

RESOLUTION

RESOLUTION APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN INSTALLATION AGREEMENTS, CERTAIN GUARANTEED SAVINGS AGREEMENTS FOR ENERGY SAVINGS IMPROVEMENT PROJECTS, TAXABLE QSCB EQUIPMENT LEASE-PURCHASE AGREEMENTS, ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENTS AND RELATED DOCUMENTS FOR THE LEASE PURCHASE OF CERTAIN ENERGY CONSERVATION MEASURES WITHIN THE DISTRICT WITH AMOUNTS TO BE PAID BY THE DISTRICT UNDER SUCH LEASE PURCHASE TO FINANCE SUCH MEASURES; DELEGATING THE AUTHORITY TO APPROVE CERTAIN MATTERS WITH RESPECT TO THE INSTALLATION AGREEMENTS, GUARANTEED SAVINGS AGREEMENTS FOR ENERGY SAVINGS IMPROVEMENT PROJECTS, TAXABLE QSCB LEASE-PURCHASE AGREEMENTS, AND ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENTS; AUTHORIZING THE APPOINTMENT OF ONE OR MORE ESCROW AGENTS; DELEGATING THE AUTHORITY TO APPROVE, EXECUTE AND DELIVER THE INSTALLATION AGREEMENTS, THE GUARANTEED SAVINGS AGREEMENTS FOR ENERGY SAVINGS IMPROVEMENTS PROJECTS, THE TAXABLE QSCB LEASE-PURCHASE AGREEMENTS, THE ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENTS AND RELATED DOCUMENTS; AND RATIFYING ALL ACTIONS TAKEN OR TO BE TAKEN TO FURTHER THIS RESOLUTION.

WHEREAS, the Governing Board (the "*Board*") of Tucson Unified School District No. 1 of Pima County, Arizona (the "*District*") desires to enter into certain installation agreements and guaranteed savings agreements (collectively, the "*Energy Savings Agreement*"), each with Ameresco, Inc., Climatec LLC, Honeywell International Inc., Midstate Mechanical, Inc. and/or affiliates thereof (collectively, the "*Contractors*"), pursuant to A.R.S. Section 15-213.01 and other relevant provisions of Arizona law in which the Contractors will design, install and service various energy conservation measures to reduce the District's energy cost as described in Exhibit A attached hereto (the "*Project*"), which Project shall be validated by an independent third-party licensed, registered professional engineer (the "*Third-Party Engineer*") on behalf of the District; and

WHEREAS, each Contractor will guarantee the cost savings of its respective Project through the expected life of the respective Project and the cost savings shall be validated by the Third-Party Engineer on behalf of the District; and

WHEREAS, with the assistance of Stifel, Nicolaus & Company, Incorporated ("*Stifel*"), acting as financial advisor to the District pursuant to the strategic Alliance of Volume Expenditures (SAVE) Cooperative Response Proposal #C-007-1213, the Board will solicit indications of interest and, ultimately, offers from one or more banks or financial institutions

(collectively, the "*Lessor*") to enter into one or more Taxable QSCB Lease-Purchase Agreements (collectively, the "*Lease-Purchase Agreement*") between the District and the Lessor to finance the Project, and one or more Acquisition Fund and Account Control Agreements (collectively, the "*Acquisition Fund Agreement*") between the District and a bank or trust company (collectively, the "*Escrow Agent*") to be determined by the Deputy Superintendent of Operations or the Chief Financial Officer to administer the proceeds of the Lease-Purchase Agreement; and

WHEREAS, within and by the parameters set forth in this resolution the Board shall authorize the execution and delivery of the Energy Savings Agreement, the Lease-Purchase Agreement, and the Acquisition Fund and Account Control Agreement;

WHEREAS, the District has received from the U.S. Department of the Treasury allocations in 2009 and 2010 to designate up to \$21,375,000 and \$20,018,000, respectively, of the Lease-Purchase Agreement as "qualified school construction bonds," providing for an interest subsidy to the District from the U.S. Department of the Treasury; and

NOW, THEREFORE, IT IS RESOLVED BY THE GOVERNING BOARD OF TUCSON UNIFIED SCHOOL DISTRICT NO. 1 OF PIMA COUNTY, ARIZONA, AS FOLLOWS:

Section 1. Authorization of Project. This Board finds and determines that both the lease purchase of the Project under the Energy Savings Agreement and the financing of the Project through the Lease-Purchase Agreement is in furtherance of the purposes of the District and is in the public interest and both (i) the Project shall be reviewed by, and (ii) the associated cost savings shall be verified by, the Third-Party Engineer on behalf of the District.

Section 2. Authorization of Financing. This Board hereby authorizes the District to enter into one or more Lease-Purchase Agreement(s) with the Lessor. The Lease-Purchase Agreement shall be executed and delivered in an aggregate principal amount of not to exceed \$40,000,000, shall mature within 15 years and shall bear interest at a taxable rate not to exceed 6.50%.

Section 3. Terms.

A. **Failure To Fully Expend Available Proceeds.** To the extent that less than 100% of the "available project proceeds" (as defined in the Internal Revenue Code of 1986, as amended (the "*Code*")) of the taxable portion of the Lease-Purchase Agreement is expended for qualified purposes by the close of the 3-year period beginning on the date of execution and delivery of the Lease-Purchase Agreement (or if an extension of such expenditure period has been received by the District from the Secretary of the Treasury Department, by the close of the extended period) the District shall be required to prepay the Lease-Purchase Agreement that is required under Section 54A(2)(B)(i) of the Code to maintain the Lease-Purchase Agreement's status as a "qualified school construction bond." In the event of a partial extraordinary mandatory prepayment of redemption, the prepayment of redemption shall be paid in either reverse chronological order of remaining unpaid principal installment payments or on a pro-rata basis.

Section 4. Subject to Annual Appropriation. Payments pursuant to the Lease-Purchase Agreement will not constitute a general obligation or debt of the District, the State of Arizona or any political subdivision thereof for which the District, the State of Arizona or any political subdivision thereof will be obligated to levy or pledge any form of *ad valorem* taxation; nor does the obligation to make lease payments under the Lease-Purchase Agreement constitute a general obligation or debt of the District, the State of Arizona or any political subdivision thereof within the meaning of the Constitution of the State of Arizona, statutes thereof or otherwise. The Lease-Purchase Agreement and the obligation to make lease payments are subject to the annual approval and appropriation by the Governing Board of the District and may be payable from other available funds or sources of the District upon the determination, at the time of execution and delivery of the Lease-Purchase Agreement, by the Deputy Superintendent of Operations or Chief Financial Officer of the District.

The Board hereby delegates to the Deputy Superintendent of Operations or the Chief Financial Officer of the District the authority to finalize the terms and lease payments set forth in the Lease-Purchase Agreement and make the determination that such lease payments paid by the District represent the fair rental value of such leased property.

Section 5. Use of Proceeds. The net proceeds of the Lease-Purchase Agreement, after payment of the expenses of execution and delivery, shall be held by the District or, at the discretion of the Superintendent or Deputy Superintendent of Operations or Chief Financial Officer, an Escrow Agent and used to pay the Contractor or its designee against invoices presented to the District or Escrow Agent.

Section 6. Execution of Documents.

A. **Energy Savings Agreement.** The forms of the Energy Savings Agreement as presented to this Board are hereby approved and the President or any member of this Board is hereby authorized to execute the Energy Savings Agreement on behalf of the District. The Deputy Superintendent of Operations or Chief Financial Officer of the District is authorized to complete the Energy Savings Agreement, including any attachments thereto. The execution and delivery of the Energy Savings Agreement by the President or any member of the Board shall be conclusive evidence of such completion and approval of the Energy Savings Agreement.

B. **Lease-Purchase Agreement and Acquisition Fund and Account Control Agreement.** The forms of the Lease-Purchase Agreement and Acquisition Fund and Account Control Agreement as presented to this Board are hereby approved and the President or any member of this Board is authorized to execute and deliver the Lease-Purchase Agreement and Acquisition Fund and Account Control Agreement on behalf of the District. The forms of such documents may be modified to meet the requirements and conditions of the Lessor, as approved by the Deputy Superintendent of Operations or Chief Financial Officer of the District. The Deputy Superintendent of Operations or Chief Financial Officer of the District is authorized to (i) select one or more Lessors to finance the Project based upon bids deemed most advantageous to the District, and (ii) complete the Lease-Purchase Agreement and Acquisition Fund and Account Control Agreement, including any attachments thereto. The execution and

delivery of the Lease-Purchase Agreement and Acquisition Fund and Account Control Agreement by the President or any member of the Board shall be conclusive evidence of such completion and approval of the Lease-Purchase Agreement and Acquisition Fund and Account Control Agreement.

Section 7. Resolution a Contract. This resolution shall not be repealed while the Lease-Purchase Agreement is unpaid.

Section 8. Election Under American Recovery and Reinvestment Act. All taxable portions of the Lease-Purchase Agreement are hereby qualified and sold as "qualified school construction bonds," with the federal tax subsidy paid directly to the District; and the President, any member of the Board, the Superintendent, the Deputy Superintendent of Operations or the Chief Financial Officer and all other officers and agents of the District are authorized to take any action, make any modification of the documents, enter into any agreements, make any election or certifications and pay any costs necessary to provide for, or facilitate the issue and sale of all or a portion of the Lease-Purchase Agreement in such manner, and to comply with the requirements of the Code and the terms of the Lease-Purchase Agreement and any agreement related thereto.

Section 9. Ratification of Actions. All actions of the officers and agents of the District which conform to the purposes and intent of this resolution and which further the actions contemplated by this resolution whether heretofore or hereafter taken are hereby ratified, confirmed and approved. The proper officers and agents of the District are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the District as may be necessary to carry out the terms and intent of this resolution.

Section 10. Severability. If any section, paragraph, subdivision, sentence, clause or phrase of this resolution is for any reason held to be illegal, invalid or unenforceable, such decision shall not affect the validity of the remaining portions of this resolution. The Board hereby declares that it would have adopted this resolution and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the execution and delivery of the Lease-Purchase Agreement pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this resolution may be held illegal, invalid or unenforceable.

PASSED, ADOPTED AND APPROVED by the Governing Board of Tucson Unified School District No. 1 of Pima County, Arizona, on April 29, 2014.

President, Governing Board

EXHIBIT A

[Description of Project]

(To Be Attached)