

**GROUND LEASE WITH RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT FOR A PORTION OF CENTENNIAL PARK KNOWN AS THE SANTA ANA COLLEGE-SCHOOL OF CONTINUING EDUCATION**

**Preamble and Recitals**

This lease is entered into on October 15, 2019 by and between, Rancho Santiago Community College District ("District") and the City of Santa Ana, a municipal corporation of the State of California ("City"). Collectively referred to as "the Parties."

- A. City is the owner of real property in the City of Santa Ana, County of Orange, State of California, commonly known as the Santa Ana College-School of Continuing Education located at City's Centennial Park ("Park") at 2900 West Edinger Avenue, in Santa Ana, California described on Exhibit "A," which is attached and made part of this lease (referred to in this lease as "the Premises").
- B. District desires to lease the Premises for the purpose of operating an educational center.
- C. District previously operated its education center at the property pursuant to a license agreement between the parties. Said license agreement began on November 5, 1979 and included District erecting buildings on the Premises owned by the City. Said license agreement will expire upon the Commencement Date of this lease.
- D. The Parties agree that this lease is conditioned upon District making improvements, including significant improvements, for the public benefit, to the Premises during the term of this lease.
- E. The Parties agree that this lease is conditioned upon the National Park Service's approval of the lease or approval of a land conversion related to deed restrictions on the property.
- F.

**ARTICLE 1: LEASE OF PREMISES AND TERM OF LEASE**

**Agreement to Lease**

Section 1.01. For and in consideration of the fees to be paid and covenants to be performed by District under the lease, City agrees to lease the Premises to District, and District agrees to lease the Premises from City, on the terms and conditions set forth in this lease. Except as expressly otherwise provided in this lease, "the Premises" includes the real property plus any appurtenances and easements described in Exhibit "A" of this lease, including any and all improvements now or subsequently located on the Premises, notwithstanding that any Improvements may or shall be construed as affixed to and as constituting part of the described Premises, and without regard to whether ownership of the Improvements is in City or District.

### Term of Lease

Section 1.02. The term of this lease shall be for a period of eighty-five (85) years commencing on October 16, 2019 ("Commencement Date"), and terminating on October 15, 2104, unless terminated earlier as provided in this lease.

## ARTICLE 2: FEES

### Operation and Maintenance Fees

Section 2.01. During the term of this lease, District agrees to pay to City, on a quarterly basis, twenty-five percent (25%) of the operation and maintenance expenses incurred by City in caring for the access roads, parking areas and other infrastructure improvements in the Park required to be maintained by the City which are used in common both by park visitors and by college employees, faculty and students. Costs payable by the District under this Section 2.01 shall be payable in equal installments on January 1, April 1, July 1, and October 1, the first payment due under this lease would be January 1, 2020, subject to the City's issuance of the Estimated Statement required by Section 2.02 below. All such costs, and any fees required under this lease shall be paid to City at 20 Civic Center Plaza, P.O. Box 1988, Santa Ana, California, 92701, Attention: Executive Director or Parks, Recreation and Community Services Agency, or any other place or places that City may designate by written notice to District.

### Estimated Statements of Annual Costs

Section 2.02. On an agreed upon date annually during the term of this lease, the City shall deliver to the District the City's good-faith estimate of the costs that will be payable by the District for the upcoming year pursuant to Section 2.01 above ("Estimated Statement").

### Annual Reconciliation of Costs

Section 2.03. After year end of each year during the term of this lease, the City shall deliver to the District a statement of the actual costs owing by the District under Section 2.01 above for the preceding year ("Reconciliation Statement"). If the Reconciliation Statement reveals that the District's share of those costs is more than the total additional rent paid by the District for the prior year's Section 2.01 costs, the District agrees to pay the City the difference in a lump sum within forty-five (45) days of receipt of the Reconciliation Statement. If the Reconciliation Statement reveals that the District's actual share of those costs is less than the total additional rent paid by tenant for such prior year's costs, the City will credit any overpayment toward the next monthly installment(s) of rent.

### District's Audit Rights

Section 2.04. If the District questions any Reconciliation Statement, it shall have the right, at any time within three (3) years after delivery thereof to the District, to request in writing copies of backup documentation reasonably sufficient to support the disputed item(s) in the Reconciliation Statement, which the City shall provide within a reasonable time (not to exceed thirty [30] days) after the City receives the District's written request. The District's right to request backup documentation shall not entitle the District to withhold, delay or offset against any payment of costs or any other charge owing under the lease pending resolution of the dispute. If the City and the District are unable to resolve the dispute within thirty (30) days after the District receives the requested supporting documentation, or if the City fails to timely deliver such documentation, then the District shall have the right, after reasonable notice and at reasonable times, to inspect and photocopy the City's accounting records at a location in the City of Santa Ana, California, mutually acceptable to the District and the City. If, after such inspection and photocopying, the District continues to dispute the amount of the costs attributable to the District pursuant to the Reconciliation Statement, then the District shall be entitled to retain a certified public accountant to audit and/or review the City's records to determine the proper amount of the District's proportionate share of the costs at issue. If such audit or review reveals that the City has overcharged the District, then the City shall either immediately credit the overpayment against the next installment(s) of rent due, or else refund the overpayment to the District within forty-five (45) days after the receipt of the results of the audit.

### No Partnership or Joint Venture

Section 2.05. Nothing in this lease shall be construed to render City in any way or for any purpose a partner, joint venture, or any associate in any relationship with District other than that of City and District, not shall this lease be construed to authorize either to act as agent for the other.

## **ARTICLE 3: USE OF THE PREMISES**

### Permitted Use

Section 3.01. District shall use the Premises solely for the purpose of operating and maintaining (subject to District's agreement to make certain improvements set forth in this Lease) District's School of Continuing Education located on the Premises. The City and District each acknowledges and understands that certain obligations under this lease are contingent upon the approval of the National Parks Service of said lease or in the alternate the approval of a land conversion by the National Parks Service. If neither is obtained, the City and District will terminate the lease on a schedule acceptable to both parties and in accordance with direction

from the National Parks Service. District shall not change the use of the Premises without first obtaining the written consent of the City. District shall use its best efforts to use and permit Use of the Premises for purposes permitted by this Section 3.01.

#### Compliance with Laws

Section 3.02. District shall, at District's own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, both federal and state and county or municipal, including those requiring capital improvements to the Premises or Improvements, relating to any use and occupancy of the Premises (and specifically not limited to any particular use or occupancy by District), whether those statutes, ordinance, regulations, and requirements are now in force or are subsequently enacted. If any license, permit or other governmental authorization is required for lawful use or occupancy of the Premises or any portion of the Premises, District shall procure and maintain it throughout the term of this lease. To the extent that the City itself is the entity issuing such licenses, permits or other authorizations, the City agrees to work in good faith with the District to issue those permits as promptly as possible pursuant to the City's usual and customary practices and procedures for issuance of such licenses, permits, or authorizations, compliance with the Municipal Code, City Charter and applicable laws. The judgment of any court of competent jurisdiction, or the admission by District in a proceeding brought against District by any government entity, that District has violated any such statute, ordinance, regulation or requirement shall be conclusive as between City and District and shall constitute grounds for termination of this lease by City.

#### Prohibited Use

Section 3.03. District shall not use or permit the Premises or any portion of the Premises to be improved, developed, used or occupied in any manner or for any purpose that is in any way in violation of the deed restrictions on the Premises (unless or until they are removed), any valid law, ordinance, or regulation of any federal, state, county or local governmental agency, body, or entity. District shall not make improvements unless said improvements are set forth herein this lease or agreed upon in writing by the parties prior to District beginning improvements. Furthermore, District shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises or any part of the Premises.

### **ARTICLE 4: TAXES AND UTILITIES**

#### District to Pay Taxes

Section 4.01. To the extent that there are any, District shall pay during the term of this lease, without abatement, deduction, or offset, any and all real and personal property taxes, general and special assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed during

the term of this lease by any governmental agency or entity on or against the Premises, the Improvements located on the Premises, personal property located on or in the Premises or Improvements, and the leasehold estate created by this lease.

#### Tax Hold Harmless Clause

Section 4.02. District shall indemnify and hold City and City's property, including the Premises, and any improvements now or subsequently located on the Premises, free and harmless from any liability, loss or damage resulting from any taxes, assessments, or other charges required by this Article to be paid by District and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments or other charges.

#### Utilities

Section 4.03. District shall pay or cause to be paid, and hold City and City's property including the Premises free and harmless from, all charges for the furnishing of gas, water, electricity, telephone service, and other public utilities to the Premises during the lease's term and for the removal of a garbage and rubbish from the Premises during the term of this lease. All such utilities shall be separately metered to the Premises.

#### Payment by City

Section 4.04. Should District fail to pay within the time specified in this Article any taxes, assessments, or other charges required by this Article to be paid by the District, City may, without notice to or demand on District, pay, discharge, or adjust that tax, assessment, or other charge for the benefit of District. In that event, District shall promptly on written demand of City reimburse City for the full amount paid by City in paying, discharging, or adjusting that tax, assessment or other charge together with interest thereon at the then-maximum legal rate from the date of payment by City until the date of repayment by District. If this Article does not specify the time within which District must pay any charge required by this Article, District shall pay that charge before it becomes delinquent.

### **ARTICLE 5: IMPROVEMENTS BY DISTRICT**

#### Previous Improvements

Section 5.01. The parties agree that pursuant to the previous license agreement between the parties, certain buildings and structures were built on the Premises. The terms of the previous license agreement between the parties provided that District had a duty to remove the structures or buildings from the property at the termination or expiration of the license and that, if District did not, the title of those buildings and structures would pass to the

City. The parties agree that these improvements, for purposes of this lease, will be called “Previous Improvements,” and that title for those Previous Improvements will remain with the District during the term of this lease but will automatically transfer to City upon expiration or termination of this lease. District agrees to execute, acknowledge, deliver to City any instrument requested by City as necessary in City’s opinion to perfect City’s right, title, and interest to the Previous Improvements and the Premises.

#### Duty to Make Significant Improvements

Section 5.02. District shall, at District’s sole cost and expense, make Significant Improvements such as replacement of buildings on the Premises for the benefit of the users of the college campus located thereon, in the manner and according to the terms and conditions of this Article. The parties will mutually determine the nature of the Significant Improvement within four and one half (4 ½) years of the commencement date of this lease (April 15, 2024).

District agrees to include improvements on the Premises, of which shall be for the joint use of the District and the City. These improvements include a branch library; a community room; and classrooms for recreational, physical fitness and other community service classes, such as yoga, dance, and similar subjects.

The parties agree that it is their belief and intention that the Improvements will increase the appeal and use of the park by the public. The parties agree that these Improvements do not change the ownership of the Park and that the Improvements do not create a property interest of any kind for District in the Park. Where applicable, District will comply with the following terms:

- a) If the Significant Improvements meets the threshold of the City’s Community Workforce Agreement in effect as of the date of this lease (“CWA”), District will comply with the terms of the CWA; and
- b) If required by law, District will pay prevailing wages as part of the construction contracts for the Significant Improvements.
- c) All Improvements, including Significant Improvements, will comply with City building standards, parking requirements, the Santa Ana Municipal Code, and Santa Ana City Charter; and
- d) District will comply with the California Environmental Quality Act (“CEQA”) for any Significant Improvements.

#### Duty to Make Capital Improvement Contribution

Section 5.03. In addition, the District shall make a one-time capital contribution in an amount no less than one million dollars (\$1,000,000) for improvement of adjacent areas to the campus, which may include sidewalks, landscaping, surface parking lots, or similar items.

### Requirement of City's Written Approval

Section 5.04. No structure or improvement of any kind shall be constructed on the Premises unless and until the plans, specifications, and proposed location of that structure or improvement has been approved in writing by City. Furthermore, no structure or other improvement shall be constructed on the Premises that does not comply with plans, specifications and locations approved in writing by City.

### Preparation and Submission of Plans

Section 5.05. District shall, at District's own cost and expense, engage a licensed architect or engineer to prepare plans and specifications for the Significant Improvements:

- a) District shall submit the following to City for approval by the date which is the later of (i) five (5) years after the commencement of this lease or (ii) three (3) years after approval by the National Parks Services of the land conversion identified in Section 3.01 above:
  1. Two copies of drawings and materials in the form of plans, elevations, sections and rendered perspectives sufficient to convey the architectural design of the significant improvements to City.
  2. Two copies of the estimated construction costs for the significant improvements prepared by the engaged architect or engineer.
- b) Within 30 days after approval by City of the items specified in subsection a) of this Section and the obtaining by District of any discretionary approvals required for the Significant Improvements, District shall provide two copies of the following to City:
  1. Detailed working drawings, plans and specifications for the significant improvements; and
  2. A revised statement of estimated construction costs for the significant improvements prepared by the engaged architect or engineer.

### City's Approval or Rejection of Plans

Section 5.06. Within 30 days after receipt by City of any documents submitted to City for approval under Section 5.05 of this lease, City shall either approve those documents or City shall give written notice to District of any objections City may have to those documents. Notwithstanding the foregoing, the City acknowledges that both the design and the manner of construction of classrooms and other community college facilities is governed by The Field Act (as codified in the California Education Code) and is subject to approval by the California Department of General Services' Division of the State Architect ("DSA"); the City agrees that it shall not disapprove any design element or construction specifications which are required by the Field Act or the DSA. City's failure to give written notice to District within 30 days of

submittal of documents to City shall constitute approval of the documents by City (on design but not for purposes of any required submissions for discretionary approvals, permits, entitlements, and similar approvals legally required from City as a public entity approving or denying said Significant Improvements. Within 30 days after service on District of the written notice of City's objections, District may deliver corrective amendments to the documents to City and City shall, within 30 days after receiving the corrective amendments, serve written notice on District of City's approval or rejection of the documents as so amended. Failure of City to serve written notice on District within that 30 day period after receipt of the corrective amendments shall constitute approval by City of the documents as so amended.

#### Changes in Plans

Section 5.07. After approval by City of the documents pertaining to the Significant Improvements described in Section 5.02 of this lease, any substantial change in the plans or specifications for the Significant Improvements shall be approved by the City. For purposes of this Section, "substantial change" means one that materially changes the exterior appearance of the significant improvements or one that results in a decrease in construction costs of 25% or more. City's failure to give written notice to District of any objections City may have to any proposed changes within 30 days after a written statement if the proposed changes has been given to City by District shall constitute City's approval of the changes. Minor changes in work or materials not constituting a substantial change need not be approved by City but a copy of the altered plans and specifications reflecting those changes shall be given to City.

#### All Work on Written Contract

Section 5.08. All work required in the construction of the Significant Improvements, including any site preparation work, landscaping work, and utility installation work, as well as actual construction work on the significant improvement, shall be performed only by competent contractors licensed under the laws of the State of California and shall be performed in accordance with written contracts with those contractors. Each such contract shall provide that the final payment under the contract due to the contractor shall be in an amount equaling at least five percent (5%) of the full amount payable under the contract and shall be paid to contractor (subject to the District's right to withhold disputed amounts) not later than sixty (60) days after the date of completion.

#### Performance and Lien Bonds

Section 5.09. Each contractor engaged by District to perform any services for construction of the Significant Improvement including any construction, site preparation, utility installation, landscaping, or parking lot construction services, shall furnish to District, who shall deliver copies of both of the following to City, at the contractor's own expense at the time of entering a contract with District for those services:



- a) A bond issued by a corporate surety authorized to issue surety insurance in California in an amount agreed upon by the parties ) securing the faithful performance by the contractor of its contract with District;
- b) A bond issued by a corporate surety authorized to issue surety insurance in California in an amount equal to one hundred percent (100%) of the contract provide payable under the contract securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of the contract.

#### Compliance with Laws and Standards

Section 5.10. The Significant Improvements shall be constructed, all work on the Premises shall be performed, and all buildings, or other improvements on the Premises shall be erected in accordance with all valid laws, ordinances, regulations, and orders of all federal, state, county, or local governmental agencies or entities having jurisdiction over the Premises. This includes compliance with City building standards, parking requirements, and where applicable CEQA ; provided, however, that any structure or other Improvement erected on the Premises, including the Significant Improvements, shall be deemed to have been constructed in full compliance with all such valid laws, ordinances, regulations and orders when a valid final Certificate of Occupancy allowing for occupancy and use of the structure or other improvements have been duly issued by proper governmental agencies or entities. All work performed on the Premises under this lease, or authorized by the lease, shall be done in a good workmanlike manner and only with new materials of good quality and high standard.

#### Time for Commencement of Construction

Section 5.11. District shall cause construction of the Significant Improvements to be commenced no later than seven (7) years after commencement of the lease (October 16, 2026). In the event that, District fails to commence construction of the Significant Improvements on or before the seventh year after the commencement of the lease (October 16, 2026), City will provide 1 years' worth of notice in writing to District of the termination of this lease. Said notice may be revoked by City in the event that, District causes construction of the Significant Improvements to be commenced no later than eight (8) years after commencement of the lease (October 16, 2027).

#### Time for Completion of Construction

Section 5.12. District shall complete construction of each of the Significant Improvements no later than twelve (12) years after commencement of this lease. Completion of construction shall be evidenced by issuance of a Certificate of Occupancy(s) or final approval of building permits if a Certificate of Occupancy is not required. City may agree to extend the time for completion of the Significant Improvements in writing for good cause.

### Mechanics Lien

Section 5.13. At all times during the term of this lease, District shall keep the Premises and all Improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. Should District fail to pay and discharge or cause the Premises to be released from any such lien or claim of lien within thirty (30) days after service on District of written request from City to do so, City may pay, adjust, compromise and discharge any such lien or claim of lien on any terms and in any manner that City may deem appropriate. In that event, District shall on or before the first day of the next calendar month following any such payment by City, reimburse City for the full amount paid by City in paying, adjusting, compromising, payment by City, reimburse City for the full amount paid by City in paying, adjusting, compromising, and discharging that lien or claim of lien, including any attorneys' fees or other costs expended by City together with interest at the then-maximum legal rate from the date of payment by City to the date of repayment by District.

### Zoning and Use Permit

Section 5.14. Should District deem it necessary or appropriate to obtain any use permit, variance, or entitlements of the Premises to construct significant improvements, City agrees to execute any documents, petitions, applications, and authorizations that may be necessary or appropriate to construct Significant Improvements. Any permits, variances, entitlements, and/or plans necessary to construct Significant Improvements shall be obtained at the sole cost and expense of District and District agrees to protect and save City and the property of City, including the Premises, free and harmless from any cost or expense.

### Ownership of Improvements

Section 5.15. With the exception of Previous Improvements discussed in Section 5.01, title to all Improvements, including Significant Improvements, to be constructed on the Premises by District shall be owned by City unless expressly agreed in writing by the parties. District agrees to execute, acknowledge, deliver to City any instrument requested by City as necessary in City's opinion to perfect City's right, title, and interest to the improvements, including Significant Improvements.

## **ARTICLE 6- ENCUMBRANCE OF LEASEHOLD ESTATE**

Section 6.01. District shall not encumber the leasehold estate under this lease without the express written permission of City, which permission shall not be unreasonably withheld.

## **ARTICLE 7- REPAIRS AND RESTORATION**

### **Maintenance by District**

Section 7.01. At all times during the term of this lease District shall, at District's own cost and expense, keep and maintain the Premises, all improvements, and all appurtenances (including landscaped and parking areas) now or hereafter on the Premises in a first-class condition, in good order and repair, and in a safe and clean condition.

### **Requirements of Government Agencies**

Section 7.02. At all times during the term of this lease, District, at District's own cost and expense, shall do all of the following:

- a) Make all alterations, additions, repairs to the Premises or the improvements on the Premises, required by any valid law, ordinance, statute, order or regulation now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Notwithstanding the foregoing, if the City is the entity imposing such law, ordinance, statute, order or regulation, the District's obligations hereunder shall apply only to those which are consistent with the Premises' zoning, City building standards or are applicable to all properties within the City
- b) Observe and comply with all valid laws, ordinances, statutes, orders and regulations now or hereafter made or issued by governmental authorities other than the City respecting the Premises or the improvements.
- c) Contest if District, in District's sole discretion, desires by appropriate legal proceedings brought in good faith and diligently prosecuted in the name of the District, or in the names of District and City where appropriate or required, the validity or applicability to the Premises of any law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity; provided, however, that any such contest or proceeding, through maintained in the names of District and City, shall be without cost to City, and District shall protect the Premises and City from District's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation; and
- d) Indemnify and hold City and the property of City, including the Premises, free and harmless from any and all liability, loss, damages, fines, penalties, claims, actions resulting from District's failure to comply with and perform the requirements of this section.

### **District's Duty to Restore Premises**

Section 7.03. If at any time during this lease's term, any Improvement(s) or Previous Improvements for which District holds title, now or hereafter on the Premises are destroyed in

whole or in part by fire, theft, the elements, or any other cause not the fault of the City, this lease shall continue in full force and effect and District, at District's own cost and expense, shall repair and restore the damaged Improvements or Previous Improvements.

- a) Any restoration by District of the Improvement(s) shall comply with the original plans for the improvements described in Article 5, except as (i) modified by District and approved in writing by City or (ii) required by the DSA, the Field Act, or other applicable law. Any restoration by District of Previous Improvements under the previous 1979 license between the parties shall comply with the original project approvals except that any currently applicable code updates shall be made, except as otherwise modified by District and approved in writing by City.
- b) The work of repair and restoration shall be commenced by District within ninety (90) days after the damage or destruction occurs and shall be completed with due diligence not later than two years after the work commenced or a date mutually agreed upon in writing by the parties. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for original construction work on the whether or not funds are available from insurance proceeds.

#### Application of Insurance Proceeds

Section 7.04. Any and all fire, casualty, or other insurance proceeds that become payable at any time during the term of this lease because of damage to or destruction of any improvements for which District holds title, on the Premises shall be paid to District and applied by District toward the cost of repairing and restoring the damaged or destroyed improvements, in the manner required by Section 7.03 of this lease.

## **ARTICLE 8- INDEMNITY AND INSURANCE**

#### Indemnity Agreement

Section 8.01. District shall indemnify and hold City and City's property, including the Premises, now or hereafter on the Premises, free and harmless from any and all liability claims, loss, damages, or expenses resulting from District's occupation and use of the Premises, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of the following:

- a) The death or injury of any person, including District or any person who is an employee, board member, official, agent of District, or any invitee to the property by District or by reason of the damage to or destruction of any property owned by District or by any person who is an employee or agent of District, from any cause whatever while that person or property is in or on the

Premises or in any way connected with the Premises or with any of the Improvements or personal property on the Premises;

- b) Any work performed on the Premises or materials furnished to the Premises at the instance or request of District or any person or entity acting for or on behalf of District; or
- c) District's failure to perform any provision of this lease or to comply with any requirement of law or any requirement imposed on District or the Premises by any duly authorized governmental agency or political subdivision.

#### Liability Insurance

Section 8.02. District shall, at District's own cost and expense, procure and maintain during the entire term of this lease a broad form comprehensive coverage policy of public liability insurance issued by an insurance company licensed by the State of California insuring District and City against loss of liability caused by or connected with District's occupation and use of the Premises under this lease in amounts not less than the following:

- a) District shall maintain commercial general liability insurance naming the City, its officers, employees, agents, volunteers and representatives as additional insured(s) and shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of District's operations in the performance of this lease, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount which is customary and agreed upon by the parties. Such insurance shall (a) name the City, its officers, employees, agents, and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.
- b) Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.
- c) Worker's Compensation Insurance. In accordance with the provisions of Section 3700 of the Labor Code, the District, is required to be insured against liability for worker's compensation or to undertake self-insurance.
- d) The following requirements apply to the insurance to be provided by the District pursuant to this section:
  - 1. The District shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.

2. Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved by the City.
3. The District shall supply City with a fully executed additional insured endorsement.

#### Fire and Casualty Insurance

Section 8.03. District shall, at District's own cost and expense, at all times during the term of this lease, keep all Improvements on the Premises, including Previous Improvements, insured for their full replacement value by insurance companies authorized to do business in the State of California against loss of destruction by fire and the perils commonly covered under the standard extended coverage endorsement to fire and earthquake insurance policies in the county where the Premises are located.

#### Specific Perils to Be Insured

Section 8.04. Notwithstanding anything to the contrary contained in Section 8.03 of this lease, the insurance required by Section 8.03 of this lease shall, whether or not included in the standard extended coverage endorsement referred to in Section 8.03, insurance all improvements, including significant improvements, on the Premises against loss of destruction by earthquake, flood, windstorm, cyclone, tornado, hail, explosion, riot, civil unrest, malicious mischief, vandalism, aircraft, fire, smoke damage, and sprinkler leakage. Furthermore, the insurance required by Section 8.03 of this lease during the construction of the significant improvements described in Article 5 shall include coverage for course of construction, vandalism, and malicious mischief, insuring the significant improvements during its construction and all materials delivered to the site of the significant improvements for their full insurable value.

#### Deposit of Insurance with City

Section 8.05. District shall, within 10 days after the commencement of the lease and promptly thereafter when any such policy is replaced, rewritten, or renewed, deliver to City a true and correct copy of each insurance policy required by this lease or a certificate of insurance from an authorized agent of the insurance companies, providing evidence of the coverages required by this lease. Failure to provide the insurance policies or a certificate of insurance as specified in this Section is grounds for immediate termination of the lease.

#### Notice of Cancellation of Insurance

Section 8.06. Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

## **ARTICLE 9-CONDEMNATION**

### **Total Condemnation**

Section 9.01. If, during the term of this lease, fee title to all of the Premises or to all of the improvements, including significant improvements, or the entire leasehold estate of District is taken under the power of eminent domain by an public or quasi-public agency or entity ("total taking"), this lease shall terminate as of 12:01 a.m. on whichever of the following occurs first: (1) the date legal title becomes vested in the agency or entity exercising the power of eminent domain; or (2) the date actual physical possession is taken by the agency or entity exercising the power of eminent domain. Thereafter, both City and District shall be released from all obligations under this lease, except those specified in Section 9.05.

### **Partial Taking-Improvements**

Section 9.02. If at any time during the term of this lease a taking occurs that is less than a total taking and affects the rentable portion of the improvements on the Premises, all compensation and damages payable for that taking shall be made available to and used, to the extent reasonably needed, by District to repair any portion of the remaining rentable portion of the Improvements damaged by the taking and to replace the rentable portion of the Improvements taken with other new rentable space on the portion of the Premises not taken, provided that replacement is then permitted by existing law. Plans and specifications for the replacement rental space must be compatible, in terms of architecture and quality of construction, with the Improvements not taken and must be first approved in writing by City. Notwithstanding anything to the contrary in this Section, if the rentable portion of the Improvements taken by eminent domain results in a net loss of fifty percent (50%) or more of the area of the Premises that can, after considering any replacement rentable space that can be lawfully constructed on the remaining portion of the Premises and paid for by the condemnation proceeds, be devoted to rentable space as compared with the area devoted to that rentable space immediately before the taking, District may terminate this lease in the manner prescribed in Section 9.03 of this lease. Moreover, the District may also terminate this lease in the manner prescribed in Section 9.03 if, in the District's reasonable opinion, the number of parking spaces taken by eminent domain deprives the Premises of sufficient parking necessary for the operation of the college upon the Premises.

### **Termination for Partial Taking**

Section 9.03. District may terminate this lease for the reasons stated in Section 9.02 of this lease, by serving written notice of termination on City within sixty (60) days after District has received from City or from the condemning authority written notice of an intended taking that sets forth the extent and scope of the intended taking. If District elects to terminate this lease, the effective date of the termination shall be the earlier of (1) the date of termination

specified in District's notice to City or (2) the date the condemning authority takes physical possession of the portion of the Premises taken by eminent domain. On termination of this lease under this Section, the Premises shall be delivered to City free and clear of all encumbrances.

#### Condemnation Award

Section 9.04. Any compensation or damages awarded or payable because of the taking of all or any portion of the Premises by eminent domain shall be allocated between City and District as follows:

- a) All compensation or damages awarded or payable for the taking by eminent domain or any land that is part of the Premises shall be paid to and be the sole property of City, free and clear of any claim of District or any person claiming rights to the Premises through or under District.
- b) All compensation or damages awarded or payable because of any improvements, including significant improvements constructed or located on the portion of the Premises taken by eminent domain when only a portion of the Premises is taken by eminent domain and District is not entitled to or does not terminate this lease shall be applied in the manner specified in Section 9.02 or Section 9.03 toward the replacement of those improvements, including significant improvements, with equivalent new improvements, including significant improvements, on the remaining portions of the Premises.
- c) All compensation or damages awarded or payable because of the improvements constructed or located in the portion of the Premises taken by eminent domain when this lease is terminated because of the taking by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, shall be allocated between District and City as follows:
  - 1. That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this lease that has, at the time of the taking, not expired shall belong to and be the sole property of the District.
  - 2. That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this lease that has, at the time of the taking, expired shall belong to and be the sole property of City.
  - 3. The term "time of taking" as used in this subparagraph shall mean 12:01 a.m. of whichever of the following shall first occur: the date that title, the date that physical possession of the portion of the Premises on which the improvements are located, is taken by the agency or entity exercising the eminent domain power.



- d) Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain shall be equally divided, except to the extent needed to replace and improvements taken by eminent domain with equivalent improvements on the remaining portion of the Premises when District cannot or does not terminate this lease, between City and District.

#### Rent Abatement for Partial Taking

Section 9.04. If title and possession of only a portion of the Premises is taken under the power of eminent domain by any public or quasi-public agency or entity during the term of this lease and District does not or cannot terminate this lease, then this lease shall terminate as to the portion of the Premises taken under eminent domain as of 12:01 a.m. on whichever of the following first occurs: the date title is taken, or the date actual physical possession of the portion taken by eminent domain is taken, by the agency or entity exercising the eminent domain power. Furthermore the rent payable under this lease shall, as of that time, be reduced in the same proportion that the value of the portion of the Premises taken by eminent domain bears to the full value of the Premises at that time provided, however, that District shall, subject to the provisions of this lease, replace any improvements or facilities on the remaining portion of the Premises and do all other acts at District's own cost and expense required by the eminent domain taking to make the remaining portion of the Premises fit for the uses specified in this lease.

#### Voluntary Conveyance in Lieu of Eminent Domain

Section 9.05. A voluntary conveyance by City of title to all or a portion of the Premises to a public or quasi-public agency or entity in lieu of any under threat by that agency or entity to take it by eminent domain proceedings shall be considered a taking of title to all or any portion of the Premises under the power of eminent domain subject to the provisions of this Article.

### **ARTICLE 10- ASSIGNMENT AND SUBLEASING**

#### No Assignment without City's Consent

Section 10.01. District may not assign this lease without the prior approval of City, which approval shall not be unreasonably withheld.

#### District's Right to Sublease

Section 10.02. District may not sublease the Premises without prior approval of the City, which approval shall not be unreasonably withheld.

## **ARTICLE 11-TERMINATION OF LEASE IF PROPERTY RETAKEN BY FEDERAL GOVERNMENT**

### **Termination if Property Retaken by Federal Government**

Section 11.01. It is understood that title to the Premises and surrounding area of Centennial Park was conveyed to the City by Quitclaim deed from the United States of America, and if, for any reason whatsoever, the federal government should retake possession of the property, City shall not be liable to District in any way whatsoever on account thereof.

## **ARTICLE 12-DEFAULT AND REMEDIES**

### **Continuation of Lease in Effect**

Section 12.01. Should District breach this lease and abandon the Premises before the natural expiration of the lease's term, City may continue this lease in effect by not terminating District's right to possession of the Premises, in which event City shall be entitled to enforce all of City's rights and remedies under this lease, including the right to recover the rent specified in this lease as it becomes due under this lease.

### **Termination and Unlawful Detainer**

Section 12.02. In the event of a default by District which remains uncured by the end of any and all applicable cure periods, City may terminate this lease by providing one year's written notice to the District and/or utilize any or all legal options available to City.

### **Breach and Default by District**

Section 12.03. All covenants and agreements contained in this lease are declared conditions to this lease and to the term hereby lease to District. Should District fail to perform any covenant, condition or agreement contained in this lease and the default is not cured within thirty (30) days, unless this lease specifies a longer cure period, after written notice of default is served on District by City, then District shall be in default under this lease. Notwithstanding the foregoing, if the nature of the default is such that it cannot reasonably be cured within 30 days, the District shall not be in default if it commences the cure within that 30-day period and thereafter diligently proceeds to implement the cure until complete. In addition to District's failure to perform any covenant, condition, or agreement contained in this lease within the cure period permitted by this section, the following shall constitute a default by District under this lease:

- a) The appointment of a receiver to take possession of the Premises or Improvements, or of District's interest in, to, and under this lease, the leasehold estate, or of District's operations on the Premises for any reason, including,

without limitation, assignment for benefit of creditors or voluntarily or involuntary bankruptcy proceedings, when not released within ninety (90) days.

- b) An assignment by District for the benefit of creditors; or the voluntarily filing by District of the involuntary filing against District of a petition, other than court action, or suit under any law for any purpose of (1) adjudicating District a bankrupt; (2) extending time for payment, (3) satisfaction of District's liabilities, or (4) reorganization, dissolution, or arrangement on account of, or to prevent, bankruptcy or insolvency; provided, however, that in the case of an involuntary proceeding, if all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated or otherwise permanently stayed or terminated within ninety (90) days after the filing or other initial event, then District shall not be in default under this Section; and
- c) The subjection of any right or interest of District to or under this lease to attachment, execution, or other levy, or to seizure under legal process when the claim against District is not released within ninety (90) days.

#### Cumulative Remedies

Section 11.04. The remedied given to City in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this lease.

#### Waiver of Breach

Section 11.05. The waiver by City of any breach by District of any of the provisions of this lease shall not constitute a continuing waiver or a waiver of any subsequent breach by District of either the same or a different provision of this lease.

#### Surrender of Premises

Section 11.06. On expiration or earlier termination of this lease, District shall surrender the Premises and all improvements, including significant improvements in or on the Premises to City in as good, safe, and clean condition as practicable, reasonable wear and tear expected.

#### Default by City

Section 11.07. should the City fail to perform any covenant, condition or agreement contained in this lease and the default is not cured within thirty (30) days, unless this lease specifies a longer cure period, after written notice of default is served on the City by the District, then the City shall be in default under this lease. Notwithstanding the foregoing, if the nature of the default is such that it cannot reasonably be cured within 30 days, the City shall not be in default if it commences the cure within that 30-day period and thereafter diligently proceeds to implement the cure until complete.

## ARTICLE 12- OTHER PROVISIONS

### Force Majeure

Section 12.01. Except as otherwise expressly provided in this lease, if the performance of any act required by this lease to be performed by either City or District is prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. However, nothing contained in this section shall excuse the prompt payment of rent by District as required by this lease or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

### Attorneys' Fees

Section 12.02. Should any litigation be commenced between the parties to this lease concerning the Premises, this lease, or the rights and duties of either in relation thereto, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum as and for the party's attorneys' fees in that litigation that shall be determined by the court in that litigation or in a separate action brought for that purpose.

### Notices

Section 12.03. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to the parties shall be in writing and shall be deemed duly served and given when personally delivered to either party, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, or sent by express mail that allows for tracking, or delivered by FedEx or any similar commercial courier and sent by next-day delivery where the signature of the recipient is required, addressed in all cases to the parties as indicated below. Either party may change its address for purposes of this Section by giving written notice of the change as specified in this Section.

a) Notice to City/City:

Clerk of Council  
City of Santa Ana  
20 Civic Center Plaza, M-30  
Post Office Box 1988  
Santa Ana, California 92702

And,

Executive Director of Parks, Recreation, and Community Services Agency  
City of Santa Ana  
20 Civic Center Plaza, M-23  
Post Office Box 1988  
Santa Ana, California 92702

With a courtesy copy to,

City Attorney  
City of Santa Ana  
20 Civic Center Plaza, M-29  
Post Office Box 1988  
Santa Ana, California 92702

b) Notice to District/Tenant:

Attention: Chancellor  
Rancho Santiago Community College District  
2323 North Broadway Street  
Santa Ana, California 92706

With a courtesy copy to,

Ruben A. Smith, Esq.  
AlvaradoSmith  
1 MacArthur Place, Suite 200  
Santa Ana, California 92707

Governing Law and Venue

Section 12.04. This lease, and all matters relating to this lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this lease or any decision or holding concerning this lease arises. Venue for any action regarding enforcement or interpretation of this lease shall be proper in Orange County, California.

Binding on Heirs and Successors

Section 12.05. This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this

section shall be construed as a consent by City to any assignment of this lease or any interest in the lease by District except as provided for in Article 10 of this lease.

## Partial Invalidity

Section 12.06. If any provision of this lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this lease shall remain in full force and effect unimpaired by the holding.

## Sole and Only Agreement

Section 12.08. This instrument constitutes the sole and only agreement between the City and District respecting the Premises, the leasing of the Premises to District, the agreement to construct the Improvements, including Significant Improvements but not the details of the Improvements or Significant Improvements, described in this lease on the Premises, and the lease terms set forth in this lease, and correctly sets forth the obligations of City and District to each other as of its date. Any agreements or representations respecting the Premises, their leasing to District by City, or any other matter discussed in this lease not expressly set forth in this instrument are null and void.

## Time of Essence

Section 12.09. Time is expressly declared to be of the essence of this lease.

## Non-Discrimination

Section 12.10. District shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. District affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement the date and year first above written.

<b>CITY OF SANTA ANA</b>  <hr/> KRISTINE RIDGE City Manager	<b>RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT</b>  <hr/> MARVIN MARTIN Chancellor
<b>ATTEST:</b>	

<p>_____</p> <p>DAISY GOMEZ Clerk of the Council</p>	
<p><b>APPROVED AS TO FORM:</b></p> <p>SONIA R. CARVALHO City Attorney</p> <p>By: _____ Laura A. Rossini Senior Assistant City Attorney</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>_____</p> <p>Ruben Smith, Esq. AlvaradoSmith, APC</p>
<p><b>RECOMMENDED FOR APPROVAL:</b></p> <p>_____</p> <p>LISA RUDLOFF Executive Director, Parks, Recreation and Community Services Agency</p>	

EXHIBIT A

Description of Real Property Subject to Lease