



TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

JOHN FENZ
TOWN ATTORNEY
jfenz@twsny.org

TO: The Honorable Town Board

FROM: John J. Fenz, Esq.
Town Attorney

DATE: June 11, 2015

RE: Planning Bond Resolution
Potential Seneca Place Infrastructure Improvements

Kindly adopt the attached Planning Bond resolution which authorizes financing for certain planning and preparation with respect to potential infrastructure improvements related to the proposed Seneca Place Project; estimating the total aggregate cost thereof is \$300,000.

Please be advised that this Planning Bond resolution will not result in immediate borrowing; but rather, it is a responsible cash management tool in anticipation of a contemplated development. If the Town incurs costs which would not be the responsibility of the developer under the local law, then it may use planning bond proceeds to reimburse the general fund for such expenditures.



At a regular meeting of the Town Board of the Town of West Seneca, in the County of Erie, New York, held at Town Hall, 1250 Union Road, West Seneca New York 14224 on June 15, 2015

PRESENT: Sheila M. Meegan, Supervisor
William P. Hanley, Jr., Councilman
Eugene P. Hart, Councilman

ABSENT:

The following resolution was offered by _____, who moved its adoption, seconded by _____, to-wit:

BOND RESOLUTION OF THE TOWN BOARD OF THE TOWN OF WEST SENECA, ERIE COUNTY, NEW YORK (THE "TOWN"), AUTHORIZING FINANCING FOR PREPARATION OF SURVEYS, PRELIMINARY AND DETAILED PLANS, SPECIFICATIONS AND ESTIMATES NECESSARY FOR PLANNING INFRASTRUCTURE IMPROVEMENTS RELATED TO THE PROPOSED SENECA PLACE PROJECT; ESTIMATING THAT THE TOTAL AGGREGATE COST THEREOF IS \$300,000; APPROPRIATING SAID AMOUNT THEREFOR; AND AUTHORIZING THE ISSUANCE OF \$300,000 IN SERIAL BONDS OF THE TOWN TO FINANCE SAID APPROPRIATION

WHEREAS, the Town Board of the Town of West Seneca (the "Town") expects to enter into an agreement with S&R Company of West Seneca ("S&R"), the developer for the proposed Seneca Place Project, a mixed-use development on a 53 acre site generally located between Orchard Park Road (New York State Route 240), Slade Avenue, Ridge Road and an existing railroad right of way (the "Project"), relating to planning for infrastructure improvements which may be constructed by the Town in relation to the Project as set forth in such agreement; and

WHEREAS, in the event that the Town determines to proceed with financing for construction of such improvements and to apply a portion of the proceeds from such financing to reimburse expenditures for such financial, engineering and legal costs, it is necessary in accordance with the New York Local Finance Law to authorize the issuance of serial bonds of the Town prior to payment of such expenditures;

WHEREAS, the Town Board of the Town now wishes to appropriate funds for preparation of surveys, preliminary and detailed plans, specifications and estimates necessary for planning infrastructure improvements related to the Project, which preparation includes without

limitation, legal advice, financial projections and other preliminary planning activities, and to authorize the issuance of the Town's serial bonds or bond anticipation notes to finance said appropriation.

NOW, THEREFORE, THE TOWN BOARD OF THE TOWN OF WEST SENECA, ERIE COUNTY, NEW YORK HEREBY RESOLVES (by the affirmative vote of not less than two-thirds of all the members of such body), AS FOLLOWS:

SECTION 1. The Town is hereby authorized to undertake the preparation of surveys, preliminary plans, specifications and estimates necessary for planning infrastructure improvements related to the proposed Seneca Place Project and to issue up to \$300,000 principal amount of serial bonds (including, without limitation, statutory installment bonds) pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (the "Law") to finance the estimated cost thereof. It is hereby determined that the maximum estimated cost of the aforementioned specific object or purpose is \$300,000, said amount is hereby appropriated therefor and the plan for the financing thereof shall consist of the issuance of the \$300,000 in serial bonds of the Town authorized to be issued pursuant to this section or bond anticipation notes issued in anticipation of such bonds. It is hereby determined that the period of probable usefulness for the aforementioned specific object or purpose is five (5) years, pursuant to subdivision a. 62 (2nd) of Section 11.00 of the Law, and that the maturity of the bonds and bond anticipation notes authorized herein shall not exceed 5 years.

SECTION 2. Current funds are not required to be provided prior to the issuance of the bonds authorized by this resolution or any bond anticipation notes issued in anticipation thereof, pursuant to Section 107.00 d.5. of the Law.

SECTION 3. The temporary use of available funds of the Town, not immediately required for the purpose or purposes for which the same were borrowed, raised or otherwise created, is hereby authorized pursuant to Section 165.10 of the Law, for the capital purposes described in this resolution. This resolution shall constitute a declaration of "official intent" to reimburse the expenditures as part of the projects described herein with the proceeds of the bonds and bond anticipation notes authorized herein, as required by United States Treasury Regulation Section 1.150-2.

SECTION 4. Each of the serial bonds authorized by this resolution and any bond anticipation notes issued in anticipation of said bonds shall contain the recital of validity prescribed by Section 52.00 of the Law and said serial bonds and any bond anticipation notes issued in anticipation of said bonds shall be general obligations of the Town, payable as to both principal and interest by a general tax upon all the real property within the Town without legal or constitutional limitation as to rate or amount. The faith and credit of the Town are hereby irrevocably pledged to the punctual payment of the principal and interest on said serial bonds and bond anticipation notes and provisions shall be made annually in the budget of the Town by appropriation for (a) the amortization and redemption of the bonds and bond anticipation notes to mature in such year and (b) the payment of interest to be due and payable in such year.

SECTION 5. Subject to the provisions of this resolution and of the Law, pursuant to the provisions of Section 30.00 relative to the authorization of the issuance of bond anticipation notes or the renewals of said obligations, and of Sections 21.00, 50.00, 54.90, 56.00 through 60.00, 62.10 and 63.00 of the Law, the powers and duties of the Town Board relative to authorizing bond anticipation notes and prescribing the terms, form and contents as to the sale and issuance of bonds herein authorized, including without limitation the determination of whether to issue bonds having substantially level or declining debt service and all matters related thereto, and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said bond anticipation notes, are hereby delegated to the Town Supervisor, the chief fiscal officer of the Town (the "Town Supervisor"). Further, pursuant to subdivision b. of Section 11.00 of the Law, in the event that bonds to be issued for the objects or purposes authorized by this resolution are combined for sale, pursuant to subdivision c. of Section 57.00 of the Law, with bonds to be issued for one or more objects or purposes authorized by other resolutions of the Town Board, then the power of the Town Board to determine the "weighted average period of probable usefulness" (within the meaning of subdivision a. of Section 11.00 of the Law) for such combined objects or purposes is hereby delegated to the Town Supervisor, as the chief fiscal officer of the Town.

SECTION 6. The Town Supervisor is hereby further authorized to take such actions and execute such documents as may be necessary to ensure the continued status of the interest on the bonds authorized by this resolution and any notes issued in anticipation thereof, as excludable from gross income for Federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code") and to designate the bonds authorized by this resolution and any notes issued in anticipation thereof, if applicable, as "qualified tax-exempt bonds" in accordance with Section 265(b)(3)(B)(i) of the Code.

SECTION 7. The Town Supervisor is further authorized to enter into continuing disclosure undertakings with or for the benefit of the initial purchaser of the bonds or notes in compliance with the provisions of Rule 15c2-12, promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934.

SECTION 8. The intent of this resolution is to give the Town Supervisor sufficient authority to execute those applications, agreements, instruments or to do any similar acts necessary to effect the issuance of the aforesaid serial bonds or bond anticipation notes without resorting to further action of this Town Board.

SECTION 9. The validity of the bonds authorized by this resolution and of any bond anticipation notes issued in anticipation of said bonds may be contested only if:

(a) such obligations are authorized for an object or purpose for which the Town is not authorized to expend money; or

(b) the provisions of law which should be complied with at the date of the publication of such resolution are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty (20) days after the date of such publication; or

(c) such obligations are authorized in violation of the provisions of the constitution.

SECTION 12. This resolution shall take effect immediately and the Town Clerk is hereby authorized and directed to publish the foregoing resolution in full, together with a notice attached in substantially the form as prescribed in Section 81.00 of the Law, in the official newspaper(s) of the Town (a) for such publication, and (b) for the publication of the notice of sale in connection with any bonds issued pursuant to this resolution.

The following vote was taken and recorded in the public or open session of said meeting:

AYES:

NAYS:

This resolution shall take effect immediately.

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

I, the undersigned Clerk of the Town of West Seneca, DO HEREBY CERTIFY as follows:

1. I am the duly qualified and acting Clerk of the Town of West Seneca, Erie County, New York (the "Town") and the custodian of the records of the Town, including the minutes of the proceedings of the Town Board, and am duly authorized to execute this certificate.

2. A regular meeting of the Town Board of the Town of West Seneca, Erie County, State of New York, was held on June 15, 2015, and Minutes of said meeting have been duly recorded in the Minute Book kept by me in accordance with law for the purpose of recording the minutes of meetings of said Board.

3. Attached hereto is a true and correct copy of a board resolution duly adopted at a meeting of the Town Board held on June 15, 2015 and entitled:

BOND RESOLUTION OF THE TOWN BOARD OF THE TOWN OF WEST SENECA, ERIE COUNTY, NEW YORK (THE "TOWN"), AUTHORIZING FINANCING FOR PREPARATION OF SURVEYS, PRELIMINARY AND DETAILED PLANS, SPECIFICATIONS AND ESTIMATES NECESSARY FOR PLANNING INFRASTRUCTURE IMPROVEMENTS RELATED TO THE PROPOSED SENECA PLACE PROJECT; ESTIMATING THAT THE TOTAL AGGREGATE COST THEREOF IS \$300,000; APPROPRIATING SAID AMOUNT THEREFOR; AND AUTHORIZING THE ISSUANCE OF \$300,000 IN SERIAL BONDS OF THE TOWN TO FINANCE SAID APPROPRIATION

4. That said meeting was duly convened and held and that said resolution was duly adopted in all respects in accordance with the law and regulations of the Town. To the extent required by law or said regulations, due and proper notice of said meeting was given. A legal quorum of members of the Town Board was present throughout said meeting, and a legally sufficient number of members (2/3's of the Town Board) voted in the proper manner for the adoption of the resolution. All other requirements and proceedings under the law, said regulations, or otherwise, incident to said meeting and the adoption of the resolution, including the publication, if required by law, have been duly fulfilled, carried out and otherwise observed.

5. Public Notice of the time and place of said Meeting was duly posted and duly given to the public and the news media in accordance with the Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, and that all members of said Board had due notice of said Meeting and that the Meeting was in all respects duly held and a quorum was present and acted throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and have hereunto affixed the corporate seal of the Town of West Seneca this ___ day of June, 2015.

[SEAL]

Jacqueline A. Felser, Town Clerk

ESTOPPEL NOTICE

The resolution published herewith has been adopted on the ___ day of June, 2015, by the Town Board of the Town of West Seneca, Erie County, New York. The validity of the obligations authorized by such resolution may be hereafter contested only if such obligations were authorized for an object or purpose for which the Town of West Seneca, Erie County, New York is not authorized to expend money or if the provisions of law which should have been complied with as of the date of publication of this notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of publication of this notice, or such obligations were authorized in violation of the provisions of the constitution.

Jacqueline A. Felser, Town Clerk
Town of West Seneca
Erie County, New York

[Attach copy of Resolution without the Certification Page]