

**RESOLUTION OF THE BOARD OF EDUCATION OF THE TOWNSHIP OF UNION IN THE COUNTY OF UNION, NEW JERSEY (A) APPROVING THE ENERGY SAVINGS PLAN (ESP); (B) AUTHORIZING THE EXECUTION OF A CONTRACT WITH SCHEIDER ELECTRIC FOR THE UNDERTAKING OF THE ESP; (C) AUTHORIZING AN APPLICATION TO THE LOCAL FINANCE BOARD FOR THE FINANCING OF THE ESP AND (D) APPROVING, ON FIRST READING, AN ORDINANCE FOR THE ISSUANCE OF ENERGY SAVINGS OBLIGATION REFUNDING BONDS TO FINANCE THE ESP**

**WHEREAS**, the Board of Education of the Township of Union in the County of Union, New Jersey (the "Board" when referring to the governing body and the "School District" when referring to the territorial boundaries governed thereby) has, pursuant to N.J.S.A. 18A:18A-4.6, (the "ESP Law"), determined to undertake an energy savings plan; and

**WHEREAS**, the Board has appointed Schneider Electric ("Schneider") to develop an Energy Savings Plan (the "ESP") pursuant to the ESP Law; and

**WHEREAS**, Schneider has developed a preliminary ESP based upon a scope of projects including individual energy conservation measures ("ECM's") and including annual energy and operational savings and a proposed cash flow pro forma (the "Preliminary Plan"); and

**WHEREAS**, in accordance with the ESP Law, the Board appointed DLB Engineering to act as a "third party verifier" in order to verify the savings set forth in the ESP; and

**WHEREAS**, DLB Engineering has verified the savings set forth in the ESP; and

**WHEREAS**, the ESP, as verified, has been submitted to the New Jersey Board of Public Utilities and approval is anticipated; and

**WHEREAS**, the Board has determined that the energy savings generated from ESP will be sufficient to cover the cost of the program's ECM's set forth in the ESP, and, therefore, has determined to implement the ESP pursuant to N.J.S.A. 18A:18A-4.6 et seq. and to finance the ESP through the issuance of energy savings obligations authorized as refunding bonds pursuant to N.J.S.A. 18A:18A-4.6(c); and

**WHEREAS**, in accordance with the requirements of N.J.S.A. 18A:24-61 through 62 and N.J.S.A. 18A:18A-4.6(1)(3), the Board has determined to make application (the "Application") to the Local Finance Board within the Division of Local Government Services, New Jersey Department of Community Affairs (the "LFB") for approval to adopt an Energy Savings Obligation Refunding Bond Ordinance and to issue the Energy Savings Obligation Refunding Bonds (the "Refunding Bonds") authorized therein (collectively, the "ESIP Financing"); and

**WHEREAS**, the Board believes that:

- (a) it is in the public interest to accomplish the ESIP Financing;
- (b) the ESIP Financing is for the health, wealth, convenience or betterment of the inhabitants of the School District;

(c) the amounts to be expended for the ESIP Financing are not unreasonable or exorbitant; and

(d) the ESIP Financing is an efficient and feasible means of reducing the costs of providing services for the needs of the inhabitants of the School District and will not create an undue financial burden to be placed upon the School District.

**WHEREAS**, in order to continue to move the ESP forward, the Board seeks to (i) approve and adopt the ESP; (ii) authorize a contract with Schneider for the undertaking of the ESP; (iii) authorize an application to the Local Finance Board (the "Local Finance Board") in the Division of Local Government Services, New Jersey Department of Community Affairs for the issuance of refunding bonds to finance of the ECM's and other costs of the ESP; (iv) introduce the Refunding Bond Ordinance, attached hereto as Exhibit A and (v) authorize other actions in connection with the undertaking of the ESP.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF EDUCATION OF THE TOWNSHIP OF UNION IN THE COUNTY OF UNION, NEW JERSEY AS FOLLOWS:**

**SECTION 1.** The Board hereby approves and adopts the ESP, contingent upon the approval of the New Jersey Board of Public Utilities. The ESP, as approved by the Board shall be posted on the School District's website in accordance with law.

**SECTION 2.** Subject to the next succeeding sentence, the Board hereby awards a contract to Schneider Electric ("Schneider") to provide and install, in accordance with the ESP Law, the ECM's set forth in the approved ESP in an amount not to exceed \$19,500,361. Such award is only effective and is contingent upon the Board's receiving the approval of the Office of the State Comptroller with respect to such contract. Subject to the approval of the Office of the State Comptroller, the Board additionally authorizes the execution and delivery of a contract with Schneider with respect to same and with respect to Schneider's proposed guaranty of energy savings, upon review and advice of counsel.

**SECTION 3.** The preparation of the Application to the Local Finance Board and the filing of same with the Local Finance Board are hereby approved, along with such changes and alterations as may be advised by the Board's Bond Counsel, Wilentz, Goldman & Spitzer, P.A. (the "Bond Counsel") and other officials, officers and professionals of the Board, including but not limited to, the Board's Municipal Advisor, Phoenix Advisors, LLC (the "Municipal Advisor") and the Business Administrator, and each are hereby authorized and directed to submit such Application and to represent the Board in matters pertaining thereto. The submission of the Application to the Local Finance Board is hereby approved. The Local Finance Board is hereby respectfully requested to consider such Application and to record its findings, recommendations and/or approvals as provided by the applicable New Jersey Statutes, specifically N.J.S.A. 18A:24-61 through 62 and N.J.S.A. 18A:18A-4.6(1)(3).

**SECTION 4.** The Refunding Bond Ordinance attached hereto as Exhibit A is hereby approved. Bond Counsel is hereby authorized and directed to publish the required notice of public hearing for the Refunding Bond Ordinance in the form and at the time required by N.J.S.A. 18A:24-61.4

**SECTION 5.** This resolution shall take effect immediately.

The foregoing resolution was adopted by the following roll call vote on August 18, 2020.

**Recorded Vote**

**AYE:**

**NAY:**

**ABSTAIN:**

**ABSENT:**

EXHIBIT A

**ENERGY SAVINGS OBLIGATION REFUNDING BOND ORDINANCE OF THE BOARD OF EDUCATION OF THE TOWNSHIP OF UNION IN THE COUNTY OF UNION, NEW JERSEY, PROVIDING FOR ENERGY CONSERVATION IMPROVEMENTS AT SCHOOL DISTRICT FACILITIES, APPROPRIATING NOT TO EXCEED \$24,500,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$24,500,000 ENERGY SAVINGS OBLIGATION REFUNDING NOTES AND BONDS TO FINANCE SUCH IMPROVEMENTS**

**WHEREAS**, the Board of Education of the Township of Union in the County of Union, New Jersey (the "Board" when referring to the governing body and the "School District" when referring to the territorial boundaries governed thereby) has, pursuant to N.J.S.A. 18A:18A-4.6, (the "ESP Law"), determined to undertake an energy savings plan; and

**WHEREAS**, the Board has appointed Schneider Electric ("Schneider") to develop an Energy Savings Plan (the "ESP") pursuant to the ESP Law; and

**WHEREAS**, Schneider has developed a preliminary ESP based upon a scope of projects including individual energy conservation measures ("ECM's") and including annual energy and operational savings and a proposed cash flow pro forma (the "Preliminary Plan"); and

**WHEREAS**, in accordance with the ESP Law, the Board appointed DLB Engineering to act as a "third party verifier" in order to verify the savings set forth in the ESP; and

**WHEREAS**, DLB Engineering has verified the savings set forth in the ESP; and

**WHEREAS**, the ESP, as verified, has been submitted to and approved by the New Jersey Board of Public Utilities; and

**WHEREAS**, the Board has determined that the energy savings generated from ESP will be sufficient to cover the cost of the program's ECM's set forth in the ESP, and, therefore, has determined to implement the ESP pursuant to N.J.S.A. 18A:18A-4.6 et seq. and to finance the ESP through the issuance of energy savings obligations authorized as refunding bonds pursuant to N.J.S.A. 18A:18A-4.6(c); and

**WHEREAS**, the Board now desires to adopt and enact an Energy Savings Obligation Refunding Bond Ordinance (the "Refunding Bond Ordinance") authorizing the issuance of Energy Savings Obligation Refunding Bonds (the "Refunding Bonds") in an aggregate principal amount not to exceed \$24,500,000, to finance the ECMs; and

**WHEREAS**, in accordance with the requirements of N.J.S.A. 18A:24-61 through 62 and N.J.S.A. 18A:18A-4.6(1)(3), the Board has made the required application to the Local

Finance Board within the Division of Local Government Services, New Jersey Department of Community Affairs (the "Local Finance Board") for approval to adopt this Energy Savings Obligation Refunding Bond Ordinance and to issue the Refunding Bonds authorized herein.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF EDUCATION OF THE TOWNSHIP OF UNION IN THE COUNTY OF UNION, NEW JERSEY** (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

**Section 1.** The Board is hereby authorized to undertake the ECMs, all as set forth in the ESP.

**Section 2.** In order to finance the cost of the ECMs described in Section 1 hereof, negotiable school energy savings obligation refunding bonds (the "Refunding Bonds") are hereby authorized to be issued in the aggregate principal amount not to exceed \$24,500,000 pursuant to N.J.S.A. 18A:18A-4.6(1)(c)(3) and N.J.S.A. 18A:24-61.1 et seq.

**Section 3.** An aggregate amount not exceeding \$250,000 for items of expense listed in and permitted under N.J.S.A. 18A:24-61.4 has been included in the aggregate principal amount of Refunding Bonds authorized herein.

**Section 4.** A supplemental debt statement of the Township of Union has been prepared and filed in the offices of the Township Clerk and the Business Administrator/Board Secretary, and in the office of the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs as required by law. Such statement shows that the gross debt of the Township as defined in the Local Bond Law and the school debt of the Board is increased by the amounts of the Refunding Bond authorization set forth herein.

**Section 5.** A certified copy of this Energy Savings Obligation Refunding Bond Ordinance, as adopted on first reading, has been filed with the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs prior to final adoption, together with a complete statement in the form prescribed by the Director and signed by the Business Administrator/Board Secretary or the Board President of the School District as to the indebtedness to be financed by the issuance of the obligations authorized herein.

**Section 6.** The Board President, the Superintendent, the Business Administrator/Board Secretary and other appropriate representatives of the School District are hereby authorized to prepare such documents, to publish such notices and to take such other actions as are necessary or desirable to enable the School District to prepare for the sale and the issuance of the Refunding Bonds authorized herein.

**Section 7.** The Board reasonably expects to reimburse any expenditures toward the costs of the improvements or purposes described in Section 1 hereof and paid prior to the issuance of any bonds or notes authorized by this Refunding Bond Ordinance with the proceeds of such bonds or notes. This Section 7 is intended to be and hereby is a

declaration of the Board's official intent to reimburse any expenditures toward the costs of the improvements or purposes described in Section 1 hereof to be incurred and paid prior to the issuance of bonds or notes authorized herein in accordance with Treasury Regulations §1.150-2. No reimbursement allocation will employ an "abusive arbitrage device" under Treasury Regulations §1.148-10 to avoid the arbitrage restrictions or to avoid the restrictions under Sections 142 through 147, inclusive, of the Internal Revenue Code of 1986, as amended (the "Code"). The proceeds of any bonds or notes authorized herein used to reimburse the Board for costs of the improvements or purposes described in Section 1 hereof, or funds corresponding to such amounts, will not be used in a manner that results in the creation of "replacement proceeds", including "sinking funds", "pledged funds" or funds subject to a "negative pledge" (as such terms are defined in Treasury Regulations §1.148-1), of any bonds or notes authorized herein or another issue of debt obligations of the Board other than amounts deposited into a "bona fide debt service fund" (as defined in Treasury Regulations §1.148-1). The bonds or notes authorized herein to reimburse the Board for any expenditures toward the costs of the improvements or purposes described in Section 1 hereof will be issued in an amount not to exceed \$24,500,000. The costs to be reimbursed with the proceeds of the bonds or notes authorized herein will be "capital expenditures" in accordance with the meaning of section 150 of the Code. All reimbursement allocations will occur not later than eighteen (18) months after the later of (i) the date the expenditure from a source other than any bonds or notes authorized herein is paid, or (ii) the date the improvements or purposes described in Section 1 hereof is "placed in service" (within the meaning of Treasury Regulations §1.150-2) or abandoned, but in no event more than three (3) years after the expenditure is paid.

**Section 8.** The Board hereby covenants that it will comply with any conditions subsequently imposed by the Internal Revenue Code of 1986, as amended (the "Code"), in order to preserve the exemption from taxation of interest on the Refunding Bonds, including, if necessary, the requirement to rebate all net investment earnings on the gross proceeds above the yield on the Refunding Bonds.

**Section 9.** This Energy Savings Obligation Refunding Bond Ordinance shall take effect immediately after final adoption and endorsement of the consent of the Local Finance Board.