



TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN

TOWN COUNCIL
EUGENE P. HART
JOHN M. RUSINSKI

To: West Seneca Town Board

From: Supervisor Sheila M Meegan

Date: May 17, 2012

Re: Energy performance contract revision

Honorable Board Members:

Attached for your approval is a revised resolution concerning the energy performance contract that was approved at the May 7, 2012 Town Board meeting.

MAY 21 2012

2.

**TOWN OF WEST SENECA
AUTHORIZING RESOLUTION**

**ENERGY PERFORMANCE CONTRACT
May 21, 2012**

A RESOLUTION AUTHORIZING, RESTATING, CLARIFYING AND AUGMENTING THE NEGOTIATION AND EXECUTION BY THE TOWN OF WEST SENECA OF AN ENERGY PERFORMANCE CONTRACT AND RELATED FINANCING AS DEFINED BY THE NEW YORK STATE ENERGY LAW, AS AMENDED AS DESCRIBED HEREIN.

WHEREAS, Section 9-102 (4) defines an Energy Performance Contract as “an agreement for the provision of energy services, including but not limited to electricity, heating, ventilation, cooling, steam or hot water, in which a person agrees to install, maintain or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a building or facility in exchange for a portion of the energy savings or revenues.”; and

WHEREAS, pursuant to Section 9-103 (1) of the New York State Energy Law, , the TOWN OF WEST SENECA, in the County of Erie, (the “Town”) is empowered to enter into an Energy Performance Contract; and

WHEREAS, the Town by its Town Council has determined it in the best interest of the Town to enter into an Energy Performance Contract (the “Contract”) to realize significant savings in energy costs by the installation of energy savings equipment (the “Improvements”) in connection with various facilities owned and operated by the Town as more specifically described hereinafter at Exhibit A; and

WHEREAS, as set forth on Schedule A, the estimated maximum costs for the Contract is \$9,460,749 plus the costs of issuance; and

WHEREAS, specifically set forth hereinafter on Schedule B, the total estimated energy cost savings from the improvements is Contracted to be \$22,811,839 less total estimated annual Contract costs in the amount of \$13,153,704 for a net estimated cumulative cash flow savings in the amount of \$9,658,134; and

WHEREAS, pursuant to New York State Energy Law Section 9-103 (6) the Town issued a written request for proposals (the “RFP”) from interested Energy Services Companies; and

WHEREAS, by a resolution adopted May 7, 2012 the Town Council authorized the negotiation and execution of the Contract with the John W. Danforth Company and this Resolution is intended to restate, clarify and augment said Resolution.

BE IT RESOLVED, by the affirmative vote of not less than two-thirds of the total voting strength of the Town Council of the Town of West Seneca, Erie County, New York, as follows:

Section 1. The Contract is hereby authorized at a maximum estimated cost of \$9,460,749 plus the costs of issuance.

Section 2. A lease and/or a purchase agreement for a term not in excess of 15 years, plus installation period, or such other period of time as coincides with the life of the Contract is hereby

authorized.

Section 3. Pursuant to Energy Law Section 9-103 (1) it is hereby determined that the duration of the Contract shall not exceed the reasonably expected useful life of the Improvements.

Section 4. Pursuant to Energy Law Section 9-103 (2) the Contract shall contain the following clause: "This contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract".

Section 5. The power to authorize and execute the Contract is hereby authorized as if by separate resolution and is delegated to the Town Supervisor, the Chief Fiscal Officer of the Town, subject to the review and approval of the Town Attorney; Bond Counsel for the Town; and the Town Fiscal Advisor, Capital markets Advisors, LLC.

Section 6. All other matters except as provided herein relating to the Contract herein authorized including the term, principal and interest rate of any lease executed pursuant, within the limitations prescribed herein and the manner of execution of the same, shall be determined by the Town Supervisor, as the chief fiscal officer of the Town.

Section 7. (a) The Town reasonably expects to reimburse itself for expenditures made for the Project from the proceeds of the Lease-Purchase Agreement herein authorized. The reasonably expected source of funds to be used to initially pay for the expenditures authorized by this resolution shall be from the Town's General Fund. Other than as specified in this resolution, no monies are reasonably expected to be received, allocated on a long-term basis, or otherwise set aside with respect to the permanent funding of the objects or purposes described herein; and

(b) This resolution shall constitute a statement of official intent for purposes of Treasury Regulations Section 1.150-2. Other than as specified in this resolution, no monies are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside with respect to the permanent funding of the Improvements described herein.

Section 8. This Resolution is intended to restate, clarify and augment the related Resolution adopted and authorized by the Town Council on May 7, 2012

* * * * *

The foregoing resolution was moved by Councilperson _____ and seconded by Councilperson _____, and the vote thereon was as follows:

Supervisor Meegan voted _____

Councilman Rusinski voted _____

Councilman Hart voted _____

CERTIFICATE OF THE TOWN CLERK

STATE OF NEW YORK) ss.:
COUNTY OF ERIE)

I, Jacqueline A. Felser, the Town Clerk of the Town of West Seneca, Erie County, New York (the “Town”), DOES HEREBY CERTIFY:

1. That a meeting of the Town of West Seneca Town Council was duly called, held and conducted on the 7th day of May, 2012.
2. That such meeting was a regular meeting.
3. That attached hereto is a copy of Bond Resolution No. 2-2012 of the Town which was duly adopted at such meeting by the Town Council.
4. That such attachment constitutes a true and correct copy of the entirety of such Resolution as adopted by the Town Council.
5. That all members of the Town Council had due notice of said meeting.
6. That said meeting was open to the general public in accordance with Section 103 of the Public Officers Law, commonly referred to as the “Open Meetings Law.”
7. That the attached Resolution was adopted subject to Permissive Referendum.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town as of the 7th day of May, 2012.

Jacqueline A Felser, Town Clerk