

RESOLUTION APPROVING ENERGY SAVINGS CONTRACT WITH ENGIE SERVICES, U.S., INC. FOR THE PROCUREMENT AND INSTALLATION OF ENERGY CONSERVATION MEASURES AND AUTHORIZING AND APPROVING THE EQUIPMENT LEASE/PURCHASE AGREEMENT BETWEEN BANC OF AMERICA PUBLIC CAPITAL CORP AND THE SANTA CLARA COUNTY OFFICE OF EDUCATION FOR FINANCING THE PROCUREMENT, ENGINEERING AND THE INSTALLATION OF ENERGY CONSERVATION MEASURES, INCLUDING ALL EQUIPMENT, FIXTURES AND OTHER GOODS AND PROPERTY IN THE AMOUNT OF \$12,345,000.00 INCLUDING, BUT NOT LIMITED TO, THE RETROFITTING AND/OR INSTALLATION OF NEW LIGHTING AND THE INSTALLATION AND MAINTENANCE OF SOLAR PV ENERGY GENERATION SYSTEMS AT THE RIDDER PARK, SNELL, SUNOL, AND WALDEN WEST LOCATIONS PURSUANT TO THE ENERGY SAVINGS CONTRACT BETWEEN THE SANTA CLARA COUNTY OFFICE OF EDUCATION AND ENGIE SERVICES, U.S. INC. FOR THE SANTA CLARA COUNTY OFFICE OF EDUCATION SOLAR ENERGY PROJECT; AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS IN CONNECTION THEREWITH.

**SANTA CLARA COUNTY OFFICE OF EDUCATION
RESOLUTION No. 2329-3**

WHEREAS, the Santa Clara County Office of Education (“SCCOE”) is a local education agency that is a political subdivision of the State and duly organized and existing under and pursuant to the Constitution and laws of the State of California (“State” or “California”) and the Santa Clara County Superintendent of Schools is a Constitutional officer¹ authorized to enter into a lease or lease-purchase agreement for equipment or service systems with any persons, firm, corporation or public agency for the benefit of SCCOE²; and

WHEREAS, as set forth in California Public Resources Code Section 25008, the policy of the State is to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources. Similarly, SCCOE Board Policy 3000 provides that the Santa Clara County Superintendent of Schools or a designee shall develop a resource management program which includes strategies for implementing effective and sustainable resource practices exploring renewable and clean energy technologies, reducing energy and water consumption, minimizing utility costs, reducing the amount of waste of consumable materials, encouraging recycling and green procurement practices, and promoting conservation principles; and

WHEREAS, Board Policy 3000 further requires that the County Superintendent of Schools or designee shall make every effort to identify funding opportunities and cost-reducing incentive programs to help achieve its conservation and management goals and periodically report to the County Board of Education on SCCOE’s progress in meeting its conservation and management goals; and

WHEREAS, to reduce SCCOE’s environmental impact and energy costs, increase energy efficiency measures and increase sustainability in the operation of SCCOE facilities, SCCOE desires to acquire and install renewable solar energy systems and improvements at the Ridder Park, Snell, Sunol, and Walden West sites (“Improvements”) pursuant to an Energy Services Contract between SCCOE and ENGIE Services, Inc. for the implementation of solar power generation; and

¹ California Constitution Section 3, Article IX; Government Code §24000(k)

² Ed. Code § 17450

WHEREAS, in accordance with applicable law, the County Superintendent of Schools is authorized to administer the SCCOE and its budget and provide interim budget reports to the County Board of Education.³ Additionally, the Education Code vests the County Superintendent of Schools with the power to spend money from the approved budget and enter into a lease or lease-purchase agreement for equipment or service systems with any persons, firm, corporation or public agency. Accordingly, the County Superintendent of Schools is vested with the authority to authorize, approve and execute a contract for the engineering, procurement and installation of energy savings measures on behalf of SCCOE and make the statutorily required findings required as a condition precedent to entering into an energy savings contract; and

WHEREAS, Government Code Sections 4217.10 through 4217.18 authorize SCCOE's governing body, without advertising for bids, to enter into one or more energy service agreements with any person or entity, pursuant to which that person or entity will provide electrical or conservation services to SCCOE, which may comprise or include an energy conservation facility, if the anticipated cost to SCCOE for electrical energy or conservation services provided under the agreements is less than the anticipated marginal cost to SCCOE for the procurement of electrical, or other energy that would have been consumed by SCCOE in the absence of the energy service agreement; and

WHEREAS, ENGIE Services, Inc., a Delaware corporation ("ENGIE"), has delivered to staff of SCCOE a recommended energy plan to implement certain energy conservation measures by the acquisition, construction and installation of certain solar, heating, ventilating and air conditioning equipment, lighting equipment and related energy improvements to school facilities within buildings, or on land, owned by SCCOE ("Energy Conservation Measures"); and

WHEREAS, SCCOE staff reviewed the qualifications presented by ENGIE to conduct and provide an assessment of SCCOE energy usage, energy needs and opportunities to reduce energy expenses, found ENGIE's qualifications to appear bona fide and adequate; and

WHEREAS, ENGIE assessed the feasibility of various potential energy conservation measures to reduce SCCOE's energy consumption and expense and recommended specific Energy Conservation Measures based thereon ("Analysis"), upon which the County Superintendent of Schools, SCCOE administration and staff have relied upon as factually and analytically accurate; and

WHEREAS, ENGIE has offered to enter into an energy conservation services contract ("ESC"), the form of which is on file with SCCOE, and which is incorporated herein by this reference, to provide energy conservation services to implement the recommended Energy Conservation Measures, as set forth within the Analysis, for the price stated therein; and

WHEREAS, the Analysis demonstrates that the cost of the ESC to SCCOE for the electrical energy or conservation services provided thereunder is less than the anticipated marginal cost to SCCOE for electrical or other energy that would have been consumed by SCCOE in the absence of the ESC ("Savings"); and

WHEREAS, the SCCOE has been presented with an Energy Savings Contract and Exhibits thereto, (collectively, the "Energy Savings Contract") by and between ENGIE Services, Inc. and SCCOE which, among other things, provides for the engineering, procurement, construction management, installation construction, and training of Energy Conservation Measures; and

³ California Constitution Section 3, Article IX; Ed Code §§1621, 17450.

WHEREAS, SCCOE desires to finance the implementation of the Energy Conservation Measures described in the ESC, and intends that equipment installed as part of the Energy Conservation Measures will constitute personal property necessary for SCCOE to perform essential governmental functions; and

WHEREAS, in order to finance the Improvements and related costs, SCCOE proposes to optimize the availability of favorable solar credit rates, grant funding opportunities and low cost financing available through a debt obligation issued by the State of California to investors pursuant to the California Debt and Investment Advisory Commission Act⁴ whereby SCCOE will lease the Improvements from the Banc of America Public Capital Corp (the “Lessor”) according to the terms of a Lease Agreement (the “Lease Agreement”) between SCCOE as Lessee, and the Lessor; and

WHEREAS, the Analysis indicates that funds for payments due under the terms of the Energy Savings Contract and related Lease Purchase-Agreement for financing the improvements to SCCOE facilities are projected to be available from the savings, representing funds that otherwise would have been used for purchase of electrical or other energy required by SCCOE in the absence of the energy conservation services provided under the ESC; and

WHEREAS, the County Superintendent of Schools and the County Board of Education have determined that entering into the Energy Savings Contract and the related Lease-Purchase Agreement is in the best interest of SCCOE; and

WHEREAS, the County Superintendent of Schools and County Board of Education have reviewed and analyzed cost of implementation of the Energy Savings Measures proposed by ENGIE and financed by the Lease-Purchase Agreement and determined that the anticipated cost to SCCOE to implement the recommended Energy Conservation Measures will be less than the anticipated cost to SCCOE for thermal, electrical and other energy, together with anticipated operational, maintenance and other costs that would have been consumed by SCCOE in the absence of the Energy Conservation Measures in compliance with the applicable law; and

WHEREAS, pursuant to California Government Code sections 4217.12 and 4217.13, the County Superintendent of Schools and County Board of Education held a public hearing on the date hereof (November 1, 2023, a regular Board meeting date), for which not less than two weeks advance public notice was given, regarding the implementation of the Energy Conservation Measures and entering into the Energy Savings Contract and the related Lease-Purchase Agreement for financing the Energy Conservation Measures; and

WHEREAS, evidence of the provision of notice of such public hearing is on file with the Clerk of the Board of Education and incorporated herein by this reference; and

WHEREAS, this County Superintendent of Schools and County Board of Education desire to authorize, approve and execute the Energy Savings Contract as referenced herein.

NOW, THEREFORE, BE IT DETERMINED AND RESOLVED by the Santa Clara County Board of Education and the County Superintendent of Schools as follows:

⁴ Government Code §8855

SECTION 1. Recitals; Hearing. All of the recitals herein contained are true and correct and are incorporated herein by this reference. As referenced above, a full and fair hearing was conducted in accordance with law including, but not limited to, the applicable law.

SECTION 2. Energy Conservation Services Contract Findings. The County Superintendent of Schools finds that the cost of the ESC to SCCOE for the solar, electrical energy or conservation services provided thereunder and the financing of the Energy Conservation Measures is less than the anticipated marginal cost to SCCOE of the electrical, or other energy that would have been consumed by SCCOE in the absence of the ESC and that it is in the best interest of SCCOE to approve and enter into the ESC.

SECTION 3. Energy Conservation Services ESC Approval Execution and Delivery. The form of the ESC by and between SCCOE and ENGIE Services, Inc., in substantially the form presented to the County Board of Education, is hereby approved. The County Superintendent of Schools, the Assistant Superintendent - Business Services, or County Superintendent of Schools designee(s) (each an "Authorized Representative(s)"), is hereby authorized and directed, for and in the name of and on behalf of SCCOE, to execute and deliver to ENGIE Services, Inc. the ESC and related documents as necessary to carry out the ESC, subject to such minor changes thereto as such officer or person may require and approve, with the concurrence of SCCOE's legal counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 4. Determination Under CEQA. The County Superintendent of Schools hereby determines that the transactions described herein is not a "project" for purposes of the California Environmental Quality Act (CEQA), Division 13 (commencing with Section 21000) of the Public Resources Code, and authorizes and directs the execution, posting and filing of a Notice of Exemption pursuant to the provisions and requirements of CEQA by the Authorized Representatives.

BE IT FURTHER RESOLVED, BY THE Santa Clara County Board of Education and County Superintendent of Schools that:

Section 1. Approval of Equipment Lease Purchase Agreement and the Lease Financing Plan and Related Documents. The Santa Clara County Superintendent of Schools and the County Board of Education hereby approves the Lease Agreement and financing plan outlined above. Specifically, the Superintendent of Schools and County Board of Education, hereby approves each of the following lease financing documents in substantially the forms on file with SCCOE, together with any changes therein, or additions thereto deemed necessary and advisable by the Superintendent whose execution shall be conclusive evidence of such approval:

- **Lease Agreement** between SCCOE, as Lessee, and the Lessor, whereby SCCOE leases and purchases the Improvements and related equipment required for implementation of the renewable solar energy systems ("Equipment") and Energy Services Contract to be financed under the terms thereof; and
- **Equipment Schedule** included in the Lease Purchase Agreement between SCCOE, as Lessee, and the Lessor, agrees to lease the Equipment to SCCOE for twenty (20) years in consideration of the payment by SCCOE of the lease payments, subject to prepayment; provided that (i) the annual amount of the Lease Payments payable by SCCOE shall not exceed the projected annual energy savings at an (4.569%) effective annual interest rate (exclusive of any default rate or taxable rate), and (ii) the total principal amount financed under the lease shall not exceed \$12,345,000.00.

- **Escrow and Account Control Agreement** (the “Escrow Agreement”) among the Lessee, the Lessor and Wilmington Trust, National, as escrow agent (“Wilmington”), or such other banking institution as Lessor may require to serve as escrow agent.

In accordance with Education Code Section 17450, the Santa Clara County Superintendent of Schools is authorized to execute and attest the final form of each of the foregoing documents. The schedule of lease payments attached to the Lease Purchase Agreement is hereby approved, subject to adjustment by the County Superintendent of Schools but not in excess of the above limitations as to lease term, annual lease payments and total principal amount of Equipment subject to the Lease Purchase Agreement.

Section 2. Official Actions. The County Superintendent of Schools is authorized to make, execute, and deliver any and all assignments, certificates, requisitions, agreements, notices, consents, leases, tax certificates, IRSForms 8030-G, and other instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this Resolution any officer of SCCOE is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 3. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

Section 4. Attestations for Lease Purchase Agreement. The Clerk of, or Secretary to, the County Board of Education or such persons as may have been designated by the County Superintendent of Schools are hereby authorized and directed to attest the signature of the Authorized Representative(s), as may be required or appropriate in connection with the execution and delivery of the Lease Purchase Agreement.

Section 5. Attestations for ESC. The Clerk of, or Secretary to, the County Board of Education or such persons as may have been designated by the County Superintendent of Schools or the Assistant Superintendent are hereby authorized and directed to attest the signature of the Authorized Representative(s), as may be required or appropriate in connection with the execution and delivery of the ESC.

Section 6. Effect. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the County Board of Education at a meeting held on November 15, 2023, by the following vote:

AYES: President Chon, Vice President Sreekrishnan, and Trustees Berta, Lari, Mah, and Rocha

NOES: none

ABSTAIN: Trustee Di Salvo

ABSENT: none



Victoria Chon, President
Santa Clara County Board of Education



Mary Ann Dewan, Ph.D.
County Superintendent of Schools