set forth therein for the then remaining balance of the term of the Lease, and any extensions thereof as made pursuant to the Lease. The foregoing provision shall be self-operative and shall not require the execution of any further instrument or agreement by Permitted Lessee as a condition to its effectiveness. Permitted Lessee agrees, however, to execute and deliver, at any time and from time to time, upon the request of the City any reasonable instrument which may be necessary or appropriate to evidence such attornment.
- 4 No Liability. Notwithstanding anything to the contrary contained herein or in the Lease, it is specifically understood and agreed that City shall not be:
  - (a) liable for any act, omission, negligence or default of any prior landlord (other than to cure defaults of a continuing nature with respect to the maintenance or repair of the demised premises or the Property); provided, however, that City shall be liable and responsible for the performance of all covenants and obligations of landlord under the Lease accruing from and after the date that it takes title to the Property; or
  - (b) except as set forth in (a), above, liable for any failure of any prior landlord to construct any improvements;
  - (c) subject to any offsets, credits, claims or defenses which Permitted Lessee might have against any prior landlord; or
  - (d) bound by any rent or additional rent which is payable on a monthly basis and which Permitted Lessee might have paid for more than one (1) month in advance to any prior landlord; or
  - (e) be liable to Permitted Lessee hereunder or under the terms of the Lease beyond its interest in the Property; or
  - (f) liable or responsible for or with respect to the retention, application and or/return to the Permitted Lessee of any security deposit paid to SOCCCD or any prior Landlord, unless and until City has actually received for its own account as landlord the full amount of

such security deposit. Notwithstanding the foregoing, Permitted Lessee reserves its rights to any and all claims or causes of action against such prior landlord for prior losses or damages and against the successor landlord for all losses or damages arising from and after the date that such successor landlord takes title to the Property

5 Violation of Development Agreement. Under the Development Agreement, the City's Right of Reversion may arise in the event the Property is used for an unauthorized purpose as provided in Section 13.1.1 or in the event the Property is transferred improperly as provided in Section 13.1.2 of the Development Agreement. The provisions of Sections 13.1.1 and 13.1.2 are hereinafter collectively called the "**Restrictions.**" Notwithstanding anything to the contrary in the Development Agreement or the Lease, the parties agree that Permitted Lessee shall comply with the Restrictions set forth in the Development Agreement and that any violation of the Restrictions by Permitted Lessee shall constitute a default under the Lease.

(a) Notice of Violation. In the event that City determines that Permitted Lessee has violated any of the Restrictions, then, before taking any action to exercise its Right of Reversion, City shall first give notice to SOCCCD and Permitted Lessee to such effect. Permitted Lessee shall have ninety (90) days after receipt of such notice (the "**Permitted Lessee Cure Period**") to cure the violation of the Restrictions.

(b) SOCCCD's Right to Terminate. In the event that Permitted Lessee fails to cure the default in the Restrictions within the Permitted Lessee Cure Period, then SOCCCD shall have a further ninety (90) days following the expiration of the Permitted Lessee Cure Period to take either of the following actions in SOCCCD's sole discretion: (1) cure such violation of the Restrictions, or (b) commence proceedings to terminate the Lease and thereafter use commercially reasonable efforts to pursue such termination to completion. If SOCCCD is prohibited from commencing or prosecuting a termination of the Lease by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Permitted Lessee, the times specified above, for terminating the Lease shall be extended for the period of the prohibition.

6 Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the receiving party at its address set forth above, and:

if to Permitted Lessee, to  
the attention of:

\_\_\_\_\_  
\_\_\_\_\_, California  
Attention: \_\_\_\_\_

if to City, to the attention of:

City of Tustin  
300 Centennial Way  
Tustin, California 92780  
Attn: City Manager

If to SOCCCD, to the attention of:

Gary L. Poertner, Chancellor  
South Orange County Community College  
District 28000 Marguerite Parkway  
Mission Viejo, CA 92692

With a copy to:

South Orange County Community College  
District 28000 Marguerite Parkway  
Mission Viejo, CA 92692  
Attention: Assistant Chancellor for Business  
Operations

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Paragraph 5, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in Los Angeles, California.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

- 7 Successors. The obligations and rights of the parties pursuant to this Agreement shall bind and inure to the benefit of the successors, assigns, heirs and legal representatives of the respective parties. In addition, Permitted Lessee acknowledges that all references herein to SOCCCD shall mean the owner of the landlord's interest in the Lease, even if said owner shall be different from the Landlord named in the Recitals.
- 8 Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

*[signatures included on following page]*



IN WITNESS WHEREOF, City, Permitted Lessee and SOCCCD have duly executed this Agreement as of the date first above written.

**PERMITTED LESSEE:**

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY:**

**CITY OF TUSTIN**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager

Approved as to Form:  
City Attorney or Special Counsel

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Esq.

**SOUTH ORANGE COUNTY  
COMMUNITY COLLEGE DISTRICT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chancellor

Approved as to Form:  
SOCCCD Counsel

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_, Esq.

**ACKNOWLEDGEMENT**

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_\_, before me, \_\_\_\_\_  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal. (SEAL)

Signature: \_\_\_\_\_

**ACKNOWLEDGEMENT**

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_\_, before me, \_\_\_\_\_  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal. (SEAL)

Signature: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION**