

PROJECT ADDENDUM NO. 2

1. Name of Initiative: San Diego Schools Coalition for Electricity Cost Reduction (“SDS”)
2. Objective/Scope of Work: The SDS will intervene in the next San Diego Gas & Electric Company General Rate Case, Phase II (“GRC”). The GRC is anticipated to be filed in 2018 but it may be filed earlier or later. In the GRC, the SDS will advocate to eliminate or mitigate any proposed San Diego Gas & Electric Company (“SDG&E”) rate increases on SDS participants. This advocacy may indirectly benefit other public schools within SDG&E’s service territory to the extent advocacy results in benefits applicable to all public schools. In addition, this advocacy may also include efforts to reduce or otherwise mitigate rate increases on SDS participant school sites with current or future renewable energy investments. The scope of work will include retention of legal counsel, Best Best & Krieger LLP (“BB&K”) and consultant Dr. Lon House to prepare and file all written documents on behalf of the SDS members, as well as all other tasks identified in the proposed work plan for legal services described below. In addition, the SDS may participate in efforts to propose or support legislation to provide assistance to public schools on energy-related matters, including, but not limited to, placing schools in a separate rate class.
3. Budget: The proposed budget is an estimated amount of \$155,500 with \$127,500 budgeted for legal counsel with BB&K, \$18,000 for consultant fees for Dr. Lon House, and \$10,000 for other potential costs. All fees from BB&K and Dr. Lon House, or other contracted third vendors agreed upon by the Parties, shall be billed to the Administrator, as defined in Section 5 below, on an hourly time and materials basis with appropriate documentation, including but not limited to descriptive tasks.
4. Funding Provisions: Each Party shall pay a proportionate share of the costs, less the amount of estimated carryover from Project Addendum No. 1, based on the district’s size as measured by 2016-17 P-2 ADA in three (3) payments as specified in the table below:

| District Size | Proportionate Share | Payment 1 | Payment 2 | Payment 3 |
|---------------------------------|---------------------|--|--|--|
| Less than or equal to 2,500 ADA | \$1,264.00 | 40% Paid upon signing Project Addendum | 30% Paid on or near September 30, 2018 | 30% Paid on or near July 31, 2019 with true-up of actual costs incurred at end of Initiative |
| 2,500.01 ADA to 10,000 ADA | \$3,389.00 | | | |
| 10,000.01 ADA to 40,000 ADA | \$3,791.00 | | | |
| Greater than 40,000 ADA | \$17,691.00 | | | |

5. Identity of Administrator and Project Manager: The San Diego County Office of Education (“SDCOE”) shall be the Administrator for this Initiative, with the Assistant Superintendent Business Services acting as the designated Project Manager. The Project Manager shall work collaboratively with the Project Lead(s), as defined in Section 6 below, to coordinate efforts and resources for the Initiative and provide legal and strategic direction as described below.
6. Identity of Project Lead(s): Karl Christensen, Assistant Superintendent Business Services for Santee School District and Gina Potter, Deputy Superintendent for Lemon Grove School District shall be the Project Lead(s) for this Initiative. BB&K and Dr. House will be directed on strategy and other decisions by the Project Lead(s) who will reasonably consult in advance with

SDS participants. The Project Lead(s), in consultation with the Project Manager, shall obtain input from SDS participants as necessary for completion of the Initiative as further outlined herein or as otherwise agreed to by SDS participants by an amendment to this Project Addendum. Project Lead(s) agree(s) that it will cause SDS participants, either through BB&K or in their capacity as Project Lead(s), to timely provide draft and filed copies of any documents related to this Initiative. Parties agree that emailed .pdf copies of said documents are sufficient.

7. Process for Decision-Making, Determination of Courses of Action, and Setting Strategic Direction: The Parties shall use a process of obtaining consensus from all Parties participating in this Initiative before finalizing decisions, courses of action, and strategic direction. Consensus shall mean that each Party has the opportunity to completely express their point of view and be heard prior to finalization and that the final decision, course of action, and/or strategic direction can be supported by all Parties. In the event that consensus cannot be reached, a vote shall be taken of those present during the discussion. The decision, course of action, and/or strategic direction receiving the majority of votes shall be final.

8. Process for Providing Legal Direction: Whenever possible and practical, the Project Lead(s), in consultation with the Project Manager, will obtain consensus from SDS participants on legal strategy when requested by joint legal counsel prior to providing direction to legal counsel ("Legal Direction"). When Legal Direction needs to be provided and obtaining the consensus of SDS participants is not possible or practical, the Project Leads and Project Manager shall work together to decide on the best Legal Direction and may provide this to legal counsel without obtaining the consensus of SDS participants. In this case, a report shall be provided to all SDS participants as soon as practical on the Legal Direction provided and the reasons for such direction. In the event consensus cannot be reached between the Project Leads and Project Manager, the Legal Direction favored by two of the three participants shall control.

9. Waiver of Conflicts: All SDS participants recognize and expressly acknowledge that for purposes of this Initiative, they will be represented concurrently by BB&K through the Project Manager and Lead(s). At this time, SDCOE and all SDS participants are in the exact same legal position under the GRC and are treated exactly the same by the GRC. Accordingly, there is currently not a circumstance where the GRC does not apply equally to SDCOE and all SDS participants. While BB&K does not anticipate that these facts will change, it is possible that there could be a potential conflict amongst the SDS participants that might arise in the future given the collective nature of BB&K's representation as to this Initiative. Accordingly, execution of this Project Addendum by each SDS participant also constitutes an acknowledgment of full disclosure of such possible conflict issues by BB&K, as described below in compliance with the requirements of Section 3-310 of the California Rules of Professional Conduct and informed consent by the SDS participants.

Rule 3-310 of the California Rules of Professional Conduct provides in pertinent part:

- (C) A member [of the Bar] shall not, without the informed written consent of each client:
 - (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
 - (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

- (3) Represent a client in a matter and at the same time in a separate matter accept as a client, a person, or entity whose interest in the first matter is adverse to the client in the first matter.
- (D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.

POSSIBLE ADVERSE CONSEQUENCES

BB&K is obliged to inform each SDS participant of any actual or reasonably foreseeable adverse effects of this representation. It is possible that:

- BB&K may be tempted to favor the interests of one client over the other.
- BB&K's exercise of independent judgment to each SDS participant may be impaired or clouded by our relationship with the other SDS participants.
- BB&K may not be able to present the appropriate position, claims or defenses for a client in order to avoid taking adverse positions to the other client.
- BB&K may be restricted from forcefully advocating a client's position for fear of alienating the other client.
- BB&K may impair the position, claims or defenses of one client because of an adverse position BB&K takes for another client.
- Disputes may arise between both clients regarding tactics, objectives or resolution of this matter because of BB&K's joint representation of both clients. SDS participants acknowledge that BB&K will be directed in this matter by the Project Lead(s).
- BB&K may disclose confidential information to a client that the other client would not like revealed since BB&K cannot keep confidences between clients on the same matter.
- BB&K may be forced to withdraw from representing either or both clients because of disputes or further conflicts of interest which could increase either or both clients' attorney's fees and costs.
- There may be an appearance of impropriety in BB&K's representation of multiple clients simultaneously.
- After the matter is concluded, the clients may make conflicting demands for the client file.

BB&K will carefully monitor all such potential conflict issues and will provide the Project Lead(s) and the SDS participants with regular updates, including but not limited to, whether any potential conflicts or divergent positions are possible and/or have arisen. SDCOE and SDS participants may then seek to amend this Project Addendum as necessary.

10. **Joint Defense and Common Interest:** The SDS participants have concluded and hereby acknowledge that they share common interests in the Initiative, pursuant to the "common interest doctrine" described in *Raytheon Co. v. Superior Court* (1989) 208 Cal.App.3d 683, and cases decided thereafter, which allow parties to share privileged communications without waiving a statutory privilege, when certain conditions are fulfilled. Each SDS participant may, in its discretion, provide confidential or privileged communications, documents and/or information concerning the parties' common interests to another SDS participant pursuant to this Project

Addendum, but has no obligation under this Addendum to provide any such communications, documents, or information. The exchange of those confidential or privileged communications, documents, or information is strictly voluntary. Upon a SDS participant's transmission of such communications, documents or information to one or more other parties under this Addendum, those communications, documents or information become Joint Defense Materials subject to this Addendum's terms. For purposes of this Addendum, "Joint Defense Materials" include, but are not limited to, all communications (including communications related to the Initiative made prior to the execution of this Addendum), factual materials, mental impressions, legal analyses, theories, or strategies, memoranda, reports, notes, emails or any other communications or documents that are protected from disclosure by a privilege or similar protections and that are exchanged among the parties and their counsel to facilitate the common interest of the Parties in the Addendum. Joint Defense Materials are protected by the attorney-client privilege, attorney work product doctrine, deliberative process, official information or any other applicable privilege, immunity, or exemption from disclosure and are intended to and shall remain privileged and confidential and shall not be disclosed at any time to anyone other than: (a) attorneys of record for the SDS participants and their associates and support staff working on the Initiative, (b) inside counsel, employed by each party and working on the Initiative, (c) independent consultants and/or experts retained by the SDS participants, and (d) elected officials, directors, officers, employees and agents of the SDS participants, except pursuant to court order or the written consent of the parties. Transmittal of Joint Defense Materials between and among the Parties shall not be construed in any way as a waiver of any applicable privilege, immunity, exemption from disclosure, or similar protection.

11. Proposed Work Plan for Legal Services:

BB&K and Dr. House shall provide a work plan upon the filing of the GRC to the Project Lead(s) as soon as practical.

12. Proposed Project Schedule. BB&K and Dr. House shall provide a project schedule upon the filing of the GRC to the Project Lead(s).

13. Provisions of MOU Incorporated. Except as otherwise expressly set forth above, this Project Addendum incorporates the original Memorandum of Understanding for the Undertaking of Collective Action ("MOU") between the Parties, and all other terms and conditions of the MOU shall remain in full force and effect.

IN WITNESS WHEREOF, the Party to the MOU hereby approves this Project Addendum No. 2 as set forth below by its respective duly authorized officer.

Participant Name: _____

By: _____

Name: _____

Title: _____