

AGREEMENT FOR REAL ESTATE MARKETING SERVICES

This Agreement for Real Estate Marketing Services (“Agreement”) is made effective as of April 4, 2017 (“Effective Date”) by and between the Santee School District (“District”), a public school district organized and existing pursuant to State of California (“State”) law, and Flocke & Avoyer Commercial Real Estate (“Consultant”). The District and the Consultant may be referred to herein individually as “Party” and collectively as the “Parties.”

RECITALS

A. The District owns real property located at 10335 Mission Gorge Road (at the Southeast corner of Mission Gorge Road and Cottonwood Avenue) in the City of Santee (“City”), California, and identified as San Diego County Assessor Parcel Nos. 383-091-01, 13, 14 (“Property”). The District desires to sell the Property as surplus property under Education Code sections 17445 through 17484 (“Surplus Property Statutes”). The District desires Consultant to market the Property in order to maximize the publicity of the sale and, therefore, the possibility of obtaining multiple bidders on the Property.

B. The Consultant represents and warrants that it has the qualifications, skills, experience, resources, and other things as are necessary to fully and satisfactorily provide services to the District as contemplated by this Agreement. Consultant represents and warrants that it is a real estate broker duly licensed in the State.

C. The Parties have entered into this Agreement for the sole purposes of setting forth the terms and conditions for the Consultant to perform marketing services for the District.

Now, in consideration of the foregoing and of the respective rights and obligations of the Parties set forth herein, the Parties agree as follows:

AGREEMENT

PART 1: SCOPE, TIMING, AND COMPENSATION FOR SCOPE OF SERVICES

Section 1.1 Scope of Services. This Agreement provides for Consultant to provide marketing services to the District for the marketing and sale of the Property. The scope of the Consultant’s services to be performed by the Consultant pursuant to this Agreement (“Scope of Services”) is set forth in Exhibit “A” attached to this Agreement. In completing the Scope of Services, the Consultant shall at all times work toward assisting the District to achieve its goals of marketing and selling the Property.

Section 1.2 Time for Completion. Time is of the essence with respect to this Agreement and the performance by the Consultant of each of its obligations pursuant to this Agreement. The Consultant shall complete all Scope of Services required pursuant to this Agreement not later than August 31, 2017 (“Expiration Date”).

Section 1.3 Compensation. The District shall pay to the Consultant, in exchange for the satisfactory performance by the Consultant of the Scope of Services such all-inclusive

compensation as is specified in Exhibit “B” attached to this Agreement, contingent upon, and in conjunction with, closing of escrow. It is expressly understood and agreed to by the Parties that no compensation shall be provided to Consultant unless escrow is both opened and closed. It is also expressly understood by Consultant that the District’s Board of Education (“District Board”) has the prerogative to reject all bids received for purchase of the Property, in which case escrow would not open and Consultant would not receive any compensation for services rendered. In the event the Scope of Services is modified in accordance with Section 1.4 herein, the written amendment to this Agreement providing for such modification shall specify any applicable modification to the compensation payable to the Consultant.

Section 1.4 Change in Scope of Services. The District may at any time request any decrease, reasonable increase, or other reasonable change in the Scope of Services to be performed by the Consultant pursuant to this Agreement. In response to any such request, the Consultant shall provide to the District, within five (5) days of such request, a written proposal that describes in reasonable detail: (i) the change; (ii) the impact of the change on the time required for performance of the Consultant’s obligations pursuant to this Agreement; and (iii) the impact of the change on the cost to the District for the performance of the Consultant’s obligations pursuant to this Agreement. Each proposal shall set forth any proposed adjustment to the compensation payable to the Consultant using such basis (fixed fee, time and materials, *et cetera*) as requested by the District. No proposal shall be valid or binding on the Parties unless and to the extent incorporated into a written amendment to this Agreement that has been approved, signed and delivered by both Parties. However, regardless of whether the District has obtained approval from the District Board of any proposal, if the District has requested that a specific Scope of Services be deleted from the Scope of Services, in no circumstances shall the Consultant thereafter perform such Scope of Services unless further authorized in writing by the District. In no event shall the Consultant be entitled to any profit, overhead, or other amounts on account of the deleted portion of the Scope of Services.

PART 2: CONSULTANT STATUS AND ADMINISTRATION OF AGREEMENT

Section 2.1 Independent Contractor. The Consultant is, for all purposes of or related to this Agreement, an independent contractor to the District. Under no circumstances shall the Consultant, or any officer, employee or agent of the Consultant, be deemed or construed to be an officer, employee or agent of the District. The Consultant shall at all times conduct its activities in a manner consistent with its status as an independent contractor to the District, and, except as provided in this Agreement, the Consultant shall have the right to determine the methods, means and mechanisms by which it shall perform the Scope of Services. The Consultant shall not permit any third party to continue in any apparent belief that the Consultant, or any officer, employee or agent of Consultant, is an officer, employee, or agent of the District. The Consultant shall be responsible for ensuring compliance with all laws related to its employees, including, without limitation, laws relating to workers’ compensation and, if applicable, payment of prevailing wages. The compensation payable to Consultant under this Agreement shall not be increased as a result of any costs incurred by Consultant that are attributable to such compliance.

Section 2.2 Criminal-History Background Checks. If, at any time prior to completion of the Scope of Services, the District determines that there possibly might be more than limited contact between any of Consultant’s personnel/employees/agents and any minor-aged District

student, the District may, in its sole discretion, require that the Consultant comply with the requirements of Education Code Section 45125.1, regardless of whether such requirements are otherwise applicable. In such event, the Consultant, at its sole cost and expense, and without additional compensation from the District, shall comply with all California Department of Justice guidelines and requirements with respect to fingerprinting of the Consultant's officers, employees, agents, or other representatives who will or might be present on or at any District facility.

Section 2.3 Prohibited Interests. As part of this Agreement, Consultant agrees to sign the Noncollusion Declaration attached hereto as Exhibit "C."

Section 2.4 Required Standard of Care. The Consultant shall perform or cause to be performed all Scope of Services using such levels of care as are not less than the reasonable levels of care employed by other consultants providing similar services to school districts within the State in similar circumstances, and considering the District's goals and any facilities, financial, or other constraints or parameters described to the Consultant either before or after the Effective Date.

Section 2.5 Compliance with Law. The Consultant shall perform the Scope of Services in compliance with all applicable federal, State, and local laws, regulations, ordinances, and other governmental requirements.

Section 2.6 Consultant Records. The Consultant shall prepare and maintain, in accordance with generally-accepted accounting principles, all financial and other records related to this Agreement and to the Scope of Services as necessary, appropriate or required by law ("Consultant Records"). Pursuant to Government Code Section 8546.7, the State Auditor has the right, for a period of three (3) years following final payment, to review, audit and/or copy records of the contracting parties with respect to each contract providing for expenditure of public funds in excess of \$10,000. The District and other governmental entities with competent jurisdiction also shall hereby have an independent right pursuant to this Agreement, for a period of four (4) years following final payment, to review, audit, and/or copy the Consultant Records. The Consultant shall make the Consultant Records available for inspection by the District, the State, and any other governmental entity with competent jurisdiction, at all reasonable times during the four-year period following final payment to the Consultant pursuant to this Agreement; provided that, if the District or any other governmental entity commences, but does not complete, an audit, review, or inspection within such four-year period, the Consultant shall maintain the Consultant Records until such time as the audit, review, or inspection has been completed.

Section 2.7 Indemnification. District agrees to indemnify, defend (with counsel reasonably acceptable to Consultant) and hold Consultant harmless from any and all claims, disputes, losses, costs, judgments, liability or damages (including, without limitation, reasonable attorneys' fees) incurred by Consultant arising from incorrect information regarding the Property supplied by District to Consultant or any third party.

PART 3: TERMINATION OF AGREEMENT AND SCOPE OF SERVICES

Section 3.1 Termination Due to Expiration or Completion. Unless earlier terminated in accordance with this Part 3, this Agreement shall terminate at 11:59pm on the Expiration Date, unless mutually extended in writing by the Parties, unless, prior to the Expiration Date, the District

enters into a contract of sale for the Property with an entity that submitted a bid proposal to purchase the Property, in which case the Expiration Date shall be extended until either the Close of Escrow for such transaction, or the cancellation or termination of said Escrow, whichever occurs first. Notwithstanding the foregoing, if the first Escrow is terminated and District enters into a purchase and sale contract with a second entity that submitted a bid proposal within sixty (60) days of the termination of the first escrow, the Expiration Date shall be extended until either the Close of Escrow for such transaction, or the cancellation or termination of said Escrow, whichever occurs first.

Section 3.2 District Termination. The District may terminate this Agreement with cause, with respect to some or all of the Scope of Services, by providing written notice of termination to the Consultant. Such termination shall be effective five (5) business days following Consultant's receipt of the notice of termination. Upon receipt of the notice of termination, Consultant shall cease performing the Scope of Services, or applicable portion thereof, and shall not be entitled to reimbursement of expenses or any further compensation following such notice. Consultant's compensation, if any, in the event of termination, is set forth on Exhibit "B".

Section 3.3 Consultant to Provide Copies of Project Documents. If, for any reason, this Agreement is terminated, in whole or in part, the Consultant shall, not later than seven (7) days after the effective date of the termination, provide to the District copies of all documents prepared on behalf of or for the District and any Consultant Records, unless already provided to District.

PART 4: GIVING OF NOTICE

Section 4.1 General Requirements. Any and all demands and notices required or permitted to be given under this Agreement (each a "Notice") shall be in writing and shall be given or served via: (i) personal delivery; (ii) registered or certified United States mail; (iii) reliable, private delivery service; or (iv) electronic mail (e-mail) transmission. Either party shall be deemed to have received a Notice by electronic mail on the business day following the date such electronic mail was sent. Neither Party may unreasonably refuse to accept delivery of any Notice, and any such refusal by a Party shall be deemed a material breach of such Party's obligations under this Agreement. Notices sent to a Party shall be addressed and delivered to that Party's representative listed in Exhibit "D."

PART 5: INTERPRETATION OF AGREEMENT

Section 5.1 Fair and Reasonable Interpretations. Prior to execution and delivery of this Agreement, each Party acknowledges that it has received, or had unqualified opportunities to receive, independent legal advice from its legal counsel with respect to the advisability of executing this Agreement and the meaning of the provisions herein. Therefore, the provisions of this Agreement shall be construed based on their fair and reasonable meaning, and not for or against any Party based on whether such Party or its legal counsel was primarily responsible for drafting this Agreement or any particular provision herein.

Section 5.2 Headings and Captions. The headings and captions set forth in this Agreement are for the convenience of the reader only and shall not be deemed or construed to establish, define, or limit the meaning of any part, section or other provision herein.

Section 5.3 Recitals and Exhibits. Each Recital set forth herein and each Exhibit referenced herein and attached hereto is hereby incorporated as an effective and operative provision of this Agreement.

Section 5.4 Meaning of “Days.” Except as expressly provided in this Agreement, each reference in this Agreement to a specific number of days shall mean consecutive calendar days, not business days.

Section 5.5 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties regarding the performance of the Scope of Services by the Consultant, and any prior/contemporaneous agreements, representations, and understandings relating to such subject matter, whether oral or written, are hereby superseded and replaced.

Section 5.6 Modifications of Agreement. This Agreement may be modified only by means of written agreement executed and delivered by both Parties.

Section 5.7 Waiver. A waiver by a Party of any provision of this Agreement shall be binding only if the waiver is set forth in writing and has been approved and signed by the waiving Party. Unless specified in the written waiver, a waiver by a Party of any provision of this Agreement shall not constitute a waiver of any other provision(s) herein, and shall not be construed as a continuing waiver. Except as waived in accordance with this Section, neither the failure by a Party at any time to require performance of any requirement of this Agreement, nor any forbearance or indulgence of the Party in regard to such requirement, shall in any manner affect the Party’s right at a later time to enforce the same or any other provision of this Agreement. Similarly, silence by a Party shall not operate to effect a waiver.

Section 5.8 Governing Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State. Any action, arbitration, or other proceeding arising from this Agreement shall be initiated and conducted only in the county in the State in which the District’s principal administrative offices are located.

Section 5.9 Correct Legal Requirements Deemed Included. Each and every provision required by any applicable law to be included in this Agreement is hereby deemed to be so included, and this Agreement shall be construed and enforced as if all such provisions are so included.

Section 5.10 Severability. If a court of competent jurisdiction determines, for any reason, that any provision or requirement of this Agreement is invalid or unenforceable, such determination shall not invalidate or render unenforceable any other provision or requirement of this Agreement. In such event, the provisions and requirements that are not the subject of the court’s determination shall be interpreted, to the extent permitted by law, in a manner that is consistent with the intent and purpose underlying the invalid or unenforceable provision or requirement. Likewise, if a court of competent jurisdiction determines, for any reason, that any provision or requirement of this Agreement is invalid or unenforceable as applied to a specific person or entity, such determination shall not affect the applicability of such provision or requirement to other persons or entities. In such event, the provisions and requirements that are

not the subject of the court's determination shall be interpreted, to the extent permitted by law, in a manner that is consistent with the intent and purpose underlying the inapplicable provision or requirement.

Section 5.11 Successors and Assigns. The Consultant may not assign this Agreement without the express prior written consent of the District, and any attempt to do so shall be null and void. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding on, the Parties' authorized successors and assigns.

Section 5.12 No Third-Party Beneficiaries. The Parties have entered into this Agreement solely for their own purposes, and this Agreement shall not be deemed or construed to: (i) benefit any third party; (ii) create any right for any third party; or (iii) except as provided by law, provide a basis for any claim, demand, action, or other proceeding by any third party.

Section 5.13 Agreement is Public Record. Nothing in this Agreement shall be deemed or construed to constitute confidential information and this Agreement is a public record which the District may disclose in accordance with State law or otherwise.

PART 6: EXECUTION OF AGREEMENT

Section 6.1 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more copies of this Agreement having original signatures of both Parties. Copies of this signature page that are provided via electronic mail or facsimile shall also be deemed original signatures.

Section 6.2 Due Authority. Each person signing this Agreement on behalf of a Party represents and warrants that he/she has been duly authorized by such Party to sign, and thereby bind such Party to, this Agreement.

(Signatures to begin on the next page.)

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as evidenced by their signatures below.

Flocke & Avoyer Commercial Real Estate

By: _____ Date Signed: _____

Print Name: _____

Title: _____

Fed. Tax ID No: _____

Santee School District

By: _____ Date Signed: _____

Print Name: _____

Title: _____

Approved as to form:

By: Bowie, Arneson, Wiles & Giannone,
Attorneys for the Santee School District

By: _____ Date Signed: _____

Wendy H. Wiles, Legal Counsel

EXHIBIT “A”
Scope of Services

The Scope of Services to be provided by Consultant include the following:

- Prepare a competitive alignment study to determine logical users that are not in the trade area
- Prepare an East County commercial land sale comparison study
- Research and expand the use of methods for maximizing exposure of the Property to the public, the quantity and quality of bidders, and the sale price
- Advise the District regarding best courses of action to maximize exposure of the Property to the public, the quantity and quality of bidders, and the sale price
- Prepare a Request for Proposal (RFP) package to be pre-approved by the District in conformance with District requirements and City of Santee input for distribution to prospective buyers and posting by the District.
- Prepare and distribute a comprehensive marketing sale package for the Property
- Advertise the Property on the web, social media, Commercial Property listing services, and through emails and direct contacts with developers and users/buyers to maximize exposure and increase the quantity of bidders
- Maintain a Marketing Status Report and keep the District apprised of interest and the status of marketing efforts
- Install “For Sale” signs on the property upon approval of District

EXHIBIT “B”
Consultant Compensation

(A) Consultant Fee:

In exchange for the satisfactory performance of the Scope of Services, the District shall pay to the Consultant **\$200,000** upon successful close of escrow. Buyers will be responsible for paying their broker separately (if applicable).

(B) Consultant Fee in the Event of Termination or Expiration without Close of Escrow:

In exchange for the performance of the Scope of Services without a successful Close of Escrow, the District shall pay to the Consultant **\$0.00.**

(C) Consultant Fee in the Event of Termination with Cause:

In exchange for an unsatisfactory performance of the Scope of Services, the District shall pay to the Consultant **\$0.00.**

EXHIBIT “C”
Noncollusion Declaration

Consultant: Flocke & Avoyer Commercial Real Estate

The undersigned hereby declares:

I am the _____ (insert position) of Flocke & Avoyer Commercial Real Estate.

I represent and warrant that: (i) Consultant has not employed or retained any company or person (excepting any bona fide employee working solely for Consultant) to solicit or otherwise cause the District to enter into the Agreement for Consultant Services (“Agreement”); (ii) Consultant has not paid, agreed to pay, or otherwise provided to, any company or person, including, but not limited to, any District officer, employee or agent (but excepting any bona fide employee working solely for Consultant), any fee, commission, percentage, brokerage fee, gift, favor, or other consideration contingent upon or resulting from the District entering into the Agreement; and (iii) to the Consultant’s knowledge, the making of the Agreement shall not result in any person having any conflict of interests pursuant to Government Code Section 1090, the California Political Reform Act (Government Code Section 87100 et seq.), or the California common law.

I hereby represent that I have the full power to execute, and do execute, this declaration on behalf of the undersigned.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Representative Name:

Representative Signature:

Date Signed:

EXHIBIT “D”
Parties’ Representatives

Each Party’s representative, address, and other contact information for purposes of Notices given pursuant to Part 4 of this Agreement are as follows:

District Contact Information:

Santee School District
Attn: Karl Christensen, Assistant Superintendent of Business Services
9625 Cuyamaca Street
Santee, California 92071
619-258-2320
E-mail: karl.christensen@santeesd.net

Consultant Contact Information:

Attn: _____

Email: _____