

TOWN OF GILL

MASSACHUSETTS



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SELECTBOARD MEETING MINUTES

September 27, 2010

Minutes of an Executive Session

Called to Order: The meeting was called to order in open session at 4:30pm.

Present: John Ward, Randy Crochier, and Ann Banash, Selectboard members; Ray Purington, Administrative Assistant. Others Present: Rick James

John announced that the Selectboard will meet in executive session to consider the purchase, exchange, lease or value or real property, in that an open meeting may have a detrimental effect on the negotiating position of the Town. A roll-call vote was taken to go into executive session. Ann – yes; Randy – yes; John – yes. It was also announced that the Board will reconvene in open session following the executive session.

The executive session convened at 4:35pm in Ray's office. Present: John, Randy, Ann, and Ray.

Ray explained that Donna MacNicol, Town Counsel, wants the Board's input on how to structure the energy savings agreement between the Town and the Gill-Montague Regional School District, specifically with respect to the District's obligation to credit Gill Elementary energy savings from the ESPC back to the Town on an annual basis. The agreement could be written with a "good faith" approach, or she could attempt to craft a very tough legal obligation.

The "tough" method would cost more in legal fees to prepare, and could still be challenged in court later on. There are very specific ways to establish a capital expense obligation for a school district. An ESPC executed by the Town combined with an energy savings agreement between the Town and District is not one of those ways. Adding tougher language to the agreement could also alarm the School Committee and/or its attorney, and might delay or derail getting the agreement signed.

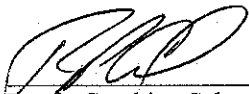
In the "good faith" method, which the District's attorney has already seen and accepted, the Town's protection comes mostly from the importance of maintaining an amicable working relationship between the Town and the District, and from Town Meeting voting on the school budget every year. If the District ever cut Gill's energy savings credits from its budget, the Town could defeat the budget. Donna suggested that this approach could be strengthened by having discussions with the School Committee and Montague's and Gill's Selectboards and Finance Committees.

The Board noted that the agreement needs to find balance between potential risk to the Town, and legal complexity which might keep the District from signing. It was felt that the current contract language, using the "good faith" approach, achieves this balance.

Ann made a motion, seconded by Randy, to endorse the contract as it currently stands. A roll call vote was taken: Ann – aye; Randy – aye; John – aye. Motion carried by unanimous vote.

Ann made a motion, seconded by Randy, to adjourn the executive session. A roll call vote was taken: Ann – aye; Randy – aye; John – aye. Motion carried by unanimous vote. The executive session was adjourned at 4:42pm.

Minutes respectfully submitted by Ray Purington, Administrative Assistant.



Randy Crochier, Selectboard Clerk

**AGREEMENT BETWEEN
THE TOWN OF GILL AND
THE GILL-MONTAGUE REGIONAL SCHOOL DISTRICT**

WHEREAS, the Town of Gill (hereinafter referred to as "Town") owns the Gill Elementary School, and

WHEREAS, the Gill-Montague Regional School District (hereinafter referred to as "District") leases said building from the Town, and

WHEREAS, the Town and District, collectively referred to as the Parties, desire to enter into a collaborative agreement regarding the Town's desire to provide for an energy saving performance contract that requires the usage of the value of the energy savings on an annual basis to pay the capital cost of the project, plus all accrued financing charges,

NOW THEREFORE, the Town and District agree as follows:

1. The Town is in negotiations with Siemens Industry, Inc. (hereinafter referred to as "Siemens") to provide capital improvements pursuant to an Energy Savings Performance Contract (hereinafter referred to as "ESPC"). Said improvements include the Gill Elementary School.
2. Pursuant to the ESPC, the Guaranteed Annual Savings and the Verified Annual Savings will be quantified as defined below.
 - a. Guaranteed Annual Savings are those savings as calculated and guaranteed by Siemens pursuant to the Performance Assurance ("PA") Program negotiated between Siemens and the Town. Guaranteed Annual Savings are defined in units of energy saved and are valued based on stipulated unit costs per energy type.
 - b. Verified Annual Savings are those savings, calculated on an annual basis pursuant to the requirements set forth in the PA Program. Verified Annual Savings are determined in units of energy saved and are valued based on stipulated unit costs per energy type, as escalated in accordance with the negotiated unit rates in the ESPC agreement.
3. On an annual basis, the District will credit the Town an amount equal to the Verified Annual Savings specifically determined in regard to the Gill Elementary School. Said credit shall occur in the quarter following the completion of the prior year (as specified in the ESPC). The credit shall be made each year for the term of the financing period.
4. If the Town terminates its ESPC contract and PA Program with Siemens within the financing term, the Verified Annual Savings shall be calculated as the average Verified Annual Savings value for all proceeding years in which such savings were actually verified. Such average Verified Annual Savings value shall be credited to the Town for the balance of the financing term. For example, if the Town terminates its contract after

year five (5) of a fifteen (15) year financing term, the Verified Annual Savings shall be calculated as the sum of the first five (5) years of Verified Annual Savings divided by five (5) years. Such new verified savings shall herein be referred to as Calculated Verified Annual Savings.

5. Under its ESPC agreement with Siemens, the Guaranteed Annual Savings are contingent upon the Town maintaining certain baseline parameters and conducting proper annual operations and maintenance (herein referred to as O&M, as defined below) on the energy savings improvements installed under the ESPC. The Parties agree that to the extent the District desires to operate the buildings beyond the baseline parameters utilized to develop and calculate the energy savings (as defined below), the District will seek written authorization from the Town before implementing such changes to building operations and baseline conditions (as defined below), Such written authorization shall not be unreasonably withheld.
 - a. O&M includes operating and maintaining equipment and building systems in accordance with the manufacturer's guidelines and requirements, good business practices and consistent with operations and training manuals provided by Siemens and the Original Equipment Manufacturers to the Town.
 - b. Baseline Parameters include hours of operation, building occupancy, and temperature setpoints during occupied and unoccupied periods.
 - c. Changes to building operations include utilizing the school for additional programming or activities beyond the normal schedule as defined in the baseline parameters, and changing, upgrading, modifying or extending building footprint or facilities.
6. This Agreement will immediately become null and void if the Town is no longer a part of the District and/or the Gill Elementary School is no longer utilized by the District.
7. The District is not a party to the ESPC, and this Agreement in no way obligates the District in any way to perform under the ESPC; provided however, the District agrees to undertake all required annual O&M, as defined above, for the systems and equipment installed under the ESPC. The Town agrees to provide all necessary training, user manuals, As-Built drawings and documents, materials and equipment specifications, and training manuals and materials to the District. The Town further agrees that any reasonable additional expenses incurred by the District for such O&M on the equipment installed under the ESPC, which extend beyond the District's current O&M expenses, shall be borne by the Town.
8. This Agreement shall be governed by and construed according to the laws of the Commonwealth of Massachusetts.
9. This Agreement sets forth the entire agreement and understanding of the parties and supersedes all prior agreements, arrangements, and understandings, whether written or oral. Neither of the parties is relying on any representation, promise, or inducement that is not set forth in this Agreement.

10. The District has authority to enter into this Agreement pursuant to a vote of the Gill-Montague Regional School Committee dated _____, which vote was taken at a validly posted school committee meeting.
11. The Town has authority to enter into this Agreement pursuant to a vote of the Gill Board of Selectmen dated _____, which vote was taken at a validly posted board of selectmen meeting.
12. Any addendum or amendment to this Agreement must be voted on by the District at a validly posted school committee meeting and agreed to by the Town.
13. Any agreement reached by the parties regarding an addendum or amendment pursuant to Paragraph 9 of this Agreement shall be reduced to writing and attached to this Agreement.

IN WITNESS WHEREOF, the undersigned have entered into this Agreement effective the date hereof.

Dated:

Signatures:

School Committee,
Gill-Montague Regional School District:

Board of Selectmen,
Town of Gill:

By _____

By _____

(Title)

(Title)