



PASADENA UNIFIED SCHOOL DISTRICT

NOTICE OF PUBLIC HEARING

May 10, 2018

**PASADENA UNIFIED SCHOOL DISTRICT
EDUCATION CENTER – BOARD ROOM 236
351 S. Hudson Avenue
Pasadena, California 91109**

THE GOVERNING BOARD OF THE PASADENA UNIFIED SCHOOL DISTRICT WILL HOLD A PUBLIC HEARING AND COMMENT REGARDING THE APPROVAL AND ADOPTION OF RESOLUTION NO 2453 AUTHORIZING SCHNEIDER ELECTRIC UNDER GOVERNMENT CODE SECTION 4217 ET SEQ, TO PERFORM ENERGY CONSERVATION MEASURES AT NORMA COOMBS ELEMENTARY SCHOOL THAT WILL INCLUDE CENTRAL PLANT UPGRADES.

Dr. Brian McDonald
Superintendent
Pasadena Unified School District

**BOARD OF EDUCATION
PASADENA UNIFIED SCHOOL DISTRICT
PASADENA, CALIFORNIA**

Topic: APPROVAL TO ACCEPT RESOLUTION NO. 2453 AND ASSIGN THE NORMA COOMBS CHILLER REPLACEMENT PROJECT TO SCHNEIDER ELECTRIC TO PERFORM ENERGY SERVICE UPGRADES AT NORMA COOMBS ELEMENTARY SCHOOL'S CENTRAL PLANT.

RECOMMENDATION: The Governing Board of the Pasadena Unified School District approves Resolution No. 2453 and accepts the contract with Schneider Electric to perform energy service upgrades at Norma Coombs Elementary School's Cooling/Heating Central Plant.

District Priority/Strategy: To ensure a clean, safe, and orderly environment that supports learning

I. BACKGROUND

The existing cooling/heating central plant at Norma Coombs Elementary is reaching the end of its operational/shelf life and is very inefficient and has sections that are in irreparable stages. Under Section 4217 of the California Government Code, the Board of Trustees of District (the "Governing Board") will hold a public hearing at a special board meeting on May 10, 2018 of which a minimum of two weeks advance public notice was given regarding as required by Section 4217 in the California Government Code.

On November 17, 2016 the board approved Board Report No. 1117-F for the proposal of three companies for Turn-Key Design/Build Energy Conservation and Renewable Energy Consultant Services. Schneider Electric was one of the firms selected and is able to enter into an energy services contract to implement the replacement and upgrades to the Norma Coombs Chiller Plant as needed under the California Government Code 4217.

The Governing Board, by adopting Resolution No. 2453 at its special board meeting on May 10, 2018 as required by Section 4217 of the California Government Code. It is in the best interest of the district to approve and execute the attached contract between Schneider Electric and the District as a Designed-Build: Guaranteed-Maximum-Price (GMP) project for the replacement and upgrade the Norma Coombs Chiller Project.

II. STAFF ANALYSIS

Staff recommends approval of this project as a Design-build: Guaranteed-Maximum-Price (GMP) as a method of construction delivery. It meets the entire requirement under Section 4217 of the California Government Code and as a GMP project there will be no change orders.

Attachments: Schneider Energy Services Contract
Resolution No. 2453
Section 4217 of the California Government Code

III. FISCAL IMPACT

Funds in the amount not to exceed \$1,259,687.00 are available and budgeted for in the Norma Coombs Elementary Measure TT School account.

Pasadena Unified School District
Board of Education Agenda: May 10, 2018
Prepared by: Nelson Cayabyab, Chief Facilities Officer

Funding Code: 21.1-95146.0-00000-85000-6275-0600000

Originator: Nelson Cayabyab, Chief Facilities Officer



ENERGY SERVICES CONTRACT

This is an energy services contract (Contract”) by and between Schneider Electric Buildings Americas, Inc., a Delaware corporation (“ESCO”) and Pasadena Unified School District, a public school district organized and existing under the laws of the State of California (“Customer”), dated May 10, 2018 (the “Date of Commencement”) whereby ESCO agrees to provide and perform the energy conservation measures (“ECMs”) set forth in the attached schedules and exhibit(s) which are listed below and incorporated fully herein, subject to the terms and conditions set forth herein.

Schedule A: Scope of Work

Schedule B: Projected Savings

Schedule C: Methodology and Baseline

Form 1: CERTIFICATION REGARDING CONTRACTOR REGISTRATION

**Pasadena Unified School
District**

**Schneider Electric Buildings
Americas, Inc.**

By _____ (Signature)	By _____ (Signature)
Print Name _____	Print Name _____
Title _____	Title _____

RECITALS

- A. WHEREAS, pursuant to Section 4217 of the California Government Code, the Board of Trustees of District (the "Governing Board") held a public hearing at a regularly scheduled public hearing on May 10, 2018 of which a minimum of two weeks advance public notice was given regarding this Agreement and its subject matter; and
- B. WHEREAS, based upon the foregoing findings and public hearing, the Governing Board has determined that entering into an energy services contract with ESCO to implement the ECM recommendations (the "Project") is in the best interests of the Customer, provides the best-value to the District, and pursuant to California Government Code Section 4217 authorizes the Customer to enter into this Agreement with ESCO to implement the measures recommended in the ECMs; and
- C. WHEREAS, the Governing Board, by adoption of Resolution #2453 at its meeting of May 10, 2018, approved this Agreement by and between ESCO and the Customer and authorized the Governing Board to execute this Agreement on behalf of the Customer.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained in this Contract, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

DEFINITIONS

1. "Actual Savings" is defined as the sum of the total savings realized using the procedures defined in Schedule C plus all adjustments.
2. "Annual Projected Savings" is the amount of energy savings projected by ESCO for a twelve (12) month period beginning on the Projected Savings Commencement Date and any subsequent twelve (12) month anniversary thereafter.
3. "Change Order" is defined as a written change in the Project executed by both parties.
4. "Contract Documents" consist of this Contract with the terms and conditions set forth herein, the Schedules identified above, other documents listed in the Contract and any mutually agreed upon written modification issued after execution of this Contract. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by ESCO. The Contract Documents are correlative and complementary, and ESCO'S performance shall be required only to the extent consistent with the Contract Documents.
5. "Date of Commencement" is the date provided on the first page of this contract.
6. "Day" as used herein shall mean calendar day unless otherwise specifically designated.
7. "Excess Savings" is the amount of Actual Savings in excess of the Projected Savings to date, including any savings achieved during construction.
8. "Projected Savings" is the sum of the projected annual savings for each year of the term as set forth in Schedule B unless terminated earlier in accordance with the Contract Documents.
9. "Projected Savings Commencement Date" means the first day of the first utility billing period following the month in which ESCO delivers to Customer the project warranty letter, which designates when the project goes into the warranty period.
10. "Project" refers to Work, as set forth in Schedule A: Scope of Work, done on Customer's facilities.
11. "Substantial Completion" refers to and shall mean the date the individual scopes of work are sufficiently implemented in accordance with the Contract Documents that Customer may utilize the Project for the use for which it is intended, and is fully complete except for minor items, adjustments and/or corrections.
12. "Warranty Period" is as defined in Article 4.3.
13. "Work" means the services required by the Contract Documents, and includes all labor, materials, equipment and services provided or to be provided by ESCO to fulfill ESCO'S obligations. The Work may constitute the whole or a part of the Project.

TERMS AND CONDITIONS OF CONTRACT

ARTICLE 1 – DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

1.1 ESCO projects it will achieve Substantial Completion of the Work within 365 days from Date of Commencement (the “Contract Time”), subject to adjustments of this Contract Time as provided in the Contract Documents.

ARTICLE 2 – CONTRACT SUM AND PAYMENTS

2.1 The total of all Contract payments for the Work shall be **\$1,259,687** (the “Contract Sum”). Construction progress payments (“Progress Payments”) shall be made to ESCO monthly based on the percentage completion of items delineated on a “Schedule of Values” completed during the prior month. The Schedule of Values will be developed by ESCO and provided to Customer subject to Customer’s approval at the beginning of Project implementation. The Schedule of Values will be based upon the Contract Sum less the project mobilization payment.

2.2 ESCO shall submit “Payment Request Forms” and supporting documentation to Customer and Progress Payments shall be made to ESCO on a monthly basis during construction. Customer shall promptly forward payment to ESCO in an amount equal to the value of services rendered since the last interim payment as shown on the Schedule of Values provided during installation. Customer’s Progress Payments shall be subject to retention withheld equal to ten percent (10%) of each Progress Payment (“Retention”). Retention withheld by the Customer shall be disbursed to ESCO as part of the Final Payment due to ESCO.

2.3 If any payment is over sixty (60) days late from the date the District receives the invoice, Customer shall pay to ESCO a 1% late penalty per month and ESCO reserves the right to terminate this Contract due to non-payment upon seven (7) days prior written notice to Customer. Customer shall not be subject to any late payment penalty for an invoice if the District has a good faith dispute about the invoice, including amount charged, or the services rendered.

2.4 Within ten (10) days of Commencement, Customer shall make a 10% Project Mobilization payment to ESCO. Remaining Project costs and invoicing will be in accordance with Article 2.

2.5 Payments may be withheld or reduced on account of (1) Defective Work (as defined in Article 3.2) not remedied, (2) claims filed by third parties, (3) failure of ESCO to make payments properly to the “Subcontractor(s)” or for labor, materials or equipment, (4) repeated failure to carry out the Work in accordance with the Contract Documents, or (5) rejection of all or a portion of the Plan by the California Energy Commission (“CEC”).

2.6 Final Payment shall not become due until: (1) 30 days after acceptance by the Board and filing of the Notice of Completion with the County Recorder’s Office; and (2) ESCO has delivered to Customer a complete release of all liens arising out of this Contract covering all labor, materials, and equipment for which a lien could be filed, or a bond satisfactory to Customer to indemnify Customer against such lien.

2.7 The making of Final Payment shall constitute a waiver of claims by Customer except those arising from (1) liens, claims, security interests or encumbrances arising out of the Contract and which are unsettled, (2) failure of the Work to comply with the requirements of the Contract Documents, or (3) terms of special warranties required by the Contract Documents.

ARTICLE 3 – CUSTOMER

3.1 Except for local permits and fees, which are the responsibility of ESCO under the Contract Documents, Customer shall secure and pay for necessary approvals, easements, assessments and

charges required for the use or occupancy of permanent structures or permanent changes in facilities. In the event that any of the Work requires DSA approval, the Customer will be responsible for submission of applications and any fees associated with DSA review and permitting.

3.2 If within the Warranty Period, ESCO fails to correct Work that is not in material accordance with the requirements of the Contract Documents ("Defective Work") or repeatedly fails to carry out the Work in accordance with the Contract Documents, and if ESCO does not correct or diligently commence to correct such failure within the notice period provided in this section 3.2, Customer, upon seven (7) days prior written notice to ESCO, may order ESCO to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, the right of Customer to stop the Work shall not give rise to a duty on the part of Customer to exercise this right for the benefit of ESCO or any other person or entity.

3.3 Customer agrees to repair or replace as necessary any defective existing equipment that is intended to be reused.

3.4 Information under Customer's control shall be furnished by Customer with reasonable promptness as requested by ESCO.

3.5 Customer shall notify ESCO in writing of any or all uses or restrictions in usage of all areas of Customer's facility.

3.6 The foregoing are in addition to any other duties and responsibilities of Customer set forth herein or in any other Contract Documents.

3.7 Contractor acknowledges that this Contract, once fully executed and approved by the Customer's Board of Trustees, is public information, subject to release in response to public information requests under California Government Code § 6250 et seq. (Public Records Act), excluding material that is marked as "proprietary." Customer shall use reasonable efforts to prevent or limit disclosure of proprietary or confidential information.

ARTICLE 4 – ESCO

4.1 ESCO shall supervise and direct the Work, using ESCO's skill and attention. ESCO shall be solely responsible for and have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters. ESCO shall maintain accurate records of the Project and shall make those records available for inspection by Customer and other appropriate agencies, during regular business hours and upon reasonable notice to ESCO.

4.2 Unless otherwise provided in the Contract Documents, ESCO shall provide and pay for labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Work.

4.3 ESCO warrants to Customer for a period of one (1) year from the date of Substantial Completion that the materials and equipment manufactured by ESCO will be of good quality and new unless the Contract Documents require or permit otherwise, and further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. ESCO'S warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by or for ESCO, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. ESCO shall repair or replace defective material or equipment and re-perform Work to correct any defect within the Warranty Period. ESCO does not warrant products not manufactured by ESCO, but it will pass on to Customer any manufacturer's warranty to the extent permitted. THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF

MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OR TRADE), AND ESCO WILL NOT BE RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF CUSTOMER. ESCO'S RESPONSIBILITY IN WARRANTY OR CONTRACT SHALL NOT EXCEED THE CONTRACT PRICE PAID FOR THE SPECIFIC PRODUCT OR SERVICE THAT GIVES RISE TO THE CLAIM EXCLUDING THIRD PARTY CLAIMS FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE OR AS MAY BE REQUIRED BY LAW.

4.4 Unless otherwise provided in the Contract Documents, ESCO shall pay sales, consumer, use, and other similar taxes which are legally enacted when bids are received or negotiations concluded, whether or not effective or merely scheduled to go into effect, and shall secure and pay for the building permit and other permits, licenses and inspections necessary for proper execution and completion of the Work.

4.5 ESCO shall comply with and give notices, required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work..

4.6 ESCO shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, ESCO shall remove from and about Project waste materials, rubbish, ESCO'S tools, equipment, machinery and surplus material.

4.7 ESCO shall provide Customer access to the Work in preparation and progress wherever located.

4.8 ESCO shall pay all royalties and license fees, shall defend suits or claims for infringement or patent rights, and shall hold Customer harmless from loss on account thereof.

4.9 Except to the extent of the negligence or willful misconduct of Customer, or its agents, representatives, employees, officers, directors or assigns, ESCO shall indemnify and hold harmless Customer, and agents and employees thereof from and against all third party claims, damages, losses and expenses, including, but not limited to, reasonable attorney's fees, arising out of or resulting from performance of the Work provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused in whole or in part by negligent acts or omissions of ESCO, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

4.10 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, ESCO SHALL NOT BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER. The remedies of Customer set forth herein are exclusive where so stated and the total cumulative liability of ESCO with respect to this Contract or anything done in connection therewith, such as the use of any product covered by or furnished under the Contract, whether in contract, in tort (including negligence or strict liability) or otherwise, shall not exceed the contract price for the specific product, equipment, material or service work performed that gives rise to the claim, excluding third party claims for personal injury, death or property damage or as may be required by law.

ARTICLE 5 – DISPUTE RESOLUTION

5.1 To the extent allowed by applicable law, any controversy or claim arising out of or relating to this Contract, or Contract Documents, or any breach thereof, shall be settled by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

5.2 The arbitration proceeding location shall be in the county in which the Project is located.

ARTICLE 6 – SUBCONTRACTS

6.1 A Subcontractor is a person or entity who has been hired by ESCO to perform a portion of the Work at the site.

6.2 Unless otherwise stated in the Contract Documents or the bidding requirements, ESCO shall, prior to the start of Work, furnish in writing to Customer the names, licenses, addresses and contact information of the Subcontractors to whom ESCO plans to award Work. Contracts between ESCO and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to ESCO by the terms of the Contract Documents, and to assume all the obligations and responsibilities which ESCO, by the Contract Documents, assumes toward Customer, and (2) to allow the Subcontractor the benefit of all rights, remedies and redress afforded to ESCO by these Contract Documents.

6.3 ESCO shall select its Subcontractors by a competitive process of its own choosing, which may include evaluation by the "best value" criteria defined in the Public Contract Code Section 20133(c)(1) as a value determined by objective criteria related to price, features, functions, and life-cycles costs.

ARTICLE 7 – CHANGES IN THE WORK

7.1 Customer may request changes in Work consisting of additions, deletions or modifications, whereby, the Contract Sum and Contract Time shall be adjusted accordingly. Such changes in the Work shall be authorized by written Change Order that shall be mutually agreed to and signed by Customer and ESCO. The parties shall negotiate in good faith and use their best efforts to execute any Change Order, and any Change Order must be fully executed in writing by Customer and ESCO prior to any actual changes being implemented.

7.2 Notwithstanding anything to the contrary contained in the Contract Documents, changes to the Contract Sum and Contract Time shall be changed only by Change Order.

7.3 The cost or credit to Customer from a change in the Work shall be determined by mutual agreement and, in the absence of a mutual agreement being reached within a reasonable amount of time after the request for such Change Order was made, the cost or credit to Customer shall be decided by the dispute resolution process as provided in the Contract Documents.

7.4 In the event of any suspension or delay due to the acts or omissions of Customer or Customer directives to stop Work for any reason other than suspension or delay due to the acts and/or omissions of ESCO, the Contract Time for Substantial Completion shall be extended to reflect such period of interruption and the Contract Sum shall be equitably adjusted to recover ESCO'S costs of demobilization, delay and remobilization related to such suspension or delay. ESCO agrees it will cooperate with Customer and mitigate such costs to the extent and efforts commercially reasonable. If such suspension or delay continues for more than ninety (90) consecutive days, through no act or fault of ESCO, ESCO may terminate this Contract and recover from Customer payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination and damages.

ARTICLE 8 – TIME

8.1 The date of Substantial Completion is the date certified by ESCO in accordance with Article 9.3.

8.2 If ESCO is delayed at any time in progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, which are beyond the control of ESCO, then the parties hereto agree to execute a Change Order allowing for a mutually agreeable extension of time for performance of ESCO'S Work to cover such delay.

ARTICLE 9 – PAYMENTS AND COMPLETION

9.1 Payments shall be made as provided in Article 2 of the Contract.

9.2 Payments may be withheld on account of (1) Defective Work not remedied, (2) claims filed by third parties, (3) failure of ESCO to make payments properly to the Subcontractors or for labor, materials or equipment, (4) repeated failure to carry out the Work in accordance with the Contract Documents, or (5) rejection of all or a portion of the Plan by the Energy Commission.

9.3 Upon Substantial Completion, ESCO will issue a certificate of Substantial Completion to Customer.

9.4 Final payment shall not become due until (1) 30 days after acceptance by the Board and filing of the Notice of Completion with the County Recorder's Office; and (2) ESCO has delivered to Customer a complete release of all liens arising out of this Contract covering all labor, materials, and equipment for which a lien could be filed, or a bond satisfactory to Customer to indemnify Customer against such lien.

9.5 The making of final payment shall constitute a waiver of claims by Customer except those arising from (1) liens, claims, security interests or encumbrances arising out of the Contract and which are unsettled, (2) failure of the Work to comply with the requirements of the Contract Documents, or (3) terms of special warranties required by the Contract Documents.

ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY

10.1 ESCO shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. ESCO shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby, (2) the Work and materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto.

10.2 ESCO shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss.

10.3 The scope of work or service to be performed by ESCO pursuant to this Contract, and the compensation to be paid to ESCO hereunder for Work or services performed, expressly exclude any Work or service of any nature associated or connected with the identification, abatement, cleanup, control or removal of environmentally hazardous materials beyond what is specifically defined and identified in Schedule A of this Contract. "Hazardous Materials" includes, but is not limited to, asbestos and PCBs discovered in or on the premises. Customer agrees that all duties and obligations in connection with any Hazardous Materials already located in or on the premises, other than those defined in Schedule A, are strictly the responsibility of Customer. Customer warrants and represents Customer has not received notice of any violation of the Hazardous Materials laws in or on the premises which will affect, be affected by, come in contact with, or otherwise impact upon or interfere with the Work to be performed by ESCO pursuant to this Contract.

10.4 Should ESCO become aware of or suspect the presence of Hazardous Materials beyond those to be addressed in Schedule A during performance of its Work under this Contract, ESCO will be authorized to cease Work in the affected area immediately, and will promptly notify Customer of the conditions discovered. Should ESCO stop Work because of the discovery or suspicion of hazardous materials, the time for performance of ESCO'S Work or service will be extended to cover the period required for abatement, cleanup, or removal of the Hazardous Materials. ESCO will not be held responsible for any claims, damages, costs, or expenses of any kind associated with the period during which ESCO has stopped Work as a result of Hazardous Materials. If appropriate, ESCO will be entitled to an equitable adjustment of the Contract Sum for any increased costs or other charges incurred by ESCO in connection with the existence of its rights under this paragraph.

10.5 Customer will be responsible for taking all necessary steps to correct, abate, clean up, or control Hazardous Materials not addressed by ESCO in Schedule A in accordance with all applicable statutes

and regulations. Customer specifically agrees, to the extent allowed by state law, to indemnify and to hold ESCO, its officers, agents and employees harmless from and against any and all claims, demands, damages, or causes of action in any way arising out of the release of Hazardous Materials into the air, soil, or any water system or water course, or any actions taken in connection with same, or any failure to act.

ARTICLE 11 – INSURANCE AND BONDS

11.1 ESCO shall maintain adequate levels and types of insurance coverage appropriate to its business and profession and as may be required by applicable law and the Contract Documents. Such insurance shall be in companies authorized to do business in the jurisdiction in which the Project is located with an A.M. Best's rating of at least A- VII and as a minimum shall include Workers' Compensation and Employer's Liability at statutory limits, Automobile Liability covering all owned, hired and other non-owned vehicles and Commercial General Liability covering public liability, property damage and completed operations with limits not less than \$2,000,000 per occurrence. Certificates of such insurance shall be provided to Customer prior to commencement of the Work.

11.2 Within ten (10) days following approval of the Contract, ESCO shall provide payment and performance bonds for 100% of the Contract Sum to secure the faithful performance of the Work, compliance with the terms of this Contract and to insure ESCO'S payment obligations to its Subcontractors and suppliers related to the Work. Notwithstanding any provision to the contrary herein, any payment and performance bonds associated with this Contract guarantee only the performance of the installation portion of the Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, (2) any support or maintenance service agreement, or (3) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of the Contract.

ARTICLE 12 – TERMINATION OF THE CONTRACT

12.1 If Customer (1) fails to make payments to ESCO for the Work as required in this Contract, through no fault of ESCO, or (2) fails to fulfill any of its other obligations or responsibilities under the Contract Documents, ESCO may, after delivery of written notice and providing Customer fourteen (14) business days to cure , terminate the Contract and recover from Customer payment for (i) all Work up to and including the date of termination completed in accordance with the Construction Documents and free from defects and (ii) for proven loss with respect to materials, equipment, tools, and machinery, including reasonable overhead and profit and the costs ESCO actually incurs in cancelling subcontracts or supply contracts entered into up to and including the date of termination.

12.2 If ESCO breaches a material provision of this Contract, Customer, after delivery of written notice and providing ESCO fourteen (14) days to cure such breach, may make good such deficiencies or repairs or replacements itself at the expense of ESCO, who will either (i) have the cost of such deficiencies or repairs or replacements deducted from payment then or thereafter due ESCO or (ii) , if no payments are due to ESCO, will pay the cost of such deficiencies or repairs or replacements to Customer upon demand. If Customer chooses not to make such repairs or replacements, it may terminate the Contract.

12.3 Any remedies provided for in this Article 12, shall not be exclusive of any additional remedies available to a party pursuant to this Contract, in equity or in the law.

ARTICLE 13 – OTHER CONDITIONS OR PROVISIONS

13.1 If any provision of this Contract shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

13.2 Nothing herein shall be deemed to establish a relationship of principal and agent between ESCO and Customer, or any of their respective agents or employees, and this Contract and the Contract

Documents may not be construed as creating any form of legal association or arrangement that would impose liability upon one party for the act or failure to act of the other party.

13.3 This Contract shall be governed by the laws of the state where the Project is located.

13.4 As between Customer and ESCO, any applicable statute of limitation shall commence to run and any alleged cause of action shall be deemed to have accrued (1) not later than the date of Substantial Completion for acts or failures to act occurring prior to the relevant date of Substantial Completion, or (2) not later than the date of the relevant act or failure to act by either party for acts or failures to act occurring after the date of Substantial Completion.

13.5 ESCO agrees to complete and submit the following documents, as required by Customer upon receipt of a NOTICE TO PROCEED: Prevailing Wage Certification, Workers' Compensation Certification, Fingerprinting/Criminal Background Investigation Certification, Drug-Free Workplace / Tobacco-Free Environment Certification, Insurance Certificates and Endorsements.

13.6 This Contract, along with the Master Contract and Contract Documents, sets forth the entire understanding between the parties and supersedes all prior oral or written understandings relating to the subject matter herein. This Contract may not be altered or modified except by a written instrument signed by a duly authorized representative of each party.

13.7 On and after April 1, 2015, no contractor or subcontractor may be awarded a contract for work on a public works project, or may perform any work on a public works project, unless the contractor or subcontractor is currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5. It is not a violation of Labor Code Section 1725.5 for an unregistered contractor to submit a bid authorized by Business and Professions Code Section 7029.1 or Public Contract Code Section 20103.5, if the contractor is registered at the time the contract is awarded.

13.8 To the extent Labor Code Section 1725.5 is applicable to the Contract, ESCO shall be responsible for ensuring that it and all subcontractors are currently and properly registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5. Prior to commencing the Work, ESCO must complete, execute, and submit to the District the "Certification Regarding Contractor Registration" form included in the Required Contract Forms. Notwithstanding anything to the contrary, if at any time during the performance of the Work, ESCO or any of its subcontractors is not duly registered pursuant to Labor Code Section 1725.5 (including, without limitation, if the registration expires or the DIR revokes the registration), the District in its sole discretion may cancel the Contract and/or replace the ESCO or subcontractor with an ESCO or subcontractor that is duly registered pursuant to Labor Code Section 1725.5.

SCHEDULE A: SCOPE OF WORK

Customer hereby acknowledges and agrees that the scope of work shall be limited to, and ESCO shall only perform the following:

ECM 1 – REPLACE EXISTING CHILLERS

This scope will replace the two existing chillers at Norma Coombs Elementary with two Multistack MagLev Centrifugal Chillers.

The scope of work is based upon plans provided M0.01, M1.00, M1.01, M2.01, M3.01, M3.02, M3.03, M4.01, M4.02, E0.01, E0.02, E0.03, E0.04, E1.01, E1.02, E2.01, E2.02, E2.03, E4.01 dated 1/26/18.

- Furnish and install equipment.
- Provide seismic restraint for equipment, duct & piping as required.
- Provide equipment identification labeling for our equipment as specified.
- Perform start, check & test procedures of the equipment to ensure proper operation.
- Provide one year warranty for all labor, materials and services provided.
- Architectural or structural scope such as concrete, rebar, structural steel, bent plate, framing, patching, shafts, soffits, finishes, architectural access doors.

HVAC Exclusions and Clarifications:

- Testing, adjusting, and balancing of existing systems not identified in these documents as included in the Scope of Work.
- Commissioning of existing systems not identified in these documents as included in the Scope of Work.
- Upgrading existing mechanical systems to provide ventilation rates in compliance with current Codes and Standards unless indicated herein to be included.
- Replacement of ductwork and diffusers not specified in the Scope of Work.
- Replacement of piping not specified in the Scope of Work.
- Ductwork and piping insulation not specified in the Scope of Work.
- Fire Alarm or Life Safety systems, fire or smoke detectors, devices, interlocks, programming
- Asbestos or lead abatement, mold remediation, or other hazmat considerations if necessary
- Maintenance Contract services, parts, materials, chemicals, or similar obligations
- Potable water plumbing, purification, chlorination, conditioning, final connections, etc
- Chemical water treatment chemicals, monitoring, controllers or other devices
- Structural design, documentation, drawings, engineering services or any delegated or deferred approval submittals

ECM 2 – BAS NETWORK MODIFICATIONS AND ADDITIONS

SE will provide for the following upgrades to the existing Network:

- (1) BCX Upgraded to a SmartStruxure ASP Controller and the Communication loops will be separated at the existing B-Link to maintain PUSD Maximum Node requirements. SE will provide an additional communication cable from the New Admin Building to cover the additional Nodes that are above the maximum.
- All programming and graphics will be moved from the Andover Server to the Enterprise Server. SE will utilize site migration tools to move existing to the EcoStruxure Enterprise Server.
- Programming and Graphics to match existing PUSD Systems

- There will be no additions or modifications to the programming that is currently located on the Andover Server

SE will provide for the following for the addition of a new network controller:

- (1) New SmartStruxure ASP will be included in the central plant panel and will be brought into the Existing Schneider Electric Enterprise Server.
- Programming and Graphics to match existing PUSD Systems
- **ASP Controllers to be provided by PUSD and are not included in this proposal**

CHW system with provisions for the following:

- **(1) DDC Control Panel Installation**
 - SE will provide enclosure and all required parts to build the central plant control panel
 - **SmartStruxure I/O and Power Supply Modules to be provided by PUSD and are not included in this proposal**
- **SE will provide for the following installation, programming and graphics for the following**
 - (2) Chiller Enable, Status, Fault
 - (2) Chiller BACnet integration
 - (2) Chiller CHW Isolation Valve Command, Proof
 - (2) Chiller Entering Temp Sensors
 - (2) Chiller Leaving Temp Sensors
 - (2) Chiller Flow Meters
 - (2) CHWP VFD Start/Stop, Status, Fault, Speed, kW
 - (2) CHWP VFD BACnet Integration
 - (2) CHWP Diff Pressure Sensors
 - (1) CHW Supply Temp
 - (1) CHW Return Temp
 - (1) CHW Bypass Valve
 - (2) CHW System Differential Pressure Sensors
 - (1) Make-up Water Flow Meters
- Programming and Graphics to match existing PUSD Systems

HHW System with provision for the following:

- **(1) DDC Control panel installation (I/O modules for HHW will be in the same enclosure as the CHW)**
 - All HW System points will be wired to same control panel as the CHW System
 - **SmartStruxure I/O and Power Supply Modules to be provided by PUSD and are not included in this proposal**
- **SE will provide for the following installation, programming and graphics for the following:**
 - (1) Boiler Start/Stop, Status
 - (1) Boiler BACnet Integration
 - (1) HWP VFD Start/Stop, Status, Fault, Speed, kW
 - (1) HWP VFD BACnet Integration
 - (1) HWP Diff Pressure Sensors
 - (1) HW Supply Flow Meter
 - (1) HW Supply Temp
 - (1) HW Return Temp
 - (1) HW Bypass Valve Command, Feedback
 - (2) HW System Differential Pressure Sensors
- Programming and Graphics to match existing PUSD Systems

EXCLUSIONS:

- Schneider Electric has not included the additional costs associated with participating in any OCIP, CCIP, or ACIP insurance program. (OCIP Deduct included in price above)
- Commissioning or rework of existing controllers unless noted in the scope of work above
- Quantity is limited to what is shown on the drawings noted above

CLARIFICATIONS:

- All items not listed in the scope of work above are specifically excluded from this proposal
- Warranty period begins on date of commissioning completion
- AutoCAD or other digital format of templates to be provided at no charge.
- All work to be done during normal working hour
- Graphic pages are included in a matrix, schematic, or floor plan format.
 - Graphics for BCX Controller upgrade to match existing
- Cost for factory mounted controls excluded
- (1) Year Warranty (per Specifications) included - parts/labor
- Training included (8) hours

GENERAL SCOPE EXCLUSIONS:

- All fees associated with Division of the State Architect submittals.
- Night/holiday work unless otherwise specified in the Scope of Work.
- Additional labor cost due to restriction of allowable work hours.
- Costs incurred due to lack of access to required areas or due to access to storage areas to which materials are to be delivered.
- Costs of providing access, access control, or security escorts not specified in the Scope of Work.
- Hazardous materials testing and abatement not specified in the Scope of Work.
- Materials and labor associated with modifications to existing systems and equipment not identified in these documents as included in the Scope of Work.
- Repair or replacement of ceiling beyond that required to accomplish the Scope of Work.
- Painting of floors, walls or ceilings beyond that required to match existing surfaces in the immediate work area.
- Waste disposal other than that required to accomplish the Scope of Work.
- Demolition of equipment, piping and accessories indicated herein to be abandoned in-place unless indicated herein to be included.
- The cost for utilities including natural or propane gas, fuel oil, electricity, potable or nonpotable water during the construction period.
- The cost for equipment and/or utilities to provide temporary heating or cooling of facilities during the construction period.
- Cost escalation of materials as a result of a delay in the construction schedule caused by Customer action or inaction.
- Fees for third party engineers acting as Customer's agent.
- Water treatment equipment not specified in the Scope of Work.
- Structural modifications not specified in the Scope of Work.
- Building envelope modifications not specified in the Scope of Work.
- Electrical systems not specified in the Scope of Work.
- Equipment replacement and their components not specified in the Scope of Work.

SCHEDULE B: PROJECTED SAVINGS

The Projected Savings provided by ESCO will be as follows:

Year	Measured Savings	Non-Measured Savings	Annual Projected Savings	Cumulative Projected Savings
1	\$0	\$32,526	\$32,526	\$32,526
2	\$0	\$33,567	\$33,567	\$66,093
3	\$0	\$34,645	\$34,645	\$100,738
4	\$0	\$35,760	\$35,760	\$136,497
5	\$0	\$36,914	\$36,914	\$173,412
6	\$0	\$38,109	\$38,109	\$211,521
7	\$0	\$39,347	\$39,347	\$250,868
8	\$0	\$40,628	\$40,628	\$291,496
9	\$0	\$41,954	\$41,954	\$333,450
10	\$0	\$43,328	\$43,328	\$376,778
11	\$0	\$44,750	\$44,750	\$421,528
12	\$0	\$46,223	\$46,223	\$467,751
13	\$0	\$47,749	\$47,749	\$515,500
14	\$0	\$49,329	\$49,329	\$564,829
15	\$0	\$50,966	\$50,966	\$615,795
16	\$0	\$52,662	\$52,662	\$668,457
17	\$0	\$54,418	\$54,418	\$722,875
18	\$0	\$56,238	\$56,238	\$779,112
19	\$0	\$58,123	\$58,123	\$837,236
20	\$0	\$60,077	\$60,077	\$897,313
21	\$0	\$62,101	\$62,101	\$959,414
22	\$0	\$64,199	\$64,199	\$1,023,613
23	\$0	\$66,373	\$66,373	\$1,089,985
24	\$0	\$68,626	\$68,626	\$1,158,611
25	\$0	\$70,961	\$70,961	\$1,229,572
26	\$0	\$73,381	\$73,381	\$1,302,953
27	\$0	\$75,890	\$75,890	\$1,378,843
28	\$0	\$78,490	\$78,490	\$1,457,333
29	\$0	\$81,186	\$81,186	\$1,538,519
30	\$0	\$83,981	\$83,981	\$1,622,500
Total	\$0	\$1,622,500	\$1,622,500	

The procedure used to calculate savings is described in Schedule C. Annual escalation rates are assumed to be 4% for electricity costs and 2% for O&M costs, based on the methods prescribed by the California Energy Commission in the Proposition 39 Clean Energy Jobs Act. Based on run-times at this site, the estimated life of the new chiller is 30 years.

SCHEDULE C: METHODOLOGY AND BASELINE

NON-MEASURED SAVINGS

- A. Overview of M&V Plan, and Savings Calculation
- B. Annual Non-Measured Savings
- C. Performance Period Validation Activities

A. Overview of M&V Plan, and Savings Calculation

The Actual Savings associated with this methodology will be agreed upon as outlined herein and will not be verified by measurements after implementation has occurred. Customer and ESCO agree to accept the annual savings values included in Section B with no additional verification. In the event that verification steps are performed by Customer or ESCO, the annual savings values included in Section B will still be the reported savings and values used for reconciling the guarantee in Schedule B. Section B details the agreed upon savings by measure and by category.

B. Annual Non-Measured Savings

Utility Cost Savings

Once the construction of each of the measures below has reached Substantial Completion, the annual savings in the table below will be prorated monthly for each measure until the Projected Savings Commencement Date. The annual savings in the table below for each measure will be claimed for each Year after the Projected Savings Commencement Date.

School	Description	Annual Energy Cost Savings	Annual O&M Savings	Total Annual Savings
Norma Coombs ES	Replace Chiller	\$19,526	\$13,000	\$32,526

Any savings accrued prior to the Projected Savings Commencement Date will be considered Excess Savings.

C. Performance Period Validation Activities

No measurements will be performed to determine the magnitude of the achieved savings.

FORM 1: CERTIFICATION REGARDING CONTRACTOR REGISTRATION

District: Pasadena Unified School District
Contractor: Schneider Electric Buildings Americas, Inc.
Contract: Energy Services Contract dated May 10, 2018

The undersigned hereby certifies to the District, subject to penalty for perjury pursuant to the laws of the State of California, that the following is true and correct:

- (i) I am a duly-authorized representative of the Contractor and, in that capacity, I have executed this certification on behalf of the Contractor.
- (ii) The Contractor is aware and acknowledges that, on and after March 1, 2015, and except as authorized by Business and Professions Code Section 7029.1 and Public Contract Code Section 20103.5, no contractor may bid on a public works project unless the contractor is, and no subcontractor may be listed in any bid for a public works project unless the subcontractor is, currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5.
- (iii) The Contractor is aware and acknowledges that, on and after April 1, 2015, no contractor or subcontractor may be awarded a contract for work on a public works project, or may perform any work on a public works project, unless the contractor or subcontractor is currently registered with the DIR and qualified to perform public work pursuant to Labor Code Section 1725.5.
- (iv) The Contractor is aware and acknowledges that, notwithstanding anything to the contrary, if at any time during the performance of the Work, the Contractor or any of its Subcontractors is not duly registered pursuant to Labor Code Section 1725.5 (including, without limitation, if the registration expires or the DIR revokes the registration), the District may cancel the Contract and/or replace the Contractor or Subcontractor with a contractor or subcontractor that is duly registered pursuant to Labor Code Section 1725.5, and the Contractor and/or its surety shall be responsible for any and all associated costs incurred by the District.
- (v) The Contractor and each Subcontractor who will perform any of the Work are duly registered with the DIR pursuant to Labor Code Section 1725.5.
- (vi) Evidence (in the form described in the note below) that the Contractor and each Subcontractor are duly registered with the DIR pursuant to Labor Code Section 1725.5 is attached to this certification.

Representative Name: _____

Representative Title: _____

Representative Signature: _____

Date Signed: _____

Note: This certification must be accompanied by print-outs of the applicable screens on the DIR website evidencing that the Contractor and all Subcontractors are currently registered pursuant to Labor Code Section 1725.5.

**RESOLUTION OF THE BOARD OF EDUCATION
OF THE PASADENA UNIFIED SCHOOL DISTRICT
AUTHORIZING AN ENERGY SERVICES CONTRACT IN SUPPORT OF THE
DISTRICT'S ENERGY CONSERVATION/MODERNIZATION/GENERATION
PROGRAM
Resolution No. 2453**

WHEREAS, Government Code section 4217.12(a)(1) authorizes a public agency to enter into an energy services contract (“Energy Services Contract”) with respect to energy conservation facilities, as defined in Government Code Section 4217.11 (“Energy Conservation Facilities”), on terms that the public agency’s governing board determines are in the best interests of the public agency and if the governing board finds that the anticipated cost to the public agency for the energy provided by the Energy Conservation Facilities will be less than the anticipated marginal cost to the public agency energy that would have been consumed by the public agency in the absence of those purchases; and

WHEREAS, the Pasadena Unified School District (“District”) has previously obtained proposals from qualified entities and has selected Schneider Electric Buildings Americas, Inc. (“ESCO”) for the design and installation of Energy Conservation Facilities; and

WHEREAS, the District (“District”) has previously contracted with ESCO for the completion of assessments of current and projected energy usage at certain District school facilities and sites with and without the proposed installation of Energy Conservation Facilities at those sites; and

WHEREAS, the District desires to proceed with the installation of Energy Conservation Facilities and/or energy conservation measures at Norma Coombs Elementary School (“The Project”); and

WHEREAS, ESCO, in cooperation with District Staff, has analyzed the energy needs of the site identified for the Project as detailed in **Schedule A**, attached to the Energy Services Contract being presented to the District’s Board of Education (“Board”) for consideration; and

WHEREAS, ESCO has represented that ESCO’s provision of Energy Conservation Facilities at the Project school site will result in a reduction in energy consumption or demand that will result in cost savings to the District; and

WHEREAS, on May 10, 2018, pursuant to Government Code section 4217.10 *et seq.*, the Board held a public hearing (“Hearing”) at a regularly scheduled Board meeting, whereby the Board analyzed, assessed and adopted findings in support of entering into Energy Service Contracts with ESCO for provision of Energy Conservation Facilities, provided that the terms and conditions of such Energy Service Contracts are in the best interests of the District; and

WHEREAS, based upon the reports, analysis and presentations by ESCO and District staff at the Hearing, the Board made certain required findings in support of entering into the Energy Services Contract with ESCO for the Energy Conservation Facilities and services, including a finding that the anticipated cost to the District for thermal or electrical energy and conservation services provided by the Energy Conservation Facilities will be less than the anticipated marginal cost to the District of thermal, electrical, or other energy that would have been consumed by the District in the absence of the Energy Conservation Facilities; and

WHEREAS, following the Hearing, and based upon the reports, analysis and presentations by ESCO and District staff, the Board determined that it is in the best interest of the District to award an Energy Services Contract to ESCO for the Energy Conservation Facilities and services that constitute the Project, and that the anticipated cost to the District for the energy conservation services and facilities under the Energy Services Contract will be less than the marginal cost to the District of energy that would have been consumed by the District in the absence of such contract, services and facilities.

NOW, THEREFORE, BE IT RESOLVED that it is found, determined and resolved by the Board of Education of the District as follows:

1. The above recitals are true and correct.
2. The District held a public hearing at a regularly scheduled meeting of the Board for which notice was given not less than two weeks in advance pursuant to Government Code Section 4217.12(a).
3. Based upon available information, including but not limited to reports, analysis and presentations by ESCO, and District staff, as reviewed by the Board in connection herewith, and as required by Government Code section 4217.12(a), the Board hereby finds and determines as follows:
 - a. The anticipated cost to the District for electrical energy and conservation services provided by the Energy Conservation Facilities that constitute the Project under the Energy Services Contract will be less than the anticipated marginal cost to the District of electrical energy that would have been consumed by the District in the absence of the Project facilities and services; and
 - b. The fair rental value for the District's real property subject to the agreement between the District and ESCO for use in connection with the Energy Conservation Facilities is offset by below-market energy costs and other benefits provided under the Energy Services Contract to the District and/or the public.
4. It is in the best interests of the District to authorize the District's Superintendent and designees to execute and deliver the Energy Service Contract with

ESCO, substantially in the form presented to this Board at this meeting, to take all steps and perform all actions with respect to identifying and securing sources of funds, including savings and other District funds, for the Project.

PASSED AND ADOPTED by the Board of Education of the Pasadena Unified School District, following a public hearing, at a special board meeting held on May 10, 2018, by the following vote:

PASSED, APPROVED, ADOPTED, this May 10th, 2018, at the special board meeting of the Pasadena Unified School District Board of Education, Los Angeles County, California.

Lawrence Torres, President

Patrick Cahalan, Vice President

Scott Phelps, Clerk

Kimberly Kenne, Member

Roy Boulghourjian, Member

Michelle Richardson Bailey, Member

Elizabeth Pomeroy, Member


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GOVERNMENT CODE - GOV

TITLE 1. GENERAL [100 - 7914] (Title 1 enacted by Stats. 1943, Ch. 134.)

DIVISION 5. PUBLIC WORK AND PUBLIC PURCHASES [4000 - 4563] (Division 5 enacted by Stats. 1943, Ch. 134.)

CHAPTER 3.2. Energy Conservation Contracts [4217.10 - 4217.18] (Chapter 3.2 added by Stats. 1983, Ch. 868, Sec. 1.)

[4217.10.](#) To help implement the policy set forth in Section 25008 of the Public Resources Code, and to extend that policy to facilities of local governments, public agencies may develop energy conservation, cogeneration, and alternate energy supply sources at the facilities of public agencies in accordance with this chapter.

(Added by Stats. 1983, Ch. 868, Sec. 1.)

[4217.11.](#) The following terms, whenever used in this chapter, have the meanings given in this section, except where the context clearly indicates otherwise:

- (a) "Alternate energy equipment" means equipment for the production or conversion of energy from alternate sources as its primary fuel source, such as solar, biomass, wind, geothermal, hydroelectricity under 30 megawatts, remote natural gas of less than one billion cubic feet estimated reserves per mile from an existing gas gathering line, natural gas containing 850 or fewer British Thermal Units per standard cubic foot, or any other source of energy, the efficient use of which will reduce the use of fossil or nuclear fuels.
- (b) "Cogeneration equipment" means equipment for cogeneration, as defined in Section 216.6 of the Public Utilities Code.
- (c) "Conservation measures" means equipment, maintenance, load management techniques and equipment, or other measures to reduce energy use or make for a more efficient use of energy.
- (d) "Conservation services" means the electrical, thermal, or other energy savings resulting from conservation measures, which shall be treated as a supply of such energy.
- (e) "Energy conservation facility" means alternate energy equipment, cogeneration equipment, or conservation measures located in public buildings or on land owned by public agencies.
- (f) "Energy service contract" means a contract entered into by a public agency with any person, pursuant to which the person will provide electrical or thermal energy or conservation services to a public agency from an energy conservation facility.
- (g) "Facility financing contract" means a contract entered into by a public agency with any person whereby the person provides financing for an energy conservation facility in exchange for repayment of the financing and all costs and expenses related thereto by the public agency. A facility financing contract may provide for the person with whom the public agency contracts to provide any combination of feasibility studies for, and design and construction of, all or part of the energy conservation facility in addition to the financing and other related services, and may provide for an installment sale purchase, another form of purchase, or amortized lease of the energy conservation facility by the public agency.
- (h) "Facility ground lease" means a lease of all, or any portion of, land or a public building owned by, or under lease to, a public agency to a person in conjunction with an energy service contract or a facility financing contract. A facility ground lease may include, in addition to the land on which energy conservation facilities will be located, easements, rights-of-way, licenses, and rights of access, for the construction, use, or ownership by the person of the facility and all related utility lines not owned or controlled by the interconnecting utility, and offsite improvements related thereto. A facility ground lease may also include the addition or improvement of utility lines and equipment owned by the interconnecting utility which are necessary to permit interconnection between that utility and an energy conservation facility.

(i) "Person" means, but is not limited to, any individual, company, corporation, partnership, limited liability company, public agency, association, proprietorship, trust, joint venture, or other entity or group of entities.

(j) "Public agency" means the state, a county, city and county, city, district, community college district, school district, joint powers authority or other entity designated or created by a political subdivision relating to energy development projects, and any other political subdivision or public corporation in the state.

(k) "Public building" includes any structure, building, facility, or work which a public agency is authorized to construct or use, and automobile parking lots, landscaping, and other facilities, including furnishings and equipment, incidental to the use of any structure, building, facility, or work, and also includes the site thereof, and any easements, rights-of-way appurtenant thereto, or necessary for its full use.

(Amended by Stats. 2006, Ch. 198, Sec. 2. Effective January 1, 2007.)

4217.12. (a) Notwithstanding any other provision of law, a public agency may enter into an energy service contract and any necessarily related facility ground lease on terms that its governing body determines are in the best interests of the public agency if the determination is made at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, and if the governing body finds:

(1) That the anticipated cost to the public agency for thermal or electrical energy or conservation services provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the public agency of thermal, electrical, or other energy that would have been consumed by the public agency in the absence of those purchases.

(2) That the difference, if any, between the fair rental value for the real property subject to the facility ground lease and the agreed rent, is anticipated to be offset by below-market energy purchases or other benefits provided under the energy service contract.

(b) State agency heads may make these findings without holding a public hearing.

(Amended by Stats. 1998, Ch. 328, Sec. 7. Effective August 21, 1998.)

4217.13. Notwithstanding any other provision of law, a public agency may enter into a facility financing contract and a facility ground lease on terms that its governing body determines are in the best interest of the public agency if the determination is made at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, and if the governing body finds that funds for the repayment of the financing or the cost of design, construction, and operation of the energy conservation facility, or both, as required by the contract, are projected to be available from revenues resulting from sales of electricity or thermal energy from the facility or from funding that otherwise would have been used for purchase of electrical, thermal, or other energy required by the public agency in the absence of the energy conservation facility, or both. State agency heads may make these findings without holding a public hearing.

(Amended by Stats. 1998, Ch. 328, Sec. 8. Effective August 21, 1998.)

4217.14. Notwithstanding any other provision of law, the public agency may enter into contracts for the sale of electricity, electrical generating capacity, or thermal energy produced by the energy conservation facility at such rates and on such terms as are approved by its governing body. Any such contract may provide for a commitment of firm electrical capacity.

(Added by Stats. 1983, Ch. 868, Sec. 1.)

4217.15. The public agency may, but is not required to, base the findings required under Sections 4217.12 and 4217.13 on projections for electrical and thermal energy rates from the following sources:

(a) The public utility which provides thermal or electrical energy to the public agency.

(b) The Public Utilities Commission.

(c) The State Energy Resources Conservation and Development Commission.

(d) The projections used by the Department of General Services for evaluating the feasibility of energy conservation facilities at state facilities located within the same public utility service area as the public agency.

(Added by Stats. 1983, Ch. 868, Sec. 1.)

4217.16. Prior to awarding or entering into an agreement or lease, the public agency may request proposals from qualified persons. After evaluating the proposals, the public agency may award the contract on the basis of the experience of the contractor, the type of technology employed by the contractor, the cost to the local agency, and

any other relevant considerations. The public agency may utilize the pool of qualified energy service companies established pursuant to Section 388 of the Public Utilities Code and the procedures contained in that section in awarding the contract.

(Amended by Stats. 1998, Ch. 328, Sec. 9. Effective August 21, 1998.)

4217.17. This chapter does not limit the authority of any public agency to construct energy conservation projects or to enter into other leases or contracts relating to the financing construction, operation, or use of alternate energy type facilities in any manner authorized under existing law. This chapter shall not be construed to abrogate Section 14671.6.

(Amended by Stats. 1998, Ch. 328, Sec. 10. Effective August 21, 1998.)

4217.18. The provisions of this chapter shall be construed to provide the greatest possible flexibility to public agencies in structuring agreements entered into hereunder so that economic benefits may be maximized and financing and other costs associated with the design and construction of alternate energy projects may be minimized. To this end, public agencies and the entities with whom they contract under this chapter should have great latitude in characterizing components of energy conservation facilities as personal or real property and in granting security interests in leasehold interests and components of the alternate energy facilities to project lenders.

(Added by Stats. 1983, Ch. 868, Sec. 1.)