

Consent Item D.3.1. Acceptance and Filing of the Costs of Issuance Statement for
 Prepared by Bill Clark the Santee School District General Obligation Bonds, 2006
 October 7, 2008 Election, Series B, Series C, and Series D

BACKGROUND:

On July 15, 2008, the Board of Education ("Board") of the Santee School District ("District") adopted Resolution Nos. 0809-01, 0809-02, and 0809-03 authorizing the issuance and sale of the Santee School District General Obligation Bonds, 2006 Election, Series B, Series C, and Series D respectively (collectively the "Bonds"). Within the provisions of these resolutions, the Board directed that, following the sale and delivery of the Bonds (which occurred on September 11, 2008), that the Board would be presented with a statement of the final costs of issuing the Bonds. A statement of the final costs of issuing the Bonds was prepared in cooperation with the District's financial advisor, Capital Public Finance Group, LLC and the underwriting firms of Piper Jaffray & Co. The statement of the final costs of issuing the Bonds is attached for the Board to review, accept, and file.

RECOMMENDATION:

It is recommended that the Board of Education review, accept, and file the Costs of Issuance Statement for the Santee School District General Obligation Bonds, 2006 Election, Series B, Series C, and Series D.

This recommendation supports the following District goals:

- Provide facilities that optimize the learning environment for all students.
- Pursue actively the funding and resources to fulfill our mission and maintain fiscal solvency

FISCAL IMPACT:

Santee School District General Obligation Bonds, 2006 Election, Series B (\$12,385,076.75), Series C (\$2,869,039.35), and Series D (\$7,840,155.20) costs of issuance totals \$23,094,271.30. The fiscal impact for the bonds supports the \$128.8 million Capital Improvement Program. The general obligation bonds are payable from the levy of an ad valorem tax against the taxable property in the District. The District will also arrange, through the County, for the annual collection of the *ad valorem* taxes (beginning in tax year 2008-09) necessary to repay the principal and interest on the Bonds pursuant to applicable statutory requirements and as directed in the District Resolutions and the County Resolutions.

STUDENT ACHIEVEMENT IMPACT:

The modernization/Capital Improvement Program plans will positively impact student learning environments.

Motion:		Second:		Vote:		Agenda Item D.3.1.
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\$12,385,076.75
**SANTEE SCHOOL DISTRICT
 GENERAL OBLIGATION BONDS,
 2006 ELECTION, SERIES B
 (San Diego County, California)**

\$2,869,039.35
**SANTEE SCHOOL DISTRICT
 GENERAL OBLIGATION BONDS,
 2006 ELECTION, SERIES C
 (San Diego County, California)**

\$7,840,155.20
**SANTEE SCHOOL DISTRICT
 GENERAL OBLIGATION BONDS,
 2006 ELECTION, SERIES D
 (San Diego County, California)**

COSTS OF ISSUANCE LISTING/DESCRIPTION

SPECIFIC COSTS BY SERIES:

SERIES B BONDS:

<u>Description</u>	<u>Costs</u>
Underwriter's Discount (Piper Jaffray & Co.)	\$83,599.27
Bond Insurance (Assured Guaranty Corp.)	\$58,291.35
Bond Counsel (Bowie Arneson Wiles & Giannone)	\$38,000.00
District Counsel (Bowie Arneson Wiles & Giannone)	\$1,000.00
Bond Counsel Expenses (Bowie Arneson Wiles & Giannone)	*\$1,608.90
Financial Advisor (Capitol Public Finance Group)	*\$42,902.68
Disclosure Counsel Fees and Expenses (Quint & Thimming, LLP)	*\$18,769.92
Ratings Services (Standard & Poor's)	*\$8,044.25

* Allocated costs for Series B bonds

SERIES C BONDS:

<u>Description</u>	<u>Costs</u>
Underwriter's Discount (Piper Jaffray & Co.)	\$19,366.02
Bond Insurance (Assured Guaranty Corp.)	\$15,190.00
Bond Counsel (Bowie Arneson Wiles & Giannone)	\$14,500.00
District Counsel (Bowie Arneson Wiles & Giannone)	\$1,000.00
Bond Counsel Expenses (Bowie Arneson Wiles & Giannone)	*\$372.60
Financial Advisor (Capitol Public Finance Group)	*\$9,938.53
Disclosure Counsel Fees and Expenses (Quint & Thimming, LLP)	*\$4,348.11
Ratings Services (Standard & Poor's)	*\$1,863.47

* Allocated costs for Series C bonds

SERIES D BONDS:

<u>Description</u>	<u>Costs</u>
Underwriter's Discount (Piper Jaffray & Co.)	\$52,921.05
Bond Insurance (Assured Guaranty Corp.)	\$110,464.31
Bond Counsel (Bowie Arneson Wiles & Giannone)	\$31,500.00
District Counsel (Bowie Arneson Wiles & Giannone)	\$1,000.00

Bond Counsel Expenses (Bowie Arneson Wiles & Giannone)	*\$1,018.50
Financial Advisor (Capitol Public Finance Group)	*\$27,158.79
Disclosure Counsel Fees and Expenses (Quint & Thimming, LLP)	*\$11,881.97
Ratings Services (Standard & Poor's)	*\$5,092.28

* Allocated costs for Series D bonds

COMMON COSTS: (Applicable to all 3 Series)

<u>Description</u>	<u>Costs</u>
Printing and Shipping of POS and OS (Image Master)	\$5,000.00
Paying Agent & County Services (County of San Diego)	\$1,500.00
Costs of Issuance Fiscal Agent (Bank of America)	\$250.00

Consent Item D.3.2. Approval of Revised Energy Performance Award for
Prepared by Bill Clark Modernized Schools and HERS Testing Consultant
October 7, 2008

BACKGROUND:

San Diego Gas & Electric Company (SDG&E) offers incentive monies for construction projects utilizing energy-efficient lighting and mechanical equipment. District staff and contractors have worked closely with SDG&E representatives on our school modernization designs and the final plans have been submitted to SDG&E for an energy design audit and review. Upon construction completion and operation of the HVAC system, SDG&E representatives will verify that the equipment has been installed as designed and the District will receive an incentive check that will be used to offset utility expenses. An additional incentive savings can be achieved with a duct leakage testing option by a Home Energy Rating System (HERS) rater which will increase the incentive by approximately an additional \$20,000 per school. HERS raters were contacted and the best proposal was received by SoCal HERS Raters for duct leakage testing for the SDG&E added incentive (see attached).

RECOMMENDATION:

It is recommended that the Board of Education approve the energy-saving incentive funding from SDG&E relating to the construction and design of the project as proposed and authorize administration to execute the necessary documents to include HERS duct leakage testing and increased incentive funding through contracting with SoCal HERS Raters for such.

This recommendation supports the following District goal:

- Provide facilities that optimize the learning environment for all students.

FISCAL IMPACT:

The energy-saving incentive from San Diego Gas & Electric was increased for the District's nine schools involved in modernization and is estimated to increase \$180,000, payable at the completion of each project once the installed design work is verified by representatives of SDG&E. Incentive funds can be used to offset the HERS rater duct leakage costs at less than \$5,000 per school campus at \$135 per HVAC unit/system. A net total increased incentive at \$135,000 is anticipated district wide.

STUDENT ACHIEVEMENT IMPACT:

This is a fiscal item related to facilities modernization. All fiscal resources impact student achievement.

Motion:		Second:		Vote:		Agenda Item D.3.2.
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So Cal HERS Raters
 4840 Normandie Place
 La Mesa, CA 91941-4545
 P: 619-251-7982
 F: 888-826-9536
 socalhers@socalhers.com

Sheet # P2908SANTEESD
Date Sep 11, 2008


Proposal Submitted To:

Name	Don Hendricks / Christine Becker
Company	Santee School District
Phone Number	619-258-2323
Fax Number	

Work To Be Performed At:

Address 5 Santee School District Schools: Cajon Park Elementary School Sycamore Canyon Elementary School Rio Seco Elementary School Carlton Hills Elementary School Carlton Oaks Elementary School
Documentation Author Unknown

We hereby propose to perform the labor necessary for the completion of:

HERS required verifications as called for by SDG&E for participation in an Energy Efficiency Program.
So Cal HERS Raters will be verifying the following HERS measures:
1. HERS Verified Duct Leakage Measured and documented on the appropriate form (Mech-5 Page 3) at a rate of \$119 per HVAC package unit test. Mech-5 Page 3 requires less than 6% duct leakage for a pass.
So Cal HERS Raters will also provide a service of sealing the exterior seams of the HVAC rooftop package units in effort to achieve a passing number. Since there is a conflict of interest when sealing equipment we're testing, Cesar Rios, the SDG&E program representative advised we video tape the actual testing portion of the duct test- specifically showing the classroom/unit and the number on the gauge thus relieving the conflict of interest. So Cal HERS Raters will ONLY attempt to seal the exterior seams accessible at the rooftop and will not attempt to seal duct work located above the t-bar ceiling. Should we encounter a unit not passing after our sealing attempt, we will notify Don Hendricks for corrective action.
We will provide this sealing service for additional \$16.00.
The above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of :
<u>One Hundred & Thirty Five Dollars per HVAC package unit duct test/unit seal) \$135.00 seal & test</u>
With payments to be as follows: Full payment due 15 days after delivery of compliance documents.
Any alteration or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.
our control.
Respectfully submitted

Note: this proposal may be withdrawn by us if not accepted within 14 days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.
Signature _____
Date _____
Signature _____

PROPOSAL



What is a HERS Rating?

A home energy rating involves an analysis of a home’s construction plans and onsite inspections. Based on the home’s plans, the Home Energy Rater uses an energy efficiency software package to perform an energy analysis of the home’s design. This analysis yields a projected, pre-construction HERS Index. Upon completion of the plan review, the rater will work with the builder to identify the energy efficiency improvements needed to ensure the house will meet ENERGY STAR performance guidelines. The rater then conducts onsite inspections, typically including a blower door test (to test the leakiness of the house) and a duct test (to test the leakiness of the ducts). Results of these tests, along with inputs derived from the plan review, are used to generate the HERS Index score for the home.

The HERS Index

The HERS Index is a scoring system established by the Residential Energy Services Network (RESNET) in which a home built to the specifications of the HERS Reference Home (based on the 2006 International Energy Conservation Code) scores a HERS Index of 100, while a net zero energy home scores a HERS Index of 0. The lower a home’s HERS Index, the more energy efficient it is in comparison to the HERS Reference Home.

Each 1-point decrease in the HERS Index corresponds to a 1% reduction in energy consumption compared to the HERS Reference Home. Thus a home with a HERS Index of 85 is 15% more energy efficient than the HERS Reference Home and a home with a HERS Index of 80 is 20% more energy efficient.

For more information, visit the [RESNET Web site](#) [EXIT](#) ↗ .

Comparing the New HERS Index with the Old HERS Score

For homes rated before July 1, 2006, the rating score is known as a “HERS Score.” The HERS Score is a system in which a home built to the specifications of the HERS Reference Home (based on the 1993 Model Energy Code) has a HERS Score of 80. Unlike the HERS Index, each 1-point increase in a HERS Score is equivalent to a 5% increase in energy efficiency. Please see the table below for a comparison of the HERS Score and the HERS Index.

	HERS Score	HERS Index
Reference Home Score	Reference Home is assigned a HERS Score of 80	Reference Home is assigned a HERS Index of 100, while a net zero energy home is assigned a HERS Index of 0
Reference Home Basis	1993 Model Energy Code (MEC)	2006 International Energy Conservation Code (IECC)
Scale	Each 5% <i>increase</i> in energy efficiency corresponds to a 1-point <i>increase</i> in HERS Score	Each 1% <i>increase</i> in energy efficiency corresponds to a 1-point <i>decrease</i> in HERS Index
Energy Use Considered	Heating, cooling, and water heating	Heating, cooling, water heating, lighting, appliances, and onsite power generation*
ENERGY STAR Requirement	HERS Score 86	HERS Index of 85 in climate zones 1–5 HERS Index of 80 in climate zones 6–8
Status	Phasing out	Approved by the RESNET Board of Directors. To be implemented as of July 1, 2006.

* Note that although onsite power generation is included in the RESNET HERS Index, it cannot be used to decrease a

Consent Item D.3.3. Ratification/Approval of Performance Auditor
Prepared by Bill Clark Contract Services, and Audit Reporting Services
October 7, 2008 for the Independent Citizens' Oversight
Committee Capital Improvement Program

BACKGROUND:

The Board of Education has directed staff to make every effort to ensure the Santee School District Capital Improvement Program (CIP) is effectively managed. Last year the Board approved work for an annual performance audit to be conducted by Mr. Anthony Fulton. Mr. Fulton's report provided the District with many recommendations of benefit to the program. Proposition R was issued under the provision of Proposition 39 which includes a requirement that the District's Board conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.

This language was shared and discussed with the Independent Citizens' Oversight Committee (ICOC). The ICOC determined that the requirement should be interpreted with input from the San Diego County Tax Payers Association, our performance auditor, and our independent financial auditor Vavrenik, Trine, Day & Co. (VTD). After input and discussion, it was determined that VTD should provide the interpretation and submit a sample report demonstrating how the Proposition 30 audit requirement was met by other school districts.

A sample report was shared with the Board on September 16, 2008. The sample report was discussed and approved by the ICOC at its October 1, 2008 meeting. VTD is prepared to complete this work as part of their annual financial audit at a cost not to exceed \$4,500.

Administration found the work of Mr. Fulton to be very beneficial and requests in addition to the audit by VTD, approval to continue with an annual performance audit. Mr. Fulton was recommended by ICOC member Chris Cate of the Taxpayers' Association for his work with Gafcon and other local school districts. AF Consultants (Mr. Fulton), completed the performance audit and program recommendations for the District's first year. AF Consultants audit services include:

- Annual Program Review and Progress Report
- Organizational Review
- Operational Controls
- Consultant Procurement
- Construction Methods
- Review Construction Financial Tools
- Advanced Planning, Scheduling and Estimating
- Contract Review
- Process Improvement Recommendations
- Change Order Review
- Financial Closeout and Capitalization
- Master Planning
- Project Budgeting, Scope and Schedule Controls
- Recommendations for Future Bond Issues

Administration requests Board approval ratification of the attached contract with AF Consultants to continue to provide program performance audit services for 2008-09.

RECOMMENDATION:

It is recommended that the Board of Education authorize the District's independent financial auditor Vavrenik, Trine, Day & Co. (VTD) to provide a report demonstrating how the Proposition 30 audit requirement was met. Additionally, it is recommended that the Board provide approval ratification of the contract with AF Consultants to continue with performance auditor contract services for the ICOC/Capital Improvement Program.

This item supports the following District goal:

- Provide facilities that optimize the learning environment for all students.

FISCAL IMPACT:

The fiscal impact for an ICOC performance audit report and program improvement services by AF Consultants is \$20,000, and \$4,500 for a report by VTD demonstrating Proposition 30 audit requirement was met. This fiscal impact will be funded from the Capital Facilities Fund 25.

STUDENT ACHIEVEMENT IMPACT:

Strong, positive relationships exist between overall building conditions, a positive learning environment, and student achievement.

Motion:		Second:		Vote:		Agenda Item D.3.3.
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SANTEE SCHOOL DISTRICT

Independent Contractor Agreement Contract No. _____

This agreement is hereby entered into between **Santee School District**, 9625 Cuyamaca Street, Santee, CA 92071, hereinafter referred to as "District," and Anthony Fulton, dba **AF Consultants**, 8501 Chevy Chase Drive, La Mesa, CA 91941 hereinafter referred to as "Contractor."

WHEREAS, District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in administrative matters, if such persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, District is in need of such special services and advice, and

WHEREAS, Contractor is specially trained and experienced and competent to perform the special services required by the District, and such services are needed on a limited basis;

NOW, THEREFORE, the parties agree as follows:

1. **Work Tasks:** Contractor will provide advice and guidance to District's staff regarding the execution of the District's Bond and Modernization Program which may include but not be limited to the following:
 - **Assistance with contract negotiations between the District and Construction Manager; District and Architect; District and other consultants.**
 - **Assistance and guidance with the selection of appropriate consultants.**
 - **Assistance with planning, scheduling, and project budget and estimate reviews.**
 - **Assistance with ICOC committee interface and public relations.**
 - **Assistance with financial reviews, invoice and change order reviews and other financial matters regarding the program financial expenditures.**
 - **Other tasks as assigned by the District staff and agreed to by the parties.**
2. **Term.** Contractor shall commence providing services under this Agreement on: **July 1, 2008** and will diligently perform as required and complete performance by: **June 30, 2009**.
3. **Compensation.** District agrees to pay the Contractor for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed the hourly rates for personnel as indicated. District shall pay Contractor according to the following terms and conditions:

Terms: Payment is due upon receipt of monthly invoices and considered late after 30 days.

Payment: At the rates as follows:

Anthony Fulton, Principal	\$150.00/hour
Patricia Campbell, Sr. Financial Analyst	\$135.00/hour
Administrative Asst.	\$ 55.00/hour

Reimbursable Expenses: Included

4. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District, except as follows:
 - **Travel, as authorized outside of San Diego County, at cost**
 - **Reproduction of documents, other than incidental to the performance of services, at the cost of reproduction**
 - **Other reimbursable expenses as approved, in advance, by the District**
5. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Contractor assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the service to be provided under this Agreement.
6. **Taxes.** Contractor acknowledges and agrees that it is the sole responsibility of Contractor to report as income its compensation received from District and to make the requisite tax filings and payments to the appropriate federal, state, or local tax authority. No part of Contractor's compensation shall be subject to withholding by District for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation.
7. **Materials.** Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows: **Not Applicable**

Contractor's services will be performed, findings obtained, reports and recommendations prepared in accordance with general and currently accepted principles and practices of his/her profession.

8. **Confidentiality and Use of Information.**

(a) Contractor shall advise District of any and all materials used, or recommended for use by Consultant to achieve the project goals, that are subject to any copyright restrictions or requirements. In the event Contractor shall fail to so advise District and as a result of the use of any programs or materials developed by Contractor under this Agreement, District should be found in violation of any copyright restrictions or requirements, or District should be alleged to be in violation of any copyright restrictions or requirements, Contractor agrees to indemnify, defend, and hold harmless, District against any action or claim brought by the copyright holder.

9. **Audit and Inspection of Records.** At any time during the normal business hours and as often as District may deem necessary, Contractor shall make available to District for examination at District's place of business specified above, all data, records, investigation

reports and all other materials respecting matters covered by this Agreement and Contractor will permit the District to audit, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Agreement.

10. **Works for Hire/Copyright/Trademark/Patent.** Contractor understands and agrees that all matters produced under this Agreement shall be works for hire and shall become the sole property and cannot be used without District's express written permission. District shall have all rights, title, and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

11. **Termination.** District may, at any time, with or without reason, terminate this Agreement and compensate contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or not later than five (5) days after the day of mailing, whichever is sooner.

District may also terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this Agreement by the Contractor; or (b) any act by Contractor exposing the District to liability to others for personal injury or property damage; or if Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency, written notice by District of termination for cause shall contain the reasons for such intention to terminate and unless within fifteen (15) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the fifteen (15) days cease and terminate. In the event of such termination, the District may secure the required services from another contractor. If the cost to the District of obtaining the services from another contractor exceeds the cost of providing the service pursuant to this Agreement, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Written notice by District shall be deemed given when received by the other party, or no later than five (5) days after the day of mailing, whichever is sooner.

12. **Hold Harmless.** Contractor agrees to and does hereby indemnify, hold harmless, and defend the District and its officers, agents and employees from every claim or demand made and every liability, loss, damage or expense, of any nature whatsoever, which may be incurred by reason of:

(a) Liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property; or (3) any other loss, damage or expense arising out of (1) or (2) above, sustained by the Contractor or any person, firm or corporation employed by the Contractor; either directly or by independent contract, upon or in connection with the services called for in this Agreement, however caused, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the District or its officer, employees or agents.

(b) Any injury to or death of any person, including the District or its officers, agents and employees, or damage to or loss of any property caused by any act, neglect, default, or omission of the Contractor, or any person, firm or corporation employed by the Contractor either directly or by independent contract, arising out of, or in any way connected with, the services covered by this Agreement, whether said injury or

damage occurs either on or off District's property, except for liability for damages which result from the sole negligence or willful misconduct of the District or its officers, employees or agents.

- (c) Any liability for damages which may arise from the furnishing or use of any copyrighted or uncopied matter or patented or unpatented invention under this Agreement.

13. **Insurance.** Pursuant to Section 10, Contractor agrees to carry a comprehensive general and automobile liability insurance with limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect Contractor and District against liability or claims of liability which may arise out of this Agreement. In addition, Contractor agrees to provide an endorsement to this policy stating, "Such insurance as is afforded by this policy shall be primary, and any insurance carried by District shall be excess and noncontributory." No later than five days from date of this Agreement, Contractor shall provide District with certificates of insurance evidencing all coverage and endorsements required hereunder including a thirty (30) day written notice of cancellation or reduction in coverage. Contractor agrees to name District and its officers, agents, and employees as additional insured under said policy.
14. **Worker's Compensation Insurance.** Contractor agrees to procure and maintain in full force and effect Worker's Compensation Insurance covering its employees and agents while these persons are participating in the activities hereunder. In the event a claim under the provisions of the California Workers' Compensation Act is filed against District by a bona fide employee of Contractor participating under this Agreement, Contractor agrees to defend and hold harmless the District from such claim.
15. **Fingerprinting Requirements.** Contractor agrees to provide the District with written certification that Consultant has complied with the fingerprinting and criminal background investigation requirements of the California Education Code with respect to all Consultant's employees who may have contact with District students in the course of providing said services, and that the California Department of Justice has determined that none of those employees has been convicted of a felony, as defined in Education Code Section 45122.1 through 45125.5.

The Contractor and his employees do not anticipate any contact with District students in the performance of this contract and therefore the District waives this provision in so much as the Contractor has no contact with students and reports only to the District administrative offices.

16. **Assignment.** The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.
17. **Compliance with Applicable Laws.** The service completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof. Contractor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Contractor, Contractor's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.
18. **Permits/Licenses.** Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

19. **Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
20. **Entire Agreement/Amendment.** This Agreement and any exhibits attached hereto constitute the entire agreement among the parties to it and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, any may be amended only by a written amendment executed by both parties to the Agreement.
21. **Nondiscrimination in Employment.** Contractor agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.
22. **Non-waiver.** The failure of District or Contractor to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement, shall not be deemed a waiver by that party or such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.
23. **Administrator of Agreement.** This Agreement shall be administered on behalf of, and any notice desired or required to be sent to a party hereunder shall be addressed to:

For District: **Bill Clark, Assistant Superintendent**
 Santee School District
 9625 Cuyamaca Street
 Santee, CA 92071

For Contractor: **Anthony Fulton, Principal**
 AF Consultants
 8501 Chevy Chase Drive
 La Mesa, CA 91941

24. **Notice.** All notices or demands to be given under this Agreement by either party to the other, shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally serviced or if mailed on the fifth day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this Agreement, the addresses of the parties are set forth above.
25. **Severability.** If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.
26. **Governing Law.** The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in San Diego County, California.

27. **Warranty of Authority.** Each of the parties signing this Agreement warrants to the other that he or she has the full authority of the entity on behalf of which his or her signature is made.

This Agreement is entered into this 7th day of July, 2008.

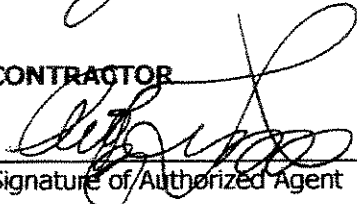
SANTEE SCHOOL DISTRICT



Signature of Authorized Agent

Typed or Printed Name

CONTRACTOR



Signature of Authorized Agent

Anthony Fulton, dba AF Consultants
Typed Name

Social Security or Taxpayer I.D. No.
191-34-0148

Consent Item D.3.4. Approval of Hazardous Materials Consultant
Prepared by Bill Clark Services with Western Environmental and
October 7, 2008 Safety Technologies, Inc. (WEST)

BACKGROUND:

The District has used Western Environmental and Safety Technologies, Inc. (WEST) to provide hazardous materials consultation services for several years. This company has continuously provided excellent services and is very familiar with the District's facilities and has completed all past Hazmat reports and clearances. The Services necessary for the District as part of the Capital Improvement Program (CIP) for Modernization at the schools is:

Hazmat abatement monitoring and air clearances are 70% complete on the five school modernizations with multi-phased monitoring during construction. The multiple air clearances increased the monitoring cost over multiple building phases. During the course of construction, additional sampling was done on suspicious materials and to confirm material was not asbestos containing. Projects were estimated to cost approximately \$20,000 in construction monitoring per campus. Due to the additional work indentified and increased phases of construction since the original proposal was made, it has been determined that schools sites are averaging approximately \$30,000 per site for this monitoring service. This is an additional increase of \$50,000 to the original proposal of \$114,595. This sampling is being completed to make buildings ready after demolition and during construction; therefore humans are kept away from construction sites during demolition and construction. Therefore, there is no safety hazard in and around the sampling and monitoring process.

RECOMMENDATION:

It is recommended that the Board of Education approve WEST for services described above an additional \$50,000 in costs is anticipated for construction monitoring remaining for the five (5) schools under construction and authorize staff to execute the necessary documents.

This recommendation supports the following District goal:

- Provide facilities that optimize the learning environment for all students.

FISCAL IMPACT:

The fiscal impact for consultant services of approximately an additional \$50,000 to the original estimate of \$114,595 brings the total estimated fiscal impact to \$164,595 and will be funded from CIP funds, Prop R bond proceeds, and State modernization matching funds.

STUDENT ACHIEVEMENT IMPACT:

The modernization/Capital Improvement Program plans will positively impact student learning environments.

Motion:		Second:		Vote:		Agenda Item D.3.4.
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BACKGROUND:

As part of the State funding process from the Office of Public School Construction (OPSC), projects requesting State Facilities Funds of modernization grants and/or joint use grants need to be plan checked by the California Department of Education (CDE). Final plan approval letters have been received for eight (8) school modernizations and the multitude of joint use projects. CDE has billed the District for:

- Review of current plans of 5 school modernizations at Cajon Park, Carlton Oaks, Carlton Hills, and Rio Seco - \$11,340
- Ten (10) joint use projects - \$9,135
- Additional nine (9) joint use projects - \$6,404.

The plan check fee is based on a percentage of the actual construction estimate. The total fee for 24 projects is \$26,870 to be paid from the Capital Improvement Program (CIP) . An increase to the budget for CDE fees to \$35,000 will cover current and future CDE approvals (see attached CIP budget sheet). This increase will be taken from the project contingency.

In addition as part of the State supplemental grant request process, the Division of State Architect (DSA) will be doing an additional review of the access compliance, fire safety compliance, and high energy efficiency CHPPS points review. This process will require supplemental review permit fee costs to be paid to DSA. With this supplemental review from DSA, the approval of the supplemental grants can be submitted to OPSC. The review fee is estimated to be approx. \$7,500 per school. Supplemental grants of \$2.4 million are anticipated. DSA and CDE fees have been budgeted in the CIP.

RECOMMENDATION:

It is recommended that the Board of Education authorize payment for CDE plan check fees and supplemental DSA fees for State grant funding requirements to be met and increase the budget for CDE fees to \$35,000 which will cover current and future CDE approvals.

This recommendation supports the following District goal:

- Provide facilities that optimize the learning environment for all students.

FISCAL IMPACT:

It is anticipated that the District will receive joint use grants of \$7.8 million and State modernization grants of \$28.4 million. CDE fees of approximately \$35,000 over the course of the Capital Improvement Program and increased DSA fees of approximately \$70,000 will be founded from the CIP program and State matching funds.

STUDENT ACHIEVEMENT IMPACT:

The modernization/Capital Improvement Program plans will positively impact student learning environments.

Motion:		Second:		Vote:		Agenda Item D.3.5.
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Consent Item E.3.1. Ratification of Supplemental Contract Work
Prepared by Bill Clark by Hendrix California School Construction
October 21, 2008 Services

BACKGROUND:

Due to the Board decision to move forward with a new architect's contract relative to the Lease-Leaseback delivery method, the District needed the assistance of staff and consultants without delay to the construction program to achieve a smooth transition from the current architect of record, AOR to a succeeding architect of record. Currently we have a team working in conjunction with District staff and the Barnhart-Heery construction management firm. Expansion on the abilities of this team would ensure a successful transition.

School modernizations at five schools are approximately 80% complete. The Cajon Park School addition is 65% complete. New 10 classroom additions at Rio Seco, Carlton Oaks, and Carlton Hills have begun construction and are approximately 10% complete.

The transitional plan has been for the Director of Facilities Christina Becker, a licensed architect, to act as the architect of record until a succeeding architect of record is assigned. The Board will indemnify and hold harmless Ms. Becker acting as an employee of the District. Administration increased and expanded the services and contract with LL Hendrix, California School Construction Services to provide the supplemental project management and administrative staff support services during construction under the oversight of Ms. Becker. Mr. Hendrix was contracted by the District previously to provide inspection services at three schools and staff support at all five schools as needed. This staff support was initially estimated to be one hour per week, per project. In the past month this construction administration was increased to approximately 30 hours per week as necessary in order to manage the 10 classroom additions at three school sites.

RECOMMENDATION:

It is recommended that the Board of Education ratify and proceed with supplemental consultants services and staff extension service to achieve a smooth transition from the District's current architect of record, AOR to a succeeding architect of record by approval of the attached contract for services with L.L. Hendrix, Hendrix California School Construction Services. This contract's duration is from September 5, 2008 to April 30, 2009.

This recommendation supports the following District goals:

- Provide facilities that optimize the learning environment for all students.
- Pursue actively the funding and resources to fulfill our mission and maintain fiscal solvency.

FISCAL IMPACT:

The fiscal impact for consultant services from L.L. Hendrix, Hendrix California Construction Services is anticipated to be \$98.00 per hour and will be approximately 20 hours per week to cover the five campuses currently under construction. The estimated cost of these services for Phase I schools is \$36,000.

STUDENT ACHIEVEMENT IMPACT:

Strong, positive relationships exist between overall building conditions, a positive learning environment, and student achievement.

Motion:		Second:		Vote:		Agenda Item E.3.1.
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AGREEMENT FOR ASSISTANCE WITH
ARCHITECTURAL ADMINISTRATION SERVICES

THIS AGREEMENT FOR ASSISTANCE WITH ARCHITECTURAL ADMINISTRATION SERVICES (the "Agreement") is made and entered into on _____, by and between the SANTEE SCHOOL DISTRICT OF SAN DIEGO COUNTY, CALIFORNIA, hereinafter referred to as "District", and **L. L. Hendrix, Hendrix California School Construction Services**, hereinafter referred to as "Consultant".

RECITALS:

A. It is the desire of the Governing Board of the District to contract with consultant to provide necessary assistance with architectural administration services for the District in connection with current ongoing construction projects at various District public school sites. For purposes of this Agreement, the services shall include all miscellaneous work related thereto or reasonably inferable from any of the "Contract Documents" that would reasonably apply to assistance with architectural administration services in service to the Districts architect or other designated person acting as the architect on behalf of the District.

B. The District desires to retain Consultant upon the terms and conditions hereinafter set forth and the Consultant desires to accept said retention and will agree to perform the services necessary and as directed by the District to achieve a smooth transition from the current Architect of record to a succeeding architect of record.

NOW THEREFORE for mutual and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereby agree as follows:

1. The term of this Agreement shall be for the duration of the projects or until a succeeding architect is hired for the Carlton Hills, Carlton Oaks, Sycamore Canon, Rio Seco, and Cajon Park projects or before May 30, 2009, which ever comes sooner. The District anticipates the completion of the Project to occur on or about April 30, 2009, but does not warranty or guarantee that the projects will be complete by April 30, 2009, and will expect consultant to complete the project services as will be mutually agreed at the time a determination of delay is made.
2. District will pay consultant by check made payable to L. L. Hendrix within in thirty days of the receipt of an invoice for work completed the previous month or months on the projects defined above at a rate of \$98.00 per hour billed.
3. District shall defend, indemnify, protect and hold the Consultant and its agents, officers and employees harmless from and against any and all claims, demands, liability, judgments, awards, losses, injury, damages, expenses, charges or costs of any kind or character whether to the District, Consultant, or to any person or property which arise from or are connected with or are caused or claimed to be caused by Consultant in connection with any answers, advice, directions, communications, submittal reviews,

recommendations, reports or any other activity associated with assisting the District in architectural administration of the above referenced projects.

4. It is to be understood that I am assisting the District at the Districts request based on the Districts unique special need at this time and for the express purpose of assisting the District in the transition from one architect of record to a new architect of record for the project construction sites identified above and that consultant is not an architect but will be assisting the districts chosen interim architect.

C. Consultant certifies that all of its employees or sub-consultant employees who may come in contact with pupils have not been convicted of and/or have no criminal charges pending for a felony, as defined in Education Code section 45122.1.

D. In the event Consultant fails to comply with all of the requirements of Education Code section 45125.1 and injury results from such failure, Consultant shall defend, indemnify, protect and hold the District and its agents, officers and employees harmless from and against any and all claims, demands, liability, judgments, awards, losses, injury, damages, expenses, charges or costs of any kind or character whether to the District or to any person or property which arise from or are connected with or are caused or claimed to be caused by Consultant's failure to comply with the requirements contained in Education Code section 45125.1, including, but not limited to, the requirement prohibiting Consultant from using employees or sub-consultant employees who may have contact with pupils who have been convicted or have charges pending for a felony as defined in Education Code section 45122.1.

E. Any sub-consultant hired by Consultant shall be subject to and shall comply with this provision. Consultant and sub-consultant shall be jointly and severally liable for any injury that results from sub-consultants' failure to comply with this provision.

IN WITNESS THEREOF, the parties hereto have set their hands on the day and In the month and year written below:

Consultant

SANTEE SCHOOL DISTRICT

L. L. Hendrix, JD.
Principal

Christina Becker
Director of Facilities & Modernization

Date: _____

Date: _____

Board Approved: _____

Consent Item E.3.2. Approval/Ratification of Additional Materials Testing Services
 Prepared by Bill Clark with Ninyo and Moore for the 20 Classroom Addition at Cajon
 October 21, 2008 Park School

BACKGROUND:

Part of the construction process requires construction materials testing labs be assigned to the construction of school projects. Ninyo and Moore have provided excellent services to date for the 5 schools under construction concurrently.

The Board of Education approved Ninyo and Moore, a materials testing lab, at its March 4, 2008 meeting. Administration realizes with the expedited schedule of work over the summer and the increased use of over-time hours to meet the District/Barnhart expedited schedule and in addition to the multiple phases of work over the school year, and the Cajon Park bridge that additional services and costs will be incurred above the original base estimate.

RECOMMENDATION:

It is recommended that the Board of Education approve additional construction materials and testing services costs with Ninyo and Moore and supplemental testing.

This recommendation supports the following District goal:

- Provide facilities that optimize the learning environment for all students.

FISCAL IMPACT:

Based on the present capital improvement program financial summary, \$1,897,040 is budgeted for materials testing. Phase One schools were initially contracted for \$307,288 and \$21,000 additional is anticipated to be needed. The budget of the Capital Improvement Program is \$128.8 million for nine (9) school modernizations, and this cost will be funded from CIP funds, Prop R bond proceeds, and State modernization matching funds.

	Materials Testing Original Estimate	Increased Costs	Total
Cajon Park 20 Classroom Addition	\$50,728	\$12,000*	\$62,728
Five School Modernizations	\$86,124	\$9,000	\$95,124
Carlton Hills 10 Classroom Addition	\$56,812	N/A	\$56,812
Carlton Oaks 10 Classroom Addition	\$56,812	N/A	\$56,812
Rio Seco 10 Classroom Addition	\$56,812	N/A	\$56,812
	\$307,288	\$21,000	\$328,288

*The Cajon Park bridge project was added resulting in increased materials testing.

STUDENT ACHIEVEMENT IMPACT:

Strong, positive relationships exist between overall building conditions, a positive learning environment, and student achievement.

Motion:		Second:		Vote:		Agenda Item E.3.2.
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Consent Item E.3.3. Preconstruction Services Contract Amendment with Barnhart
Prepared by Bill Clark
October 21, 2008

BACKGROUND:

On June 17, 2007 a preconstruction services contract was approved by the Board of Education. Services from Barnhart have been exemplary. Due to the expedited District Capital Improvement Program (CIP) schedule, an amendment to the payment schedule is necessary. Originally the preconstruction services were for a three year term with 36 payments. Due to the amount of work fast tracked into Phase One and the readiness of almost 90% of the projects for preconstruction services, expedition of the payment schedule of the original contract is necessary as attached.

In addition, administration recommends expanding the services of Barnhart to provide supplemental cost estimating services in regards to State modernization supplemental grants. These services will need to be completed as soon as possible in order to submit a supplemental grant application to the Division of State Architect and the Office of Public School Construction.

A cost proposal to perform this service as a reimbursable expense has been provided by Barnhart of \$6,000 per school for the five Phase One schools. The completed cost estimates spread sheets and documentation will be provided to the new architectural team of Trittipio to proceed with such through the DSA and OPSC for the District's supplemental funding grants so that we can submit to the State for our State modernization grant funds for the five Phase One schools.

RECOMMENDATION:

It is recommended that the Board of Education approve the revised payment schedule for preconstruction services. It is also recommended that the Board of Education approve the proposal of Barnhart to provide supplemental grant application services cost estimates for the five Phase One schools.

This recommendation supports the following District goal:

- Provide facilities that optimize the learning environment for all students.

FISCAL IMPACT:

The Fiscal impact is an additional \$30,000 to the Capital Improvement Program (CIP) budget, however, supplemental grants funding of \$2.4 million is anticipated. The budget of the CIP is \$128.8 million for nine (9) school modernizations, and this cost will be funded from CIP funds, Prop R bond proceeds, and State modernization matching funds.

STUDENT ACHIEVEMENT IMPACT:

Strong, positive relationships exist between overall building conditions, a positive learning environment, and student achievement.

Motion:		Second:		Vote:		Agenda Item E.3.3.
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barnhart, inc.

A HEERY INTERNATIONAL COMPANY

Tuesday, October 14, 2008

Mr. Bill Clark
Santee Elementary School District
9625 Cuyamaca Street
Santee, CA 92071

RE: 7040: Santee Program – Campus Modernization/New Construction
Subject: Amendment to Exhibit "B of the Preconstruction Services Agreement

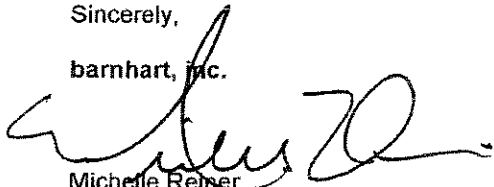
Mr. Clark,

Per your request, attached for review and approval please find an Amendment to Exhibit B of the Pre-Construction Services Agreement and our Revised Preconstruction Billing Schedule.

Please advise if I need to resubmit our Invoices #15 and #16 or if you require additional information. I may be reached at (858) 231-3029.

Sincerely,

barnhart, inc.



Michelle Reimer
Project Manager

cc: Job Files
7040 Jobsite

Attachment

Post Office Box 270399, San Diego, California 92198-2399, (858) 385-8200, FAX (858) 385-8201
Offices in Orange County, Palm Springs, Riverside, Central Valley, Ventura and San Diego, California
License No. 439407 www.debinc.com

EXHIBIT "B"
SCHEDULE OF SERVICES

AMENDMENT TO PRECONSTRUCTION SERVICES AGREEMENT

The consultant shall perform the services delineated in Exhibit "A" in a timely manner, consistent with the Preliminary Milestone Pre-Construction Schedule attached hereto, which may be revised in writing upon the mutual approval of the parties. The below schedule of values will be used for payment of preconstruction service unless modified by an amendment to this agreement.

Preconstruction Services Agreement SOV:

Phasing of Payments:

Preconstruction Payment Phase 1 (60% over 12 months @ 35K mo)	\$420,000.00
Preconstruction Payment Phase 2 (25% over 6 months @ 35K mo)	\$210,000.00
Preconstruction Payment Phase 2 (15% over 7 months @ 10K mo)	\$70,000.00

Total Contract Amount (Preconstruction):

\$700,000

**SANTEE SCHOOL DISTRICT
REVISED PRECONSTRUCTION SERVICES SCHEDULE**

Preconstruction Billing Schedule (Revised):

<u>Preconstruction Services Agmt of 6/19/07:</u>	\$700,000	
<u>Phasing of Payments:</u>		
Preconstruction Payment Phase 1 (60% over 12 months @ 35K mo)	\$420,000.00	June 2007 to May 2008
Preconstruction Payment Phase 2 (25% over 6 months @ 35K mo)	\$210,000.00	June 2008 to Nov 2008
Preconstruction Payment Phase 2 (15% over 7 months @ 10K mo)	\$70,000.00	Dec 2008 to June 2009

Total Contract Amount (Preconstruction): \$700,000

Consent Item E.3.4. Lease-Leaseback Amendment No. 1 to the Second through Sixth
Prepared by Bill Clark Amendments Phase II Construction
October 21, 2008

BACKGROUND:

On February 2, 2008, the Board of Education of the District (the "Board") adopted Resolution No. 0708-16, approving and authorizing the execution of a Site Lease, Sublease Agreement, and Lease-Leaseback Construction agreement between the District and Douglas E. Barnhart, Inc., in order to provide for the modernization of existing school facilities, at nine school sites within the District (the "Project").

On April 1, 2008, the Board approved Amendment #1 for the Guaranteed Maximum Price (GMP) of the Cajon Park classroom addition. On June 3, 2008, the Board approved amendments #2 through #6 for the GMP for five school modernizations. Amendments #7 through #9 for the next phase of the project for ten classroom additions at Carlton Hills, Rio Seco, and Carlton Oaks schools established the final GMP and added a three percent (3%) Owner's contingency within the GMP to be used with District approval, with the remainder reverting to the District at the end of the project phase.

These items are amendments to the original Lease-Leaseback Construction agreement with Barnhart, which was approved by the Board on February 2, 2008. The structure of the Lease-Leaseback Construction agreement is that each time a new project begins (i.e., ten classroom addition, library/tech room, etc), an amendment to the original agreement is brought forth to the Board. Administration anticipates up to 27 amendments to the Lease-Leaseback Construction agreement before the entire project and agreement is fulfilled.

The attached Amendment No. 1 to the Second through Sixth Amendments Phase II (Cajon Park, Sycamore Canyon, Carlton Hills, Rio Seco, Carlton Oaks) to the Construction Services Agreement for lease-leaseback site lease, and sublease agreement makes technical corrections to the phase name.

RECOMMENDATION:

It is recommended that the Board of Education ratify and approve Amendment No. 1 to the Second through Sixth Amendments Phase II (Cajon Park, Sycamore Canyon, Carlton Hills, Rio Seco, Carlton Oaks) to the Construction Services Agreement in order to accomplish the objectives set forth above.

This recommendation supports the following District goals:

- Provide facilities that optimize the learning environment for all students.
- Pursue actively the funding and resources to fulfill our mission and maintain fiscal solvency.

FISCAL IMPACT:

There is no additional fiscal impact to what has been approved in the past. This is a technical language correction to the site sub-lease of the lease-leaseback agreement with no fiscal impact. The budget of the Capital Improvement Program is \$128.8 million for nine (9) school modernizations, and will be funded from CIP funds, Prop R bond proceeds, and State modernization matching funds.

STUDENT ACHIEVEMENT IMPACT:

Strong, positive relationships exist between overall building conditions, a positive learning environment, and student achievement.

Motion:		Second:		Vote:		Agenda Item E.3.4.
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**AMENDMENT No. 1 to
SECOND AMENDMENT PHASE II (CAJON PARK) TO
CONSTRUCTION SERVICES AGREEMENT FOR LEASE-LEASEBACK,
SITE LEASE, AND SUBLEASE AGREEMENT**

This Amendment No. 1 to Second Amendment (Phase II - Cajon Park) to Construction Services for Lease-Leaseback, Site Lease, and Sublease Agreement ("Second Amendment") is made and entered into this 21st day of October, 2008, by and between the SANTEE SCHOOL DISTRICT (the "District") and Douglas E. Barnhart, Inc. (now called "Barnhart, Inc.") (the "Builder") as follows:

WHEREAS, on February 2, 2008, the Governing Board of the District adopted Resolution No. 0708-16 (the "Resolution"), approving and authorizing the execution of a Site Lease, Sublease Agreement (the "Sublease Agreement"), and Construction Services Agreement for Lease-Leaseback (the "Lease-Leaseback Agreement") (the Site Lease, Sublease Agreement and Lease-Leaseback Agreement are collectively referred to herein as the "Lease-Leaseback Documents") between the District and Builder, and authorizing the filing of a validation complaint, in order to provide for the financing and modernization of existing school facilities, at nine school sites within the District (the "Project"); and

WHEREAS, the Lease-Leaseback Agreement provides that the District will undertake work incrementally as Division of the State Architect ("DSA") approvals of plans and timelines for construction allow with the Lease-Leaseback Documents as the basis for amendments for subsequent phases of the Project; and

WHEREAS, on April 1, 2008, the District entered into the First Amendment to the Lease-Leaseback Documents and modified the Lease-Leaseback Documents and Guaranteed Maximum Price ("GMP") accordingly; and

WHEREAS, on April 22, 2008, the Superior Court of the County of San Diego, issued a judgment validating the Lease-Leaseback Documents (Case No. 37-2008-00061653-CU-MC-EC, filed April 23, 2008); and

WHEREAS, on June 3, 2008, the Governing Board of the District adopted the Second Amendment; and

~~WHEREAS, certain provisions amending the Site Lease and Sublease Agreement and clarifying the work to be performed pursuant to the Second Amendment were either unknown or inadvertently omitted in the Second Amendment, and~~

~~WHEREAS, the governing board desires to make the changes necessary to the Second Amendment.~~

NOW, THEREFORE, DISTRICT AND BUILDER HEREBY AGREE AS

FOLLOWS:

1. The Second Amendment shall be entitled "Phase II (Cajon Park)" and all work contemplated by the Lease-Leaseback Documents as amended, shall be referred to as "Phase II (Cajon Park)."

2. The Site Lease shall be applicable to Phase II (Cajon Park) and all provisions of the Site Lease for Phase II (Cajon Park) shall be applicable to the Cajon Park school site.

3. Exhibit A of the Sublease Agreement for Phase II (Cajon Park) shall be in the form attached hereto as "Attachment 1." All other provisions of the Sublease Agreement shall remain in full force and effect for Phase II of the Project, including the timelines for completion and payment, except that those provisions shall only be applicable to the Scope of Work listed in Exhibit A to the Lease-Leaseback Agreement Phase II (Cajon Park), as amended, and to the Cajon Park site in the Site Lease as of the date of this Amendment No. 1 to Second Amendment.

4. References in the Lease-Leaseback Documents and the Second Amendment to Builder as "Douglas E. Barnhart, Inc." shall be deemed to apply to Builder's new corporate name, "Barnhart, Inc."

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Second Amendment Phase II (Cajon Park), in duplicate, as of the day and year first above written and agree that this Amendment shall constitute binding modifications to the Lease-Leaseback Agreement, the Site Lease and the Sublease Agreement.


BUILDER/CORPORATION:

BARNHART, INC.

BY: _____ Dated:
Eric Stenman, President

DISTRICT:

SANTEE SCHOOL DISTRICT

BY:  _____ Dated:
Bill Clark, Assistant Superintendent, Business Services

Attachment 1 to Amendment No. 1 to Second Amendment

EXHIBIT A

SCHEDULE OF SUBLEASE PAYMENTS

The term of this sublease for **Phase II (Cajon Park)** of the Project shall commence on the date the term of the Site Lease commences for **Phase II (Cajon Park)** pursuant to section 2 thereof. Sublease payments shall be paid monthly and the total Sublease Payments made shall not exceed the amount of the GMP as defined in Section 6 of the Construction Services Agreement for **Phase II (Cajon Park)** of the Project. Each month Builder shall provide District with an invoice reflecting the percentage of work performed and itemized on a Site by Site basis, or in the case of **Phase II (Cajon Park)** for the Cajon Park Site, and signed off on by the District's DSA Inspector, Project Architect, and other designated employee. The Sublease Payments and Construction Progress Payments pursuant to section 18 of the Construction Services Agreement shall be commensurate with the amount of work performed, invoiced and signed off by the DSA Inspector to date, but in no event less than one thousand dollars per month (\$1,000/month) for a period of _____ () months, commencing on the date of issuance of the Notice to Proceed for **Phase II (Cajon Park)** of the Project, unless the District exercises its purchase option pursuant to section 25 of the Sublease Agreement. The minimum sublease payments shall be offset against invoiced payments so that the total Sublease Payments do not exceed the GMP.

Notwithstanding the foregoing, the term of this Sublease may be extended and payment options may be modified by written agreement of the parties hereto.

**AMENDMENT No. 1 to
THIRD AMENDMENT PHASE II (SYCAMORE CANYON) TO
CONSTRUCTION SERVICES AGREEMENT FOR LEASE-LEASEBACK,
SITE LEASE, AND SUBLEASE AGREEMENT**

This Amendment No. 1 to Third Amendment ~~(Phase II - Sycamore Canyon)~~ to Construction Services for Lease-Leaseback, Site Lease, and Sublease Agreement ("Third Amendment") is made and entered into this 2nd day of October, 2008, by and between the SANTEE SCHOOL DISTRICT (the "District") and Douglas E. Barnhart, Inc. (the "Builder") as follows:

WHEREAS, on February 2, 2008, the Governing Board of the District adopted Resolution No. 0708-16 (the "Resolution"), approving and authorizing the execution of a Site Lease, Sublease Agreement (the "Sublease Agreement"), and Construction Services Agreement for Lease-Leaseback (the "Lease-Leaseback Agreement") (the Site Lease, Sublease Agreement and Lease-Leaseback Agreement are collectively referred to herein as the "Lease-Leaseback Documents") between the District and Builder, and authorizing the filing of a validation complaint, in order to provide for the financing and modernization of existing school facilities, at nine school sites within the District (the "Project"); and

WHEREAS, the Lease-Leaseback Agreement provides that the District will undertake work incrementally as Division of the State Architect ("DSA") approvals of plans and timelines for construction allow with the Lease-Leaseback Documents as the basis for amendments for subsequent phases of the Project; and

WHEREAS, on April 1, 2008, the District entered into the First Amendment to the Lease-Leaseback Documents and modified the Lease-Leaseback Documents and Guaranteed Maximum Price ("GMP") accordingly; and

WHEREAS, on April 22, 2008, the Superior Court of the County of San Diego, issued a judgment validating the Lease-Leaseback Documents (Case No. 37-2008-00061653-CU-MC-EC, filed April 23, 2008); and

WHEREAS, on June 3, 2008, the Governing Board of the District adopted the Third Amendment; and

~~WHEREAS, certain provisions amending the Site Lease and Sublease Agreement and clarifying the work to be performed pursuant to the Third Amendment were either unknown or inadvertently omitted in the Third Amendment; and~~

~~WHEREAS, the governing board desires to make the changes necessary to the Third Amendment.~~

NOW, THEREFORE, DISTRICT AND BUILDER HEREBY AGREE AS

FOLLOWS:

1. The Third Amendment shall be entitled Phase II (Sycamore Canyon) and all work contemplated by the Lease-Leaseback Documents as amended, shall be referred to as Phase II (Sycamore Canyon).

2. The Site Lease shall be applicable to Phase II (Sycamore Canyon) and all provisions of the Site Lease for Phase II (Sycamore Canyon) shall be applicable to the Sycamore Canyon school site.

3. Exhibit A of the Sublease Agreement for Phase II (Sycamore Canyon) shall be in the form attached hereto as "Attachment 1." All other provisions of the Sublease Agreement shall remain in full force and effect for Phase II of the Project, including the timelines for completion and payment, except that those provisions shall only be applicable to the Scope of Work listed in Exhibit A to the Lease-Leaseback Agreement Phase II (Sycamore Canyon), as amended, and to the Sycamore Canyon site in the Site Lease as of the date of this Amendment No. 1 to Third Amendment.

4. References in the Lease-Leaseback Documents and the Third Amendment to Builder as "Douglas E. Barnhart, Inc." shall be deemed to apply to Builder's new corporate name, "Barnhart, Inc."

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Third Amendment Phase II (Sycamore Canyon), in duplicate, as of the day and year first above written and agree that this Amendment shall constitute binding modifications to the Lease-Leaseback Agreement, the Site Lease and the Sublease Agreement.

BUILDER/CORPORATION:

BARNHART, INC.

BY: _____ Dated:
Eric Stenman, President

DISTRICT:

SANTEE SCHOQL DISTRICT

BY: Bill Clark Dated:
Bill Clark, Assistant Superintendent, Business Services

Attachment 1 to Amendment No. 1 to Third Amendment

EXHIBIT A

SCHEDULE OF SUBLEASE PAYMENTS

The term of this sublease for ~~Phase II (Sycamore Canyon)~~ of the Project shall commence on the date the term of the Site Lease commences for ~~Phase II (Sycamore Canyon)~~ pursuant to section 2 thereof. Sublease payments shall be paid monthly and the total Sublease Payments made shall not exceed the amount of the GMP as defined in Section 6 of the Construction Services Agreement for ~~Phase II (Sycamore Canyon)~~ of the Project. Each month Builder shall provide District with an invoice reflecting the percentage of work performed and itemized on a Site by Site basis, or in the case of ~~Phase II (Sycamore Canyon)~~ for the Sycamore Canyon Site, and signed off on by the District's DSA Inspector, Project Architect, and other designated employee. The Sublease Payments and Construction Progress Payments pursuant to section 18 of the Construction Services Agreement shall be commensurate with the amount of work performed, invoiced and signed off by the DSA Inspector to date, but in no event less than one thousand dollars per month (\$1,000/month) for a period of _____ () months, commencing on the date of issuance of the Notice to Proceed for ~~Phase II (Sycamore Canyon)~~ of the Project, unless the District exercises its purchase option pursuant to section 25 of the Sublease Agreement. The minimum sublease payments shall be offset against invoiced payments so that the total Sublease Payments do not exceed the GMP.

Notwithstanding the foregoing, the term of this Sublease may be extended and payment options may be modified by written agreement of the parties hereto.

**AMENDMENT No. 1 to
FOURTH AMENDMENT PHASE II (CARLTON HILLS) TO
CONSTRUCTION SERVICES AGREEMENT FOR LEASE-LEASEBACK,
SITE LEASE, AND SUBLEASE AGREEMENT**

This Amendment No. 1 to Fourth Amendment ~~(Phase II - Carlton Hills)~~ to Construction Services for Lease-Leaseback, Site Lease, and Sublease Agreement ("Fourth Amendment") is made and entered into this 2^{1st} day of October, 2008, by and between the SANTEE SCHOOL DISTRICT (the "District") and Douglas E. Barnhart, Inc. (the "Builder") as follows:

WHEREAS, on February 2, 2008, the Governing Board of the District adopted Resolution No. 0708-16 (the "Resolution"), approving and authorizing the execution of a Site Lease, Sublease Agreement (the "Sublease Agreement"), and Construction Services Agreement for Lease-Leaseback (the "Lease-Leaseback Agreement") (the Site Lease, Sublease Agreement and Lease-Leaseback Agreement are collectively referred to herein as the "Lease-Leaseback Documents") between the District and Builder, and authorizing the filing of a validation complaint, in order to provide for the financing and modernization of existing school facilities, at nine school sites within the District (the "Project"); and

WHEREAS, the Lease-Leaseback Agreement provides that the District will undertake work incrementally as Division of the State Architect ("DSA") approvals of plans and timelines for construction allow with the Lease-Leaseback Documents as the basis for amendments for subsequent phases of the Project; and

WHEREAS, on April 1, 2008, the District entered into the First Amendment to the Lease-Leaseback Documents and modified the Lease-Leaseback Documents and Guaranteed Maximum Price ("GMP") accordingly; and

WHEREAS, on April 22, 2008, the Superior Court of the County of San Diego, issued a judgment validating the Lease-Leaseback Documents (Case No. 37-2008-00061653-CU-MC-EC, filed April 23, 2008); and

WHEREAS, on June 3, 2008, the Governing Board of the District adopted the Fourth Amendment; and

~~WHEREAS, certain provisions amending the Site Lease and Sublease Agreement and clarifying the work to be performed pursuant to the Fourth Amendment were either unknown or inadvertently omitted in the Fourth Amendment; and~~

~~WHEREAS, the governing board desires to make the changes necessary to the Fourth Amendment~~

NOW, THEREFORE, DISTRICT AND BUILDER HEREBY AGREE AS

FOLLOWS:

1. The Fourth Amendment shall be entitled "Phase II (Carlton Hills)" and all work contemplated by the Lease-Leaseback Documents as amended, shall be referred to as "Phase II (Carlton Hills)."

2. The Site Lease shall be applicable to Phase II (Carlton Hills) and all provisions of the Site Lease for Phase II (Carlton Hills) shall be applicable to the Carlton Hills school site.

3. Exhibit A of the Sublease Agreement for Phase II (Carlton Hills) shall be in the form attached hereto as "Attachment 1." All other provisions of the Sublease Agreement shall remain in full force and effect for Phase II of the Project, including the timelines for completion and payment, except that those provisions shall only be applicable to the Scope of Work listed in Exhibit A to the Lease-Leaseback Agreement Phase II (Carlton Hills), as amended, and to the Carlton Hills site in the Site Lease as of the date of this Amendment No. 1 to Fourth Amendment.

4. References in the Lease-Leaseback Documents and the Fourth Amendment to Builder as "Douglas E. Barnhart, Inc." shall be deemed to apply to Builder's new corporate name, "Barnhart, Inc."

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Fourth Amendment Phase II (Carlton Hills), in duplicate, as of the day and year first above written and agree that this Amendment shall constitute binding modifications to the Lease-Leaseback Agreement, the Site Lease and the Sublease Agreement.

BUILDER/CORPORATION:

BARNHART, INC.

BY:

Eric Stenman, President

Dated:

DISTRICT:

SANTEE SCHOOL DISTRICT

BY:

Bill Clark, Assistant Superintendent, Business Services

Dated:

Attachment 1 to Amendment No. 1 to Fourth Amendment

EXHIBIT A

SCHEDULE OF SUBLEASE PAYMENTS

The term of this sublease for Phase II (Carlton Hills) of the Project shall commence on the date the term of the Site Lease commences for Phase II (Carlton Hills) pursuant to section 2 thereof. Sublease payments shall be paid monthly and the total Sublease Payments made shall not exceed the amount of the GMP as defined in Section 6 of the Construction Services Agreement for Phase II (Carlton Hills) of the Project. Each month Builder shall provide District with an invoice reflecting the percentage of work performed and itemized on a Site by Site basis, or in the case of Phase II (Carlton Hills) for the Carlton Hills Site, and signed off on by the District's DSA Inspector, Project Architect, and other designated employee. The Sublease Payments and Construction Progress Payments pursuant to section 18 of the Construction Services Agreement shall be commensurate with the amount of work performed, invoiced and signed off by the DSA Inspector to date, but in no event less than one thousand dollars per month (\$1,000/month) for a period of _____ () months, commencing on the date of issuance of the Notice to Proceed for Phase II (Carlton Hills) of the Project, unless the District exercises its purchase option pursuant to section 25 of the Sublease Agreement. The minimum sublease payments shall be offset against invoiced payments so that the total Sublease Payments do not exceed the GMP.

Notwithstanding the foregoing, the term of this Sublease may be extended and payment options may be modified by written agreement of the parties hereto.

AMENDMENT No. 1 to
FIFTH AMENDMENT PHASE II (RIO SECO) TO
CONSTRUCTION SERVICES AGREEMENT FOR LEASE-LEASEBACK,
SITE LEASE, AND SUBLEASE AGREEMENT

This Amendment No. 1 to Fifth Amendment ~~(Phase II - Rio Seco)~~ to Construction Services for Lease-Leaseback, Site Lease, and Sublease Agreement ("Fifth Amendment") is made and entered into this 2^{1st} day of October, 2008, by and between the SANTEE SCHOOL DISTRICT (the "District") and Douglas E. Barnhart, Inc. (the "Builder") as follows:

WHEREAS, on February 2, 2008, the Governing Board of the District adopted Resolution No. 0708-16 (the "Resolution"), approving and authorizing the execution of a Site Lease, Sublease Agreement (the "Sublease Agreement"), and Construction Services Agreement for Lease-Leaseback (the "Lease-Leaseback Agreement") (the Site Lease, Sublease Agreement and Lease-Leaseback Agreement are collectively referred to herein as the "Lease-Leaseback Documents") between the District and Builder, and authorizing the filing of a validation complaint, in order to provide for the financing and modernization of existing school facilities, at nine school sites within the District (the "Project"); and

WHEREAS, the Lease-Leaseback Agreement provides that the District will undertake work incrementally as Division of the State Architect ("DSA") approvals of plans and timelines for construction allow with the Lease-Leaseback Documents as the basis for amendments for subsequent phases of the Project; and

WHEREAS, on April 1, 2008, the District entered into the First Amendment to the Lease-Leaseback Documents and modified the Lease-Leaseback Documents and Guaranteed Maximum Price ("GMP") accordingly; and

WHEREAS, on April 22, 2008, the Superior Court of the County of San Diego, issued a judgment validating the Lease-Leaseback Documents (Case No. 37-2008-00061653-CU-MC-EC, filed April 23, 2008); and

WHEREAS, on June 3, 2008, the Governing Board of the District adopted the Fifth Amendment; and

~~WHEREAS, certain provisions amending the Site Lease and Sublease Agreement and clarifying the work to be performed pursuant to the Fifth Amendment were either unknown or inadvertently omitted in the Fifth Amendment; and~~

~~WHEREAS, the governing board desires to make the changes necessary to the Fifth Amendment~~

NOW, THEREFORE, DISTRICT AND BUILDER HEREBY AGREE AS

FOLLOWS:

1. The Fifth Amendment shall be entitled Phase II (Rio Seco) and all work contemplated by the Lease-Leaseback Documents as amended, shall be referred to as "Phase II (Rio Seco)."

2. The Site Lease shall be applicable to Phase II (Rio Seco) and all provisions of the Site Lease for Phase II (Rio Seco) shall be applicable to the Rio Seco school site.

3. Exhibit A of the Sublease Agreement for Phase II (Rio Seco) shall be in the form attached hereto as "Attachment 1." All other provisions of the Sublease Agreement shall remain in full force and effect for Phase II of the Project, including the timelines for completion and payment, except that those provisions shall only be applicable to the Scope of Work listed in Exhibit A to the Lease-Leaseback Agreement Phase II (Rio Seco), as amended, and to the Rio Seco site in the Site Lease as of the date of this Amendment No. 1 to Fifth Amendment.

4. References in the Lease-Leaseback Documents and the Fifth Amendment to Builder as "Douglas E. Barnhart, Inc." shall be deemed to apply to Builder's new corporate name, "Barnhart, Inc."

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Fifth Amendment Phase II (Rio Seco), in duplicate, as of the day and year first above written and agree that this Amendment shall constitute binding modifications to the Lease-Leaseback Agreement, the Site Lease and the Sublease Agreement.

BUILDER/CORPORATION:

BARNHART, INC.

BY: _____ Dated:
Eric Stenman, President

DISTRICT:

SANTEE SCHOOL DISTRICT

BY:  _____ Dated:
Bill Clark, Assistant Superintendent, Business Services

Attachment 1 to Amendment No. 1 to Fifth Amendment

EXHIBIT A

SCHEDULE OF SUBLEASE PAYMENTS

The term of this sublease for Phase II (Rio Seco) of the Project shall commence on the date the term of the Site Lease commences for Phase II (Rio Seco) pursuant to section 2 thereof. Sublease payments shall be paid monthly and the total Sublease Payments made shall not exceed the amount of the GMP as defined in Section 6 of the Construction Services Agreement for Phase II (Rio Seco) of the Project. Each month Builder shall provide District with an invoice reflecting the percentage of work performed and itemized on a Site by Site basis, or in the case of Phase II (Rio Seco) for the Rio Seco Site, and signed off on by the District's DSA Inspector, Project Architect, and other designated employee. The Sublease Payments and Construction Progress Payments pursuant to section 18 of the Construction Services Agreement shall be commensurate with the amount of work performed, invoiced and signed off by the DSA Inspector to date, but in no event less than one thousand dollars per month (\$1,000/month) for a period of _____ () months, commencing on the date of issuance of the Notice to Proceed for Phase II (Rio Seco) of the Project, unless the District exercises its purchase option pursuant to section 25 of the Sublease Agreement. The minimum sublease payments shall be offset against invoiced payments so that the total Sublease Payments do not exceed the GMP.

Notwithstanding the foregoing, the term of this Sublease may be extended and payment options may be modified by written agreement of the parties hereto.

**AMENDMENT No. 1 to
SIXTH AMENDMENT PHASE II (CARLTON OAKS) TO
CONSTRUCTION SERVICES AGREEMENT FOR LEASE-LEASEBACK,
SITE LEASE, AND SUBLEASE AGREEMENT**

This Amendment No. 1 to Sixth Amendment ~~(Phase II - Carlton Oaks)~~ to Construction Services for Lease-Leaseback, Site Lease, and Sublease Agreement ("Sixth Amendment") is made and entered into this 2^{1st} day of October, 2008, by and between the SANTEE SCHOOL DISTRICT (the "District") and Douglas E. Barnhart, Inc. (the "Builder") as follows:

WHEREAS, on February 2, 2008, the Governing Board of the District adopted Resolution No. 0708-16 (the "Resolution"), approving and authorizing the execution of a Site Lease, Sublease Agreement (the "Sublease Agreement"), and Construction Services Agreement for Lease-Leaseback (the "Lease-Leaseback Agreement") (the Site Lease, Sublease Agreement and Lease-Leaseback Agreement are collectively referred to herein as the "Lease-Leaseback Documents") between the District and Builder, and authorizing the filing of a validation complaint, in order to provide for the financing and modernization of existing school facilities, at nine school sites within the District (the "Project"); and

WHEREAS, the Lease-Leaseback Agreement provides that the District will undertake work incrementally as Division of the State Architect ("DSA") approvals of plans and timelines for construction allow with the Lease-Leaseback Documents as the basis for amendments for subsequent phases of the Project; and

WHEREAS, on April 1, 2008, the District entered into the First Amendment to the Lease-Leaseback Documents and modified the Lease-Leaseback Documents and Guaranteed Maximum Price ("GMP") accordingly; and

WHEREAS, on April 22, 2008, the Superior Court of the County of San Diego, issued a judgment validating the Lease-Leaseback Documents (Case No. 37-2008-00061653-CU-MC-EC, filed April 23, 2008); and

WHEREAS, on June 3, 2008, the Governing Board of the District adopted the Sixth Amendment; and

~~WHEREAS, certain provisions amending the Site Lease and Sublease Agreement and clarifying the work to be performed pursuant to the Sixth Amendment were either unknown or inadvertently omitted in the Sixth Amendment; and~~

~~WHEREAS, the governing board desires to make the changes necessary to the Sixth Amendment.~~

NOW, THEREFORE, DISTRICT AND BUILDER HEREBY AGREE AS

FOLLOWS:

1. The Sixth Amendment shall be entitled Phase II (Carlton Oaks) and all work contemplated by the Lease-Leaseback Documents as amended, shall be referred to as "Phase II (Carlton Oaks)."

2. The Site Lease shall be applicable to Phase II (Carlton Oaks) and all provisions of the Site Lease for Phase II (Carlton Oaks) shall be applicable to the Carlton Oaks school site.

3. Exhibit A of the Sublease Agreement for Phase II (Carlton Oaks) shall be in the form attached hereto as "Attachment 1." All other provisions of the Sublease Agreement shall remain in full force and effect for Phase II of the Project, including the timelines for completion and payment, except that those provisions shall only be applicable to the Scope of Work listed in Exhibit A to the Lease-Leaseback Agreement Phase II (Carlton Oaks), as amended, and to the Carlton Oaks site in the Site Lease as of the date of this Amendment No. 1 to Sixth Amendment.

4. References in the Lease-Leaseback Documents and the Sixth Amendment to Builder as "Douglas E. Barnhart, Inc." shall be deemed to apply to Builder's new corporate name, "Barnhart, Inc."

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Sixth Amendment Phase II (Carlton Oaks), in duplicate, as of the day and year first above written and agree that this Amendment shall constitute binding modifications to the Lease-Leaseback Agreement, the Site Lease and the Sublease Agreement.

BUILDER/CORPORATION:

BARNHART, INC.

BY: _____ Dated:
Eric Stenman, President

DISTRICT:

SANTEE SCHOOL DISTRICT

BY:  Dated:
Bill Clark, Assistant Superintendent, Business Services

Attachment 1 to Amendment No. 1 to Sixth Amendment

EXHIBIT A

SCHEDULE OF SUBLEASE PAYMENTS

The term of this sublease for **Phase II (Carlton Oaks)** of the Project shall commence on the date the term of the Site Lease commences for **Phase II (Carlton Oaks)** pursuant to section 2 thereof. Sublease payments shall be paid monthly and the total Sublease Payments made shall not exceed the amount of the GMP as defined in Section 6 of the Construction Services Agreement for **Phase II (Carlton Oaks)** of the Project. Each month Builder shall provide District with an invoice reflecting the percentage of work performed and itemized on a Site by Site basis, or in the case of **Phase II (Carlton Oaks)** for the Carlton Oaks Site, and signed off on by the District's DSA Inspector, Project Architect, and other designated employee. The Sublease Payments and Construction Progress Payments pursuant to section 18 of the Construction Services Agreement shall be commensurate with the amount of work performed, invoiced and signed off by the DSA Inspector to date, but in no event less than one thousand dollars per month (\$1,000/month) for a period of _____ () months, commencing on the date of issuance of the Notice to Proceed for **Phase II (Carlton Oaks)** of the Project, unless the District exercises its purchase option pursuant to section 25 of the Sublease Agreement. The minimum sublease payments shall be offset against invoiced payments so that the total Sublease Payments do not exceed the GMP.

Notwithstanding the foregoing, the term of this Sublease may be extended and payment options may be modified by written agreement of the parties hereto.