



ENERGY JOINT POWERS
AUTHORITY

**SAN DIEGO COUNTY
ENERGY AUTHORITY**

JOINT EXERCISE OF POWERS AGREEMENT

BY AND AMONG

SAN DIEGO COUNTY SUPERINTENDENT OF
SCHOOLS,

AND

SAN DIEGO COUNTY
PUBLIC SCHOOL DISTRICTS

JOINT EXERCISE OF POWERS AGREEMENT

SAN DIEGO COUNTY ENERGY AUTHORITY

This Joint Powers Agreement ("Agreement") is entered into by and among the **San Diego County Superintendent of Schools** ("SDCSS") and one or more of those Public School Districts designated on Exhibit "A" ("Participating Public School Districts").

WITNESSETH:

WHEREAS, SDCSS and the participating Public School Districts, all acting by and through their governing boards, for the purpose of establishing a vehicle to allow SDCSS and the participating Public School Districts to establish joint powers authority for the purpose of developing County-wide energy strategies, services and projects which may reduce local energy use borrowing and utility costs, promote the greater use of existing and new energy products services and/or projects to provide significant public benefits (the "Authority"); and

WHEREAS, SDCSS and the participating Public School Districts are each empowered by California law to establish the Authority and participate in the programs and activities undertaken by the Authority;

WHEREAS, the signatories hereto have determined that there is a need and a desire by Public School Districts to provide for cooperative energy services, which may include, but are not limited to, planning, programming, conservation, construction, power production, operations and maintenance, and

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the SDCSS and Participating Public School Districts do hereby agree form and operate the Authority in conformance with the authority provided by Government Code Section 6500 et seq, and as set forth herein:

ARTICLE I

PURPOSE OF AGREEMENT

Section 1.01. Agreement Purpose. The purpose of this Agreement is to develop, operate and maintain an Energy JPA servicing San Diego County. SDCSS and the participating Public School Districts, all acting by and through their governing boards, create this joint powers authority for the purpose of establishing a vehicle to allow SDCSS and the participating Public School Districts develop County-wide energy strategies, services and projects which may reduce local energy use borrowing and utility costs, promote the greater use of existing and new energy products services and/or projects to provide significant public benefits.

Section 1.02. Energy JPA Description. The Project consists of developing, operating and maintaining an Energy JPA servicing San Diego County. The JPA may include, but not be limited to providing:

- (a) Strategic sustainable and grid neutral energy planning including facilities and fleet generation,
- (b) Utility, telecom, water and cellular bill auditing,
- (c) Facility energy audits,
- (d) Joint procurement of energy services,
- (e) Joint procurement of energy related goods and services,
- (f) Identifying, funding and finding funding resources for cost-effective energy projects,
- (g) Do-it-yourself assistance to JPA members,
- (h) Energy project related lease, construction and consulting contracting,
- (i) Energy project bid and quote evaluation for JPA members,
- (j) Cost/benefit studies,
- (k) Representation at CPUC, the State of California and Federal Schools,
- (l) Emergency power planning and development,
- (m) Long-term utility budget planning, assessment and stabilization,
- (n) Real property leasing and purchasing,
- (o) Environmental and permitting for energy projects,
- (p) Net metering and wheeling, and
- (q) Providing green energy from multiple sources for JPA members.

Section 1.03. Energy JPA Financing. The Authority shall use funds or any other alternative Contribution provided by each of the parties for the design, construction, renovation, furnishing, equipping, acquisition, installation and delivery of the Project (including any specific Project activities as described in Section 1.02) and shall enter into a “Project Agreement” as defined herein, with the appropriate parties necessary to facilitate Project activities and to provide for the assignment of those Project obligations to one of the parties, to be specified in such Project Agreement. Notwithstanding any other term in this Agreement, the parties shall each remain individually obligated for their respective share of the Mandatory Project Costs.

Section 1.04. Energy JPA Funding. The SDCSS and Participating Public School Districts shall each contribute its share of the Mandatory Project Costs, in proportion to its interest in the Project based in part on each party’s participation in mutually agreed upon Project activities. Each party’s designated share may be revised for specific Project activities pursuant to the terms of a “Project Agreement” as defined in Section 7.01 of this Agreement.

ARTICLE II

DEFINITIONS

Section 2.01. Definitions. Unless the context otherwise requires, the words and terms defined in this Article shall, for the purpose hereof, have the meanings herein specified.

“AAA” means the American Arbitration Association.

“Act” means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code, now or hereafter amended.

“Administering Agency” shall mean the San Diego County Superintendent of Schools or SDCSS.

“Agency” shall be the San Diego County Superintendent of Schools.

“Agreement” shall mean this Joint Powers Agreement as the same now exists, or as it may, from time to time be amended by any supplemental agreement entered into by the parties pursuant to the provisions hereof.

“Auditor” means the Auditor of the Authority appointed pursuant to Section 3.07 hereof.

“Authority” means the San Diego County Energy Authority established pursuant to Section 1.01 hereof.

“Board” means the Board of Directors of the Authority referred to in Section 6.01 hereof, which shall be the governing body of the Authority.

“Consultant” means an independent contractor performing duties in an independent capacity and not as an officer, Agency or employee.

“Contribution” means money, or alternative item of value including, but not limited to, real or personal property, goods, services, in-kind assets, deposits, bond revenues and special assessments, paid by Members to the Authority in return for some consideration/participation in the Project or Project activities, including but not limited to, service, equity, or support from the Authority, as provided for in this Agreement or as set forth in a Project Agreement.

“Energy Joint Powers Authority” or “EJPA” means this agreement and all future amendments.

“Executive Committee” means the committee established by Article IV.

“Fiscal Year” means the period from July 1 of each year to and including the following June 30.

“Joint Powers Act” shall mean Article I of Chapter 5 of Division 7 of Title I of the Government Code of the State of California commencing with Section 6500 thereof.

“Joint Powers Authority” or “JPA” means this agreement and all future amendments.

“Mandatory Project Costs” mean any and all capital costs to design, construct, renovate, furnish, equip, acquire, install, deliver and complete the Project, such that any Project premises have a fair rental value that equals or exceeds the rental payments required to be made therefore.

“Member” means a public school district which belongs to the SAN DIEGO COUNTY ENERGY JOINT POWERS AUTHORITY.

“New Member” shall mean any new Participating Public School District that is not currently participating in this agreement.

“Obligations” as referred to herein, shall include, but not be limited to, all payments required by law, together with all reserves which have been established for the purpose of paying Authority debts.

“Operating Funds” mean the fund established by the Authority for the purpose of paying administrative and other costs of management services for the Authority.

“Project” means the joint Energy programs offered under this agreement ranging from “do-it-yourself” assistance for Districts to alternative energy construction and power delivery to developing County-wide strategic energy plans for all EJPA members.

“Project Agreement” means a supplemental contract between Member(s) and the Authority to perform work. The specific terms and conditions of the Project Agreement will be incorporated in this EJPA upon approval of the Board of Directors.

“Project Site” means any Project real property and all buildings, fixtures and improvements, if any, currently situated thereon, that shall be owned, operated, used, and/or occupied by the Authority as necessary to accomplish Project activities as described herein or pursuant to a Project Agreement.

“Pro Rata” for the purposes of calculating annual equity, annual deficits and/or withdrawal and complete termination of a Member from the Authority, means a Member’s individual investment share in the Authority.

“Public Capital Improvement” has the meaning given to such term in Section 6585 (g) of the Act, and includes, without limitation, facilities of a school district, or Authority, any other public buildings and any equipment necessary to support such facilities or buildings, as necessary to accomplish Project activities as described herein or pursuant to a Project Agreement.

“San Diego County Board of Education” means a county board of education duly organized and existing under the laws of the State, and its successors and assigns.

“San Diego County Superintendent of Schools” or “SDCSS” means a county superintendent of schools duly organized and existing under the laws of the State, and its successors and assigns.

“State” means the State of California.

As used herein, words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular shall include the plural and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

ARTICLE III

AGENCY

Section 3.01. The Agency. The San Diego County Superintendent of Schools is hereby designated as the “Agency” for purposes of administering this Agreement on behalf of the Participating Public School Districts, pursuant to the joint powers provisions of the Government Code of the State of California. As described herein, SDCSS shall, in administering this Agreement, have the power in the name of the Authority, subject to the restrictions imposed by law upon the exercise of power of any one of the Participating Public School Districts, to make and enter into contracts, to employ Agencies and employees, and to incur debts, liabilities, or obligations necessary for the accomplishment of the purpose of this Agreement.

Section 3.02. Agreement & Authority Administration. The Agency shall provide day-to-day administration of the Authority consistent with this Agreement.

The Agency, while acting in conformity with the directions of the Executive Committee and/or Board of Directors, shall have authority, subject to budgetary and other limitations set forth herein, to carry out all functions authorized, including, but not limited to, making and entering into contracts, employing agents and employees, acquiring, holding, and disposing of personal & real property, and incurring debts, liabilities or obligations. The Agency may receive, accept, and utilize the services of personnel offered by any Member and may accept and utilize property, real or personal, from any Member or its Agents or representatives, and each Member is authorized to provide such services and property upon such terms as are agreed upon by the Member and the Agency.

The Agency shall implement directions given by the Executive Committee and the Board of Directors where said directions are legal and within budgetary limitations.

Section 3.03. Agency’s Term. The Agency may decline to act as Administrator effective at the conclusion of any fiscal year, provided Agency has given at least six months prior notice. Such notice shall be in writing to the Board of Directors.

Section 3.04. Fund Accounting. The Agency shall be accountable for expenditures made from all funds and shall have authority within major objects of the funds to make any intra-budget transfers. All other transfers shall be approved in advance by the Executive Committee and reported to the Board of Directors for ratification.

Section 3.05. Debt Payment. The Agency shall process or cause to be processed payment for all debt in the manner provided in the bylaws, consistent with applicable laws and statutes.

Section 3.05. Personnel. The Agency shall supervise all personnel who are employed by it for purposes of this agreement in accordance with Agency practices and policies.

Section 3.06. Indemnification. The Authority shall defend and hold harmless the Agency from all liability and damages resulting from actions by the Board of Directors, the Executive Committee, or representatives of any participating Members, when acting on behalf of the Authority. In addition, the Agency shall defend and hold harmless the Authority for all liability and damages resulting from actions by the Agency.

Section 3.07. Fiscal Agency. The Agency shall be the Fiscal Agency for the Authority.

Cost for the Agency's services for the EJPA shall be incorporated in each Project Agreement and include remuneration for all costs of operation of the Authority including, but not limited to, the employment of personnel, contracted services, operational expenses, audit expense, supervision, data processing services, and other related expenses. All Agency costs shall be provided for in the adopted or revised budget.

The Agency shall contract, with mutual agreement of the Executive Committee, with a Certified Public Accountant for an annual audit of the accounts, records, and financial affairs of the Authority and deliver such to the Executive Committee and Board of Directors. In each case, the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the California Government Code and shall conform to generally accepted auditing standards and accounting principles. When such an audit of accounts and reports is made by a Certified Public Accountant, a report thereof shall be filed as a public record with each of the Members of the Authority and also with the Auditor-Controller of San Diego County. Any costs of the audit, including contracts with, or employment of, Certified Public Accountants in making the audit(s) provided herein, shall be borne by the Authority.

Section 3.08. Property Custodian. The Agency shall be the custodian of all property of the Authority.

Section 3.09 Contracting Authority. The Agency shall have the authority to enter into and contract with professional consulting services as necessary to effectuate Project activities authorized pursuant to this Agreement or a Project Agreement, including, but not limited to architectural services, construction management services, etc. The Agency shall not be required to obtain approval of the Executive Committee or the Board of Directors of any expenditure within the approved budget of an Executive Committee and/or Board of Directors approved Project Agreement or for individual expenditures which involve less than \$100,000. The Executive Committee shall have authority to approve Project Agreements and/or any individual expenditure between \$100,000 and \$500,000. Any individual expenditure and/or Project Agreements exceeding \$500,000 shall only be undertaken after advance approval by the Board

of Directors. All expenditures, regardless of their value, shall be ratified by the Board of Directors at their next scheduled meeting.

ARTICLE IV

EXECUTIVE COMMITTEE

Section 4.01. Establishment of the Executive Committee. The Executive Committee shall be elected by a majority vote of the Board of Directors to serve terms of office as may be established by the Board of Directors in its rules or bylaws.

A Member of the Executive Committee may be removed by the Board of Directors after missing three consecutive meetings. All vacancies, however arising, may be filled at any time by the affirmative vote of a majority of the Board of Directors. Interim appointments may be made by the Executive Committee until the next Board of Directors meeting.

The Executive Committee shall be responsible for assisting the Agency in the ongoing operations of the Authority, and shall carry out such other responsibilities as are delegated to it by the Board of Directors. The Executive Committee shall study and recommend to the Board of Directors changes in procedures, plans, and programs as appropriate.

The Executive Committee shall hold at least one regular meeting quarterly. The date, time, and place upon with such regular meetings shall be held, shall be fixed by resolution of the Executive Committee, which resolution shall be filed with each Member of the Authority.

The presence of a majority of the Members of the Executive Committee shall constitute a quorum, except that less than a quorum may adjourn from time to time. An affirmative vote of at least a quorum of Members of the Executive Committee shall be necessary to constitute action and to transact business.

Section 4.02. Duties of the Executive Committee. The Executive Committee shall exercise its powers in the manner set for in Section 4.01. In addition, the Executive Committee is specifically empowered to:

(a) Recommend to the Board of Directors for approval the formulas and methods for determining Authority contribution rates, additional assessments during the year, changes to programs and Projects, and the method by which new Members shall be allowed to participate in the Authority;

(b) Insure that the Agency maintains a complete and accurate system of accounting for all funds at all times;

(c) Elect at its first regular meeting and thereafter as necessary a Chair and Vice Chair to serve as officers of the Executive Committee for terms of one (1) year;

(d) Give direction to the Agency as to entering into contracts consistent with the terms of this Agreement;

(e) Make appropriate periodic reports to the membership on the status of the Authority and its plans; and

(f) Develop or cause to be developed and recommend to the Board of Directors for approval and annual budget for the Authority.

Section 4.03. Sub-Committees. As needed, the Executive Committee of the Authority will establish sub-committees that will serve under the direction of the Executive Committee. The sub-committees will investigate, study and make recommendations to the Executive Committee or the Board of Directors, as appropriate.

ARTICLE V

TERM AND ADDITIONAL PARTIES

Section 5.01. This Agreement shall become effective on the Effective Date and shall remain in effect until such time until terminated by the parties hereto or pursuant to a court order. It is intended that this Agreement can be extended or amended consistent with the intent of the parties.

Section 5.02. Any Participating Public School District who is an owner/operator of a Facility may become a member and party to this Agreement by execution of a copy of this Agreement by its proper and duly authorized officer(s). The Participating Public School District shall file a duly executed copy of the Agreement with the Administering Agency that is either executed by an authorized individual or is accompanied by an authorizing resolution adopted by its governing board.

ARTICLE VI

BOARD OF DIRECTORS

Section 6.01 Board of Directors The Authority shall be administered by a Board of Directors consisting of one Director from each Participating Public School District, unless and until such number is changed by amendment of this Agreement. The Board shall be called the “Board of Directors of the San Diego County Energy Authority.” All voting power of the Authority shall reside in the Board. Neither the Directors nor the alternative Directors shall receive any compensation for their service as Directors.

Explicit duties of the Board of Directors:

1. Approve induction of new Members
2. Amend JPA except as specifically noted in Section 3.09
3. Approve annual EJPA budget
4. Resolve disputes

5. Invoke termination proceedings

Section 6.02. Meetings of the Board.

- (a) Regular Meetings. The Board shall provide for at least one regular meeting annually to be held in March. The date upon which, and the hour and place at which, each such regular meeting shall be held shall be fixed by resolution of the Board.
- (b) Special Meetings. Special meetings of the Board may be called in accordance with the provisions of the Ralph M. Brown Act of the California Government Code, as now and hereafter amended.
- (c) Call, Notice and Conduct of Meetings. All meetings of the Board, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act of the California Government Code, as now or hereafter amended.

Section 6.03. Minutes. The Agency shall cause to be kept minutes of the meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director, and to the SDCSS and Participating Public School Districts.

Section 6.04. Voting. Each Director shall have one vote.

Section 6.05. Quorum; Required Votes; Approvals. Directors holding a majority of the votes of total number of the then current Directors shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn a meeting from time to time. Unless otherwise required pursuant to this Agreement, a Project Agreement or applicable law, the affirmative vote of at least a majority of the Directors present at any meeting at which a quorum is present shall be required to take any action by the Board.

Section 6.06. Bylaws. The Board may adopt, from time to time, such bylaws, rules and regulations for the conduct of its meetings as are necessary for the purposes hereof and shall have such express or implied authority as is not inconsistent with or contrary to the laws of the State and this Agreement.

Section 6.07. Assumption of Responsibilities by Authority. As soon as practicable after the execution of this Agreement, an initial meeting of the Board shall be conducted wherein such Board shall undertake the responsibilities of the Authority.

Section 6.08. Membership. Each party to this Agreement must be eligible for membership in the Authority as defined herein and shall become a Member of the Authority on the effective date of this Agreement, except as provided herein below. Each party which becomes a Member of the Authority shall be entitled to the rights and privileges of, and shall be subject to the obligations of, Membership as provided in this Agreement.

- (a) All Public School Districts located within the County of San Diego may apply for membership in the Authority. Membership is contingent upon being a party to this Joint Powers Agreement.
- (b) Should a Member or Members reorganize in accordance with State statutes, the successor-in-interest or successors-in-interest to the obligations of any such reorganized Public School District shall be substituted as a party or parties to the Agreement.
- (c) Public School Districts applying for membership in the Authority to commence on or after July 1, 2010, shall be subject to review and approval by Board of Directors.

ARTICLE VII

INTERESTS; ACCOUNTS AND REPORTS; FUNDS

Section 7.01. Project Interests of SDCSS and Participating Public School Districts. The SDCSS and Participating Public School Districts shall enter into a Project Agreement prior to execution of any Project activities for the purpose of setting forth each party's percentage interest in the Project or certain specific Project activities (a "Project Agreement"). Except as otherwise to be set forth in one or more Project Agreement(s), each party shall have and hold an undivided one vote in the Authority. The percentage interests of SDCSS and Participating Public School Districts in any such assets may be modified, from time to time, by written agreement between the SDCSS and Participating Public School Districts or as required by the terms and conditions of this Agreement or the laws of the State. Such modifications may be accomplished without the consent of any other person or entity; provided, however, that no such modification shall adversely affect obligations the SDCSS and Participating Public School Districts may have under any tax exempt financing obligations.

Section 7.02. Contributions. The SDCSS and Participating Public School Districts may in the appropriate circumstances when required hereunder, or when either party otherwise so elects, subject to any restrictions under State or federal law, make contributions or advances of their own funds for authorized purposes of the Authority as set forth in this Agreement or in a Project Agreement, certain of such advances to be repaid as specified herein or as otherwise mutually agreed, and use its personnel, equipment or property in lieu of other contributions or advances. The provisions of Section 6513 of the California Government Code are hereby incorporated into this Agreement by reference.

Section 7.03. Credit to SDCSS and Participating Public School Districts. Unless otherwise provided in this Agreement, all accounts or funds created and established pursuant to any instrument or agreement to which the Authority is a party, and interest earned or accrued thereon, shall inure to the benefit of the SDCSS and Participating Public School Districts in the respective proportions for which such funds or accounts were created.

Section 7.04. Accounts and Reports. To the extent not covered by the duties assigned to a trustee chosen by the Authority, the Agency shall act as treasurer and fiscal Agency of the

Authority, and shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Authority in the hands of the trustee or the Agency shall be open to inspection at all reasonable times by representatives of the SDCSS and Participating Public School Districts. The Agency or the Auditor, within 180 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the SDCSS and Participating Public School Districts to the extent such activities are not covered by the report of such trustee.

Section 7.05. Funds. Subject to the applicable provisions of any indenture or agreement which the Authority may enter into, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Agency of the Authority shall receive, have custody of and disburse Authority funds as nearly as possible in accordance with generally accepted accounting practices, and shall make the disbursement required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

ARTICLE VIII

DEFAULTS AND REMEDIES; ARBITRATION

Section 8.01. Default; General Rights and Remedies. If the SDCSS or Participating Public School Districts shall breach any term, covenant, or condition contained in this Agreement, such party shall be deemed to be in default under this Agreement, and the Authority and the non-defaulting parties shall each have the right to enforce all of its rights and remedies regarding such default which are provided under State or federal laws.

Section 8.02. Additional Rights and Remedies. If the SDCSS or Participating Public School Districts shall fail to (a) make or meet any required payment, contribution or obligation to the Authority or any other party for Project design, consulting, construction or related actions or for Project operations by the close of business on the date such payment, contribution or obligation is due, and such payment, contribution or obligation exceeds \$5,000.00; and (b) cure or remedy such default within ten days thereafter, than and in any such event, in addition to any rights and remedies available under State or federal law, the Authority under certain circumstances and the non-defaulting party under all circumstances shall have all the following rights and remedies:

(1) The non-defaulting parties or the Authority may, for the purpose of protecting their economic interest or financial rating or mitigating possible financial hardship or loss, or for the purpose of protecting the Project, pay and/or advance, on behalf of the defaulting party, an amount equal to the contribution, payment or obligation of the defaulting party, or, if permitted by law, pay and/or advance such amount as may be required to meet the defaulting party's respective payments or any other obligation. If permitted by law, such right to pay, advance or meet the defaulting party's respective payments or other obligations shall not continue for a period longer than needed to provide the non-defaulting parties reasonable time to evaluate and implement their respective alternatives as provided herein. In addition, any payment or advance made hereunder by a non-defaulting party or the Authority shall be a liability of the defaulting party which shall be due and owing to the party making or advancing

such payment forthwith. In addition, and notwithstanding such advance and/or payment, the defaulting party shall not be relieved of its obligations and duties to the Authority during any period, or portion thereof, during which the non-defaulting parties or the Authority makes such payments, contributions and/or advances as provided above.

(2) The Authority or non-defaulting parties may choose and designate another qualified public entity to sublease the defaulting party's obligations under the Authority under the same terms and conditions as set forth for the defaulting party, with appropriate adjustments for term payments; and the Authority or non-defaulting parties may also choose and designate another qualified public entity to acquire, by irrevocable option herein granted by the defaulting party to such designee or nominee, the right to acquire such defaulting party's interest in the Authority and the assets of the Authority at a price equal to the equity value of the defaulting party's interest, determined by the annual audit required by Section 3.07. In the event that the non-defaulting party nominates or designates a third party qualifying public entity to sublease and/or acquire the interest of the defaulting party in the present Authority, such defaulting party shall transfer its interest in the Authority to the nominee or designee and shall tender possession of any of the subleased Project to such party forthwith as provided above. In addition, and notwithstanding the provisions of this paragraph, the defaulting party shall not be relieved of its obligations and duties under this Agreement until such obligation is completely discharged.

(3) The non-defaulting parties may terminate and liquidate the Authority but only upon the payment and discharge of all the obligations of the Authority, including, without limitation, any Bonds or other indebtedness. In addition, upon termination, the non-defaulting parties shall herein possess an irrevocable option to acquire all of the assets of the Authority at a price equal to the equity value of the defaulting party's interest, determined in the annual audit as set forth in Section 3.07 hereof. Until such a time as the non-defaulting party has completed the termination and liquidation, including the payment and discharge of all the obligations described above, each of the parties agree that they shall remain liable under all the terms and obligations described in this Agreement. In addition, and following the termination and liquidation of the Authority and the payment and discharge of all of the obligations, each of the parties agree that any obligation based on the equity value of its interest in the Authority and the assets of the Authority determined in the manner set forth in Section 3.07 hereof, shall survive the termination of any agreements by and between the parties.

(4) Each of the parties to this Agreement and the Authority herein irrevocably consent to a non-defaulting party's right as above-described to sublease, nominate another qualifying public entity or terminate and acquire as above described and further irrevocably appoint such non-defaulting party as their attorney in fact, which appointment shall be deemed to be coupled with an interest, to execute any and all documents and to further carry out the terms and conditions of the remedies as provided for herein.

Section 8.03. Effect on Bondholders' Rights and Remedies. Notwithstanding the foregoing or any other provision of this Agreement, no right or remedy described in this Article 8 shall be valid or have any force or effect to the extent that it would in any way (a) impair the rights and remedies of the trustee or the holders of any Bonds issued by the Authority, described in any trust agreement, indenture, lease or other instrument securing such Bonds, (b) discharge

any obligation of SDCSS, participating Public School District, or the Authority under any such trust agreement, indenture, lease or instrument, or (c) impair the exclusion from gross income for federal income tax purposes of the interest on the Bonds and in the event that a substitute public entity is designated pursuant to Section 8.02(3), an opinion of independent counsel of recognized national standing in the field of municipal finance must be delivered to the effect that such exclusion is not thereby impaired.

Section 8.04. Mediation and Arbitration. Any controversy or claim between the parties to this Agreement, or between any such party or parties and the Authority, in respect to the Authority operations, or to any claims, disputes, demands, differences, controversies or misunderstandings arising under, out of, or in relation to, this Agreement, or any breach hereof, shall be first subject to non-binding mediation submitted to mutually agreed upon mediator. If any claims or disputes are not resolved through mediation, they shall then be determined by arbitration. The party desiring to initiate mediation and then arbitration shall give notice of its intention to mediate and arbitrate to every other party to this Agreement and the Authority. The parties shall mutually agree upon an inconsistency herewith, the rules of the AAA shall apply.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.01. Notices. All notices to be given pursuant to this Agreement shall be in writing and either: (i) sent by certified mail, return receipt requested, in which case notices shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States mail, (ii) sent by nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with the courier, or (iii) by facsimile (fax) or similar means, if a copy of the notice is also sent by United States Certified Mail, in which case notice shall be deemed delivered on transmittal by facsimile (fax) or other similar means provided that a transmission report is generated reflecting the accurate transmission of the notices, as reflected in Exhibit "B", attached hereto and incorporated herein, and as may be amended from time to time [attach list of PSDs with notice information].

Section 9.02. Section Headings. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

Section 9.03. Consent. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

Section 9.04. Law Governing. This Agreement is made in the State of California under the constitution and laws of the State, and is to be so construed.

Section 9.05. Amendments. This Agreement may be amended at any time, or from time to time, except as limited by this Agreement, by contract with the owners of the Bonds issued by the Authority or by applicable regulations or laws of any jurisdiction having authority, by one or more supplemental agreements or amendments executed by all parties to this Agreement either as required in order to carry out any of the provisions of this Agreement or for any other purpose, including without limitation addition of new parties (including any Local Schools heretofore or hereafter created) in pursuit of the purposes of this Agreement.

Section 9.06. Enforcement by Authority. The Authority is hereby authorized to take any or all legal or equitable actions, including but not limited to injunction and specific performance, necessary or permitted by law to enforce this Agreement.

Section 9.07. Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Section 9.08. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the SDCSS and Participating Public School Districts, respectively. Except as otherwise provided in this Agreement, neither the District(s) nor the County nor

SDCOE nor SDCSS, may assign any right or obligation hereunder without the written consent of the others.

Section 9.09. Counterparts. This Agreement maybe simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which together shall constitute but one and the same Agreement.

Section 9.10. Force Majeure. SDCSS shall not be responsible for any loss or breach due to delay in delivery or performance hereunder caused by governmental regulations, controls or directions, outbreak of a state of emergency, acts of God, war, hostilities, civil commotion, riots, epidemics or other natural casualties or fires beyond the reasonable control of the parties. Any such delays shall not be deemed a breach of or failure to perform this Agreement or any part thereof and the date on which any obligations hereunder are due to be fulfilled shall be extended for a period of time equal to the time lost as a result of such delays.


Section 9.11. Acknowledgment of Prudent Review

Each party declares that prior to the execution of this Agreement, it has had an opportunity to review and understand the contents, rights and responsibilities herein. The parties have further had the opportunity to seek independent legal advice regarding the Agreement.

IN WITNESS WHEREOF, EACH PARTICIPATING PARTY HAS EXECUTED THIS AGREEMENT ON THE DATE ADJACENT TO THE SIGNATURE OF ITS REPRESENTATIVE.

DATE: 6/22/2010

AGENCY: SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS

BY: 
(signature)

NAME: Lora Duzyk

TITLE: Assistant Superintendent Business Services

DATE: _____

SCHOOL: _____

BY: _____
(signature)

PRINT NAME: _____

TITLE: _____

SCHOOL ADDRESS: _____

Sample
1ST PROJECT AGREEMENT BETWEEN
CORONADO UNIFIED SCHOOL DISTRICT
AND THE
SAN DIEGO COUNTY ENERGY AUTHORITY JPA

This **First** Project Agreement by and between the **SAN DIEGO COUNTY ENERGY AUTHORITY** ("AUTHORITY"), and **CORONADO UNIFIED SCHOOL DISTRICT** ("CORONADO SCHOOLS") is made this **7th** day of **May, 2010**. Authority and "Coronado Schools" are sometimes individually referred to as "Party" and collectively as "Parties."

RECITALS

WHEREAS, the Coronado Schools became a Member of the San Diego County Energy JPA (EJPA Agreement) on **March 10, 2010** for developing County-wide energy strategies, services and projects which may reduce local energy use borrowing and utility costs, promote the greater use of existing and new energy products services and/or projects to provide significant public benefits (the "Authority"); and

WHEREAS, AUTHORITY desires to perform the Additional Work for the Coronado Schools as part of its performance of its duties under the EJPA Agreement; and

WHEREAS, AUTHORITY and the Coronado Schools have negotiated in good faith and desire to include the Additional Work in the EJPA Agreement pursuant to this Project Agreement.

AGREEMENT

NOW THEREFORE, in good and valuable consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

A. AUTHORITY and Coronado Schools mutually desire to enter into a Project Agreement to include the following Work:

1. **add: "Task Order No. 1 – Energy Master Plan for Coronado Schools:** Provide consulting and administrative service to develop a comprehensive energy master plan for Coronado Schools. The master plan shall include facilities, fleet vehicle and education aspects.

Deliverables.

- a. Attend and provide meeting minutes for three (3) weekly meetings with Coronado Stakeholders.
- b. Develop master plan document with no less than three options for each site in the areas of energy savings, energy monitoring, and capital improvement projects.
- c. Provide plan of action and milestones schedule.
- d. Provide preliminary cost estimate with project delivery assumptions.
- e. Provide five (5) bound copies and one electronic file in .pdf format of the master plan to Coronado School officials.

Reimbursable Expenses (at cost)

- a. Printing
- b. Travel (not included in meeting hours)
- c. Mileage (at Federal mileage reimbursement rate)
- d. Per diem for out of town travel (not to exceed State of California approved per diem rate)
- e. Photocopying
- f. Delivery

Task Order No. 1 Not to exceed fee: \$144,000.00 plus \$6,000.00 for miscellaneous reimbursables. Task order to be complete by July 30, 2010.”

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2. The total compensation for this Project Agreement and all previous Project Agreements with the Coronado Schools, to include payment for the Additional Work described above as follows:

Total contract fee is \$144,000 for Task Order No. 1 plus \$6,000 allowance for reimbursables.

3. The schedule for work product delivery including this Project Agreement is amended as follows:

Contract term remains unchanged. Work to be completed as noted in Task Orders.

- B. This Project Agreement shall only be effective upon the execution by both the AUTHORITY and the “Coronado Schools”.
- C. This Project Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

- D. If any provision of this Project Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Project Agreement unless elimination of such provision materially alters the rights and obligations set forth herein.
- E. This Project Agreement shall affect only the sections referred to herein, and all other terms and conditions of the Agreement between AUTHORITY and the Coronado Schools, shall remain in full force and effect.

Acknowledgment of Prudent Review

Each party declares that prior to the execution of this Project Agreement, it has had an opportunity to review and understand the contents, rights and responsibilities herein. The parties have further had the opportunity to seek independent legal advice regarding the Project Agreement.

IN WITNESS WHEREOF, EACH PARTICIPATING PARTY HAS EXECUTED THIS PROJECT AGREEMENT ON THE DATE ADJACENT TO THE SIGNATURE OF ITS REPRESENTATIVE.

DATE: _____ AGENCY: SAN DIEGO COUNTY
SUPERINTENDENT OF SCHOOLS

BY: _____
(signature)

NAME: _____

TITLE: Assistant Superintendent
Business Services

DATE: _____ PUBLIC
SCHOOL: _____

BY: _____
(signature)

PRINT NAME: _____

TITLE: _____

SCHOOL ADDRESS: _____



SAN DIEGO COUNTY
ENERGY AUTHORITY JPA
EXHIBIT A

LIST OF PARTICIPATING PUBLIC SCHOOL DISTRICTS

1. San Diego County Superintendent of Schools
2. Coronado Unified School District
3. La Mesa – Spring Valley School District
4. Lemon Grove School District
5. Lakeside School District
6. Warner Springs School District
7. Borrego Springs School District
8. Carlsbad Unified School District
9. Alpine School District
10. National School District
11. San Ysidro School District
12. San Pasqual School District
13. Fallbrook High School District

