

**K-12 PUBLIC SCHOOL DISTRICTS  
AND  
COMMUNITY COLLEGES  
FACILITY AUTHORITY**

JOINT EXERCISE OF POWERS AGREEMENT

BY AND AMONG

SAN DIEGO COUNTY  
SUPERINTENDENT OF SCHOOLS

AND

K-12 PUBLIC SCHOOL DISTRICTS AND  
COMMUNITY COLLEGES

Effective as of November 16, 2010



## JOINT EXERCISE OF POWERS AGREEMENT

### K-12 PUBLIC SCHOOLS AND COMMUNITY COLLEGES FACILITY AUTHORITY (FACJPA)

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 and community colleges in the State of California, (Participating Public School Districts or Community Colleges").

#### WITNESSETH:

WHEREAS, SDCSS and the participating public schools, all acting by and through their governing boards, for the purpose of establishing a vehicle to allow SDCSS and the participating public schools to establish a joint powers authority for the purpose of developing facility planning, construction and maintenance strategies, services and projects which may reduce the time to delivery and the overall cost of capital improvements, modernization, code and permit compliance, support and maintenance for school district facilities, providing access to skilled and knowledgeable facility professionals skilled in traditional and alternative delivery methods, providing access to proven non-traditional project funding strategies and/or providing significant public benefits; and

WHEREAS, SDCSS and the participating public schools 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 Participating Public School Districts or Community Colleges to provide for cooperative facility services, which may include, but are not limited to, planning, programming, construction, modernization, code and permit compliance, support, operations and maintenance, and

NOW, THEREFORE, in consideration of the above facts and of the mutual promises herein contained, the SDCSS and Participating Public School Districts or Community Colleges do hereby agree to 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 a Facility Cooperative joint powers authority



SAN DIEGO COUNTY  
SCHOOL FACILITY AUTHORITY JPA

servicing K-12 public school districts and/or community colleges focusing on San Diego County but available elsewhere in the State of California as appropriate. SDCSS and the participating Public School Districts and/or Community Colleges, 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 and/or Community Colleges to develop facility planning, construction and maintenance strategies, services and projects which may reduce the time to delivery and the overall cost of capital improvements, modernization, code and permit compliance, support and maintenance for school district facilities, provide access to skilled and knowledgeable facility professionals skilled in traditional and alternative delivery methods, provide access to proven non-traditional project funding strategies and/or provide significant public benefits.

Section 1.02. Facility JPA Description. This Agreement provides for the development, operation and maintenance of a Facility JPA servicing San Diego County and other locations in the State of California as appropriate. The JPA services/projects provided to JPA members may include, but not be limited to:

- a) Project Management Services
- b) Capital Facility Program Management
- c) Professional Services contracting
- d) Construction contracting
- e) DSA certification and Contract closeout
- f) Facility Inspection Tool (FIT) and Emergency Repair Program(ERP) and similar inspections and compliance
- g) Stormwater permit support
- h) Regional Construction Standards
- i) Developer fee support
- j) Long Range Facility Master Planning, including, but not limited to: Educational Specifications, demographics, and facility needs analysis and costing
- k) Major Maintenance and Preventative maintenance planning and execution
- l) Facility funding and financing, including State Facility Program support and other funding and financing options
- m) Planning, design and construction of non-traditional school facilities as permitted by California law, including but not limited to, charter school facilities or other alternatively funded/maintained facilities sponsored by JPA members

All current SDCSS Educational Facility Solutions Group consortium agreements are planned to be handled through the Facility JPA. This will minimize the overhead required to run the District Outreach Consortium, Stormwater



Consortia, and future initiatives such as professional services contracting, construction contracting, construction and DSA close-out, facilities inspection tool (FIT)/emergency repair program (ERP), major maintenance and other project management support from SDCSS, and accounting and documentation support through Colbi, Inc.. Each Participating Public School District or Community College will be able to opt in for all or part of the services provided. Services will provide an economy-of-scale approach with other Districts with similar needs so that each district gets the best value for the facilities support they need.

Section 1.03. Facility 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 desired Project activities and to provide for the assignment of those Project obligations to one of the parties, to be specified and mutually agreed to 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, as described and mutually agreed to in an appropriate Project Agreement.

Section 1.04. Facility JPA Funding. The SDCSS and Participating Public School Districts or Community Colleges 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.



“Agency or Administering Agency” shall be the San Diego County Superintendent of Schools (SDCSS).

“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 K-12 Public Schools and Community Colleges Facility 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, agent 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 Amendment.

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

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

“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” means any and all capital costs to finance, service, insure, 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 agency which belongs to the K-12 PUBLIC SCHOOLS AND COMMUNITY COLLEGES FACILITY JOINT POWERS AUTHORITY.

“New Member” shall mean any new Participating Public School District or Community College 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 Facility programs offered under this agreement ranging from “do-it-yourself” assistance for Districts to alternative delivery capital improvement projects for FACJPA members.

“Project Agreement” means a supplemental contract between Member(s) and the Authority to perform and fund work. The specific terms and conditions of the Project Agreement will be incorporated in this FACJPA upon approval of the Board of Directors, as further described in Section 7.01 herein. Project funding by member will be by auditor’s transfer, escrow agreement or other mutually agreed method.

“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 or as determined by specific project agreement.

“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 Amendment.



“Public School District” means a school district, community college district, county board of education, or county superintendent of schools.

“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 and Community Colleges, 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 SDCSS’s rules, regulations and procedures as well as the restrictions imposed by law upon the exercise of power of any one of the Participating Public School Districts and Community Colleges and the provisions of this Agreement, to make and enter into contracts, to employ agents 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 and any subsequent Project Agreement(s) as described herein.

The Agency, while acting in conformity with the directions of the Executive Committee and/or the 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 FACJPA 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, project 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 \$100,000 or greater. 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.

Electronic meetings may be held pursuant to the provisions of the Ralph M. Brown Act of the California Government Code, as now and hereafter amended.

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) Ensure 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 President and Vice President 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 an annual budget for the Authority.

(g) Fund transfers as defined in Section 3.04.



(h) Monitor and ensure all required funds are deposited/contributed by the Members as set forth in the applicable Project Agreement(s) to ensure that positive Project fund balances are maintained at all times and sufficient funding is always on hand to pay for Project work as it progresses. Neither the JPA, the Executive Committee or the Agency shall have any obligation to forward fund Project work.

(i) Approve Project Agreements.

(j) Approve induction of new members.

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, ADDITIONAL PARTIES AND WITHDRAWAL FROM OR TERMINATION OF MEMBERSHIP

Section 5.01. Term. This Agreement shall become effective on the Effective Date and shall remain in effect until such time as 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. Additional Parties. Any Participating Public School District or Community College 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 or Community College 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. There shall be no cost/contribution required to become a member of the JPA. Any required costs/contributions shall be determined and memorialized at the time a specific project is considered in an appropriate Project Agreement as described further herein.

Section 5.03. Withdrawal. Any party in good standing may withdraw from this Agreement by providing three (3) months prior written notice to the Authority. Withdrawal pursuant to this section shall be effective three months from the date of the written notice unless otherwise mutually agreed by the parties subject to the provisions of Articles VII and VIII regarding financial liabilities for shared



interests. Each party shall bear its own costs should there be a Member withdrawal pursuant to this provision.

Section 5.04. Termination. A Member may be involuntarily terminated from the Authority at any time upon the recommendation of the Executive Committee and vote of two-thirds (2/3) of the Members of the Board of Directors. Involuntary termination from the Authority shall have the effect of eliminating the Member as a signatory of this Agreement and as a Member of the Authority, effective at the end of contract services provided under any applicable Project Agreement or fiscal year in which the action is taken or upon such other date as the Board of Directors may specify. Should a Member be involuntarily terminated from the Authority, reserve/escrow accounts may be established to cover all costs, liabilities, assessments or contingencies of the terminated Member and the Member shall continue to be liable and responsible for any costs, liabilities, assessments, or contingencies which exceed the amount set aside in the reserve/escrow accounts. Grounds for involuntary termination include, but are not limited to, the following:

1. Failure or refusal of a Member to abide by this Joint Powers Agreement, any amendment hereto or any applicable duly executed Project Agreement.
2. Failure or refusal to make contractual payments to the Authority per terms of any applicable duly executed Project Agreement.

## 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 or Community College, unless and until such number is changed by amendment of this Agreement. The Board shall be called the "Board of Directors of the K-12 Public Schools and Community Colleges Facility 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 FACJPA 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 on or about the anniversary date of the establishment of the FACJPA. The date upon which, and the hour and place at which shall be approved by the Executive Committee.
- (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 or Community Colleges.

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

Section 6.05. Quorum; Required Votes; Approvals. A majority of the total number of the Directors of the JPA shall constitute a quorum for the transaction of business including any members attending electronically pursuant to the provisions of the Ralph M. Brown Act of the California Government Code, as now and hereafter amended.

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. The only action that less than a quorum may take is to adjourn a meeting as necessary due to the lack of a quorum.

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 K-12 public schools and community colleges located in the State of California 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 or Community College shall be substituted as a party or parties to the Agreement. All rights, obligations, and responsibilities of any such reorganizing Member shall remain continuing obligations of the successor-in-interest as described in the applicable Project Agreement.
- (c) Public School Districts or Community Colleges applying for membership in the Authority after the initial FACJPA Board Meeting shall be subject to review and approval by Board of Directors.

## ARTICLE VII

### INTERESTS; ACCOUNTS AND REPORTS; FUNDS

Section 7.01. Project Agreements, Project Interests of SDCSS and Participating Public School Districts or Community Colleges. As described above, there shall be no cost to any Participating Public School District or Community College to join the JPA. Any costs/contributions necessary for a Project activity shall be determined pursuant to a written Project Agreement(s). The SDCSS and Participating Public School Districts or Community Colleges 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"). The Project Agreement shall also include all applicable and necessary terms and conditions for the performance of all contemplated Project activities, including, but not limited to,





scope of work, required monetary or in-kind contributions, insurance, indemnification, termination rights, all applicable general conditions for the Project activities etc. The percentage interests of SDCSS and Participating Public School Districts or Community Colleges in any such assets, as described in the applicable Project Agreement(s) may be modified, from time to time, by written agreement between the SDCSS and Participating Public School Districts or Community Colleges or as required by the terms and conditions of this Agreement or the laws of the State. Such modifications maybe 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 or Community Colleges may have under any tax exempt financing obligations.

Section 7.02. Contributions. The SDCSS and Participating Public School Districts or Community Colleges 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 or Community Colleges. 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 or Community Colleges 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 Agent 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 or Community Colleges. 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 or Community Colleges 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 Project Agreement(s) and/or any indenture or agreement thereunder 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 the Project Agreement, and 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 or Community Colleges 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 or Community Colleges 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, then 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 including associated interest and costs. 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 assume the rights and obligations of the defaulting party if permissible pursuant to California law, and mutually agreed to in writing by the Authority and the applicable non-defaulting parties.

(3) The non-defaulting parties may terminate and liquidate the Authority pursuant to applicable California law and if mutually agreed to in writing by the Authority and the applicable non-defaulting parties, but only upon the payment and discharge of all the obligations of the Authority, including, without limitation, any Bonds or other indebtedness. Unless otherwise altered or amended by an applicable Project Agreement upon termination, the non-defaulting parties shall also 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 rights 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 and consistent with applicable California law, 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 Community College, 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" (**List of Participating School Districts and appropriate contact information**) attached hereto and incorporated herein, and as may be amended from time to time.

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.

Amendments to this agreement may be required to:

1. contract with the owners of the Bonds issued by the Authority,
2. comply with applicable regulations or laws of any jurisdiction having authority, or
3. make changes to these provisions that are in the best interest of the Authority.

Amendments shall only be made to this agreement by one or more supplemental agreements or amendments executed by two thirds vote of all parties in good standing 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 Agencies 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 or Community Colleges, respectively. Except as otherwise provided in this Agreement, neither the District(s) 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.

(The balance of this page is intentionally left blank.)



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

For the first two FACJPA members:

DATE: \_\_\_\_\_

AGENCY: SAN DIEGO COUNTY  
SUPERINTENDENT OF  
SCHOOLS

BY:

\_\_\_\_\_  
(signature)

NAME: Lora Duzyk

TITLE: Assistant Superintendent  
Business Services

DATE: \_\_\_\_\_

MEMBER:

\_\_\_\_\_  
(Name of District/College)

BY:

\_\_\_\_\_  
(Signature)

PRINT NAME:

\_\_\_\_\_  
PRINT TITLE:

\_\_\_\_\_  
DISTRICT ADDRESS:



For members joining established FACJPA:

DATE: \_\_\_\_\_ for FACJPA:

BY:

\_\_\_\_\_  
(signature)

NAME: Mikal H. Nicholls

TITLE: FACJPA Secretary

DATE: \_\_\_\_\_ MEMBER:

\_\_\_\_\_  
(Name of District/College)

BY:

\_\_\_\_\_  
(Signature)

PRINT NAME:

\_\_\_\_\_

PRINT TITLE:

\_\_\_\_\_

DISTRICT ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





DATE: \_\_\_\_\_

AGENCY: SAN DIEGO COUNTY  
SUPERINTENDENT OF  
SCHOOLS

BY:

\_\_\_\_\_  
(signature)

NAME: Lora Duzyk

TITLE: Assistant Superintendent  
Business Services





SAN DIEGO COUNTY  
SCHOOL FACILITY AUTHORITY JPA  
PROJECT AGREEMENT  
\*\* S A M P L E \*\*

1ST PROJECT AGREEMENT BETWEEN  
XYZ 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 XYZ SCHOOL DISTRICT ("XYZUSD") is made this 7th day of May, 2011. Authority and "XYZUSD" are sometimes individually referred to as "Party" and collectively as "Parties."

RECITALS

WHEREAS, the XYZUSD became a Member of the K-12 Public Schools and Community Colleges Facility JPA (FACJPA Agreement) on March 10, 2011 for developing facility planning, construction and maintenance strategies, services and projects which may reduce the time to delivery and the overall cost of capital improvements, modernization, code and permit compliance, support and maintenance for school district facilities, providing access to skilled and knowledgeable facility professionals skilled in traditional and alternative delivery methods, providing access to proven non-traditional project funding strategies and/or providing significant public; and

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

WHEREAS, AUTHORITY and the XYZUSD have negotiated in good faith and desire to include the Additional Work in the FACJPA 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:





SAN DIEGO COUNTY  
SCHOOL FACILITY AUTHORITY JPA  
PROJECT AGREEMENT  
\*\* S A M P L E \*\*

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

1. add: "Task Order No. 1 – Lease-Lease Back financing and Design-Build delivery of a \$5M Capital Improvement Project at **(fill in the blank for location)** campus for DISTRICT: Provide consulting and administrative service to deliver a LLB/D-B alternative delivery facility for DISTRICT. The project shall include **(fill in the blank for scope, can reference attachments including Education Specifications, Criteria Documents, or District Maintenance standards)**, start in May 2011, open for use in May 2012 and be leased for no more than 30 years.

Deliverables

- a. Develop project criteria through with DISTRICT stakeholders and Authority provided criteria designer.
- b. Provide LLB financing plan for DISTRICT approval.
- c. Provide XYZUSD Board of Education resolutions to enable the Authority to deliver the required service.
- d. Make all financial, risk management and construction/consultant/lease payments.
- e. Administer the project until the Lease-Leaseback agreement is completed or the Lease-Leaseback agreement is terminated.

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 or SDCSS reimbursable rates, which ever is more restrictive)
- e. Photocopying
- f. Delivery

Task Order No. 1 Not to exceed fee: \$300,000.00 plus \$6,000.00 for miscellaneous reimbursables per year of this Project Agreement.





SAN DIEGO COUNTY  
SCHOOL FACILITY AUTHORITY JPA  
PROJECT AGREEMENT  
\*\* S A M P L E \*\*

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

Total contract fee is \$300,000 for Task Order No. 1 plus \$6,000 allowance for reimbursables for each year of the Project Agreement.

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 "XYZUSD".
- 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 XYZUSD, 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.





SAN DIEGO COUNTY  
SCHOOL FACILITY AUTHORITY JPA  
PROJECT AGREEMENT  
\*\* S A M P L E \*\*

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: Lora Duzyk

TITLE: Assistant Superintendent  
Business Services

DATE:

PUBLIC  
SCHOOL: \_\_\_\_\_

BY: \_\_\_\_\_  
(signature)

PRINT  
NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

SCHOOL  
ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

