

RESOLUTION NO. 2018-15

A RESOLUTION OF THE TOWN OF BELLEAIR, AUTHORIZING THE EXECUTION AND DELIVERY OF A GUARANTEED ENERGY, WATER AND WASTEWATER PERFORMANCE SAVINGS CONTRACT, GUARANTEED PROFESSIONAL MAINTENANCE AGREEMENT, AND EQUIPMENT LEASE/PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN EQUIPMENT FOR THE PUBLIC BENEFIT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION

WHEREAS, THE TOWN OF BELLEAIR (the “Town”), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of Florida, is authorized by the laws of the State of Florida to purchase, acquire and lease personal property for the benefit of the TOWN and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, The TOWN Commission finds that investment in energy, water, and wastewater efficiency and conservation measures in town facilities can reduce the amount of energy and water consumed and wastewater produced and produce immediate and long-term savings. It is the policy of the TOWN to invest in energy, water, and wastewater efficiency and conservation measures to minimize energy and water consumption and wastewater production and maximize energy, water, and wastewater savings. It is further the policy of the TOWN to encourage agencies to reinvest any savings resulting from energy, water, and wastewater efficiency and conservation measures in additional energy, water, and wastewater efficiency and conservation measures; and

WHEREAS, the TOWN has determined to undertake capital projects consisting of, but not limited to, all or some of the following: a guaranteed energy savings and conversion project, including the planning, design, purchase, acquisition, installation, construction, equipping and furnishing of energy savings repairs, renovations, upgrades and improvements to buildings and facilities operated by the town as funds are available to undertake and complete (the “Project”); and

WHEREAS, Florida Statute 489.145, the “Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act.” provides that: “An agency may enter into a guaranteed energy, water, and wastewater performance savings contract with a guaranteed energy, water, and wastewater performance savings contractor if the agency finds that the amount the agency would spend on the energy, water, and wastewater efficiency and conservation measures is unlikely to exceed the amount of the cost savings for up to 20 years after the date of installation, based on the life cycle cost calculations provided in s. 255.255, if the recommendations in the report were followed and if the qualified provider or providers give a written guarantee that the cost savings will meet or exceed the costs of the system. However, actual computed cost savings

must meet or exceed the estimated cost savings provided in each agency's program approval. Baseline adjustments used in calculations must be specified in the contract. The contract may provide for repayment to the lender of the installation construction loan through installment payments for a period not to exceed 20 years."

WHEREAS, ABM Building Services Inc. conducted an investment grade audit, which found that there were sufficient savings to fund such a guaranteed program; and

WHEREAS, in order to implement the Project, the TOWN proposes to enter into an Guaranteed Energy, Water, and Wastewater, Performance Savings Contract, and a Guaranteed Professional Maintenance Agreement with ABM Building Services, LLC (the "Contracts"), the forms of which have been presented to the governing body of the TOWN at this meeting; and

WHEREAS pursuant to the Contracts, the TOWN desires to purchase, acquire and lease certain equipment with a cost not to exceed \$1,112,390.00 constituting personal property necessary for the TOWN to perform essential governmental functions (the "Equipment"); and

WHEREAS, in order to acquire such equipment, the TOWN proposes to enter into that certain Equipment Lease/Purchase Agreement (the "Agreement") with City National Capital Finance Inc., the form of which has been presented to the Commission of the TOWN at this meeting; and

WHEREAS, the TOWN Commission deems it for the benefit of the TOWN and for the efficient and effective administration thereof to enter into the Contracts and the Agreement and the documentation related to the financing of the equipment for the purchase, acquisition, and leasing of the equipment to be therein described on the terms and conditions therein provided;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF BELLEAIR, FLORIDA:

Section 1. Approval of Documents. The form, terms, and provisions of the Contracts and the Agreement are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be approved by the Town Manager of the TOWN, the execution of such documents being conclusive evidence of such approval; and the Town Manager of the TOWN is hereby authorized and directed to execute, and the Town Manager of the TOWN is hereby authorized and directed to attest and countersign the Contracts, the Agreement and any related Exhibits attached thereto and to deliver the Contracts and Agreement (including such Exhibits) to the respective parties thereto, and the Town Manager of the TOWN or the Town Clerk is hereby authorized to affix the seal of the TOWN to such documents.

Section 2. Other Actions Authorized. The officers and employees of the TOWN shall take all action necessary or reasonably required by the parties to the Contracts and the Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates and any tax certificate and agreement, as contemplated in the Contracts and the Agreement) and to take all action necessary

in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Contracts and the Agreement.

Section 3. No General Liability. Pursuant to F.S. 489.0145(5)(h), Nothing contained in this Resolution, the Contracts, the Agreement, nor any other instrument shall be construed with respect to the TOWN as incurring a pecuniary liability or charge upon the general credit of the TOWN or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Contracts, the Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the TOWN or any charge upon its general credit or against its taxing power, except to the extent that the payments payable under the Contracts and the Agreement are special limited obligations of the TOWN as provided in the Contracts and the Agreement.

Section 4. Appointment of Authorized TOWN Representatives. Town Manager of the TOWN is the authorized representative of the TOWN for purposes of the Contracts and the Agreement until such time as the TOWN shall designate any other or different authorized representative for purposes of the Contracts and the Agreement.

Section 5. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 6. Effective Date. This Resolution shall be effective immediately upon its approval and adoption

PASSED AND ADOPTED by the Town Commission of the Town of Belleair, Florida, this 6th day of **MARCH, A.D., 2018.**

Mayor

ATTEST:

Town Clerk