

1 AN ABSTRACT OF PROCEEDINGS

2 STATE OF NEW MEXICO)

3 COUNTY OF SANTA FE) ss.

4 CITY OF SANTA FE)

5 The Governing Body (the "Governing Body") of the City of Santa Fe (the "City") in the County
6 of Santa Fe, State of New Mexico, met in regular session in full conformity with law and ordinances
7 and rules of the City, at City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico, being the regular
8 meeting place of the Governing Body, at the hour of 5:00 p.m., on Wednesday, the ____ day of
9 February, 2021.

10 Upon roll call the following were found to be present, constituting a quorum of the Governing
11 Body:

12	PRESENT:	Mayor:	_____
13		Councilor:	_____
14		Councilor:	_____
15		Councilor:	_____
16		Councilor:	_____
17		Councilor:	_____
18		Councilor:	_____
19		Councilor:	_____
20		Councilor:	_____

21 ABSENT:

22 _____

23 Thereupon the following proceedings, among others, were had and taken:

24 PUBLIC HEARINGS

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CONSIDERATION OF BILL NO. 2021-3

ADOPTION OF ORDINANCE NO. 2021-_____

**Approval of Investment Grade Audit and Professional Services Contract for Energy
Performance Contracting with Yearout Energy Services Company, LLC (Guaranteed Energy
Savings Agreement)**

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CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2021-3

INTRODUCED BY:

Mayor Alan Webber

AN ORDINANCE

ACCEPTING THE INVESTMENT-GRADE AUDIT REPORT AND APPROVING THE ENERGY SAVINGS PERFORMANCE CONTRACT BY AND BETWEEN THE CITY OF SANTA FE AND YEAROUT ENERGY SERVICES COMPANY, LLC, SUBJECT TO CITY COUNCIL APPROVAL OF A SEPARATE FINANCING TRANSACTION TO FINANCE THE COSTS OF THE EPC; AUTHORIZING THE PLEDGE OF UTILITY COST SAVINGS AS SECURITY FOR THE EPC FINANCING TRANSACTION, AND THE EXECUTION AND DELIVERY OF CERTAIN OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION WITH THE EPC; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION WITH THE EPC; REPEALING ALL ORDINANCES AND PRIOR ACTION IN CONFLICT HEREWITH; AND RELATED MATTERS.

Capitalized terms used in the following preambles have the same meaning as set forth in Section 1 of this Ordinance unless the context requires otherwise.

WHEREAS, the City of Santa Fe, New Mexico (the “City”) is a legally created, established, organized and existing incorporated charter municipality with home-rule powers under

1 the constitution and laws of the State of New Mexico; and

2 **WHEREAS**, pursuant to Statewide Price Agreement 90-000-18-00017AH, the City
3 entered into Professional Services Agreement No. 19-0641 (“PSA 19-0641”) with Yearout Energy
4 Services Company, LLC, a New Mexico limited liability Company (the “Contractor”), effective as
5 of August 2, 2019 for the purpose of obtaining an investment grade audit of energy and water usage
6 for various buildings and facilities owned and operated by the City, and to determine the feasibility
7 of entering into a guaranteed utility savings contract for the purpose of installing and implementing
8 energy efficiency and water conserving measures at the City’s facilities; and

9 **WHEREAS**, pursuant to PSA 19-0641, if energy and water conserving measures are
10 determined to be feasible, and if the amount of savings to be realized through the implementation
11 of such measures is determined to be sufficient to cover all such costs, as determined by the City,
12 associated with an Energy Savings Performance Contracting project, the City and the Contractor
13 intend to negotiate a Guaranteed Utility Savings Contract under which the Contractor will design,
14 procure, install, implement, maintain and monitor such energy and water conserving measures;
15 provided, that the City, by entering into PSA 19-0641, was not committed to entering into a
16 Guaranteed Utility Savings Contract; and

17 **WHEREAS**, the Contractor has provided the Investment Grade Audit Report dated August
18 21, 2020 (the “IGA”), a copy of which has been presented to the City Council in connection with
19 its consideration of this Ordinance, and pursuant to which the Contractor recommended the
20 implementation of energy savings measures (including both electricity and natural gas) and water
21 conservation measures throughout City-owned facilities to achieve a 16.8 percent reduction in the
22 City’s annual utility costs over the useful life of the energy and water conserving measures, at a
23 total contract price of \$15,442,785 (the “Energy and Water Conservation Project” or “Project”);
24 and

25 **WHEREAS**, the Contractor has proposed that the City and the Contractor enter into a

1 Professional Services Agreement for Energy Performance Contracting (the “EPC”), a copy of
2 which has been presented to the City Council in connection with its consideration of this Ordinance,
3 and pursuant to which the Contractor will complete the Energy and Water Conservation Project at
4 a total cost not to exceed \$15,442,785, and will guarantee utility cost savings at a level sufficient
5 to pay the total cost of the Energy and Water Conservation Project; and

6 **WHEREAS**, the Energy and Water Conservation Project consists of the following
7 energy savings and water conservation measures:

- 8 1. Upgrading approximately 9,000 existing lighting fixtures to LED technology;
- 9 2. Install 2.750MW DC renewable energy systems which are sized for a target
10 offset of 80% of post-retrofit On-Peak consumption at select City facilities and
11 a 60% of post-retrofit On-Peak consumption at select Water Utilities and
12 Buckman Direct Diversion (BDD) sites;
- 13 3. Repair of underperforming existing solar PV carports at Genoveva Chavez
14 Community Center to recover lost production and available Renewable Energy
15 Credit (“REC”) payments;
- 16 4. Upgrade approximately 760 existing domestic water fixtures to reduce water
17 consumption;
- 18 5. Remediate approximately 200 square feet of existing air leakage in building
19 envelope;
- 20 6. Install 28 new high efficiency transformers;
- 21 7. Identify and correct billing errors to reduce utility costs;
- 22 8. Replace the roof at the Canyon Road Water Treatment Plant in order reduce energy
23 and operational costs and support the installation of rooftop solar PV; and

24 **WHEREAS**, pursuant to the Public Facility Energy Efficiency and Water Conservation
25 Act, Sections 6-23-1 through -10 NMSA 1978 (the “Act”), and specifically Section 6-23-5(B)(1)

1 NMSA 1978, the City Council has been advised that the EPC satisfies the requirements of the
2 Public Facility Energy Efficiency and Water Conservation Act (the “Act”); and

3 **WHEREAS**, pursuant to Section 6-23-5(B)(2) NMSA 1978, the Energy, Minerals and
4 Natural Resources Department of the State (“EMNRD”) certified to the City by letter dated
5 September 12, 2020 that the Contractor meets the experience requirements established by EMNRD
6 and is a qualified provider of energy efficiency measures, and that the energy savings measures
7 proposed in the IGA appear to have been accurately estimated and are reasonable; and

8 **WHEREAS**, pursuant to Section 6-23-5(B) (3) NMSA 1978, the Office of the State
9 Engineer (“OSE”) certified to the City by letter dated August 28, 2020 that the Contractor meets
10 the experience requirements established by OSE and is a qualified provider of water conservation
11 measures, and that the water conservation measures proposed in the IGA appear to have been
12 accurately estimated and are reasonable; and

13 **WHEREAS**, the City intends to finance the costs of the Energy and Water Conservation
14 Project through a separate financing arrangement with a third-party financial institution (the
15 “Financing Transaction”) which will be paid from pledged guaranteed utility cost savings as
16 authorized pursuant to the Act, and pursuant to which the pledged guaranteed utility cost savings
17 (the “Pledged Revenues”) constitute a special fund; and

18 **WHEREAS**, the City Council intends to approve the EPC and authorize its execution,
19 delivery, and assignment of the Pledged Revenues, subject to the terms and provisions of this
20 Ordinance.

21 **NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE**
22 **CITY OF SANTA FE, NEW MEXICO:**

23 **Section 1. Definitions.** The terms in this section are defined for all purposes of this
24 Ordinance and of any ordinance amendatory hereof or supplemental hereto, or relating hereto, and
25 of any instrument or document appertaining hereto, except where the context by clear implication

1 herein otherwise requires, shall have the following meanings:

2 “Act” means the general laws of the State, including Sections 6-23-1 through 6-23-10
3 NMSA 1978, as amended, and enactments of the Governing Body relating to the EPC and the
4 Financing Transaction, including this Ordinance.

5 “Authorized Officer” means the following officers of the City: Mayor, City Manager, City
6 Finance Director, or other officer of the City when designated by a certificate signed by the Mayor
7 of the City from time to time, a certified copy of which shall be delivered to the Paying Agent.

8 “Bond Counsel” means an attorney or firm of attorneys nationally recognized for expertise
9 in the area of municipal bonds and the exemption of interest on municipal bonds from federal
10 income taxation.

11 “City,” “Municipal,” or “Municipality” means the Municipal Corporation and body
12 corporate and politic known as the City of Santa Fe, Santa Fe County, New Mexico.

13 “Conservation Measures” mean, collectively or individually, as the context may require,
14 the energy savings and water conservation equipment and improvements of which the Energy and
15 Water Conservation Project is comprised.

16 “Conservation-Related Cost Savings” means cost savings, other than Utility Cost Savings,
17 in the operating budget of the City that are the direct result of the Conservation Measures.

18 “Contract Price” means \$15,442,785, the maximum amount payable pursuant to the EPC.

19 “Contractor” means Yearout Energy Services Company, LLC, a New Mexico limited
20 liability company.

21 “Costs of Issuance” means all costs relating to the execution and delivery of the EPC [and
22 the Financing Transaction], including, without limitation, costs of advertising and publication,
23 costs of fees and expenses of the financial advisor, Bond Counsel, the Paying Agent, and other
24 reasonable and necessary fees and costs, including applicable gross receipts taxes, related to the
25 execution and delivery of the EPC [and the Financing Transaction].

1 “Energy and Water Conservation Project” or “Project” means the implementation of
2 energy savings (including both electricity and natural gas) and water conservation measures
3 throughout City-owned facilities, including the following energy savings and water conservation
4 measures:

- 5 1. Upgrading of approximately 9,000 existing lighting fixtures to LED technology;
- 6 2. Installation of 2.750MW DC renewable energy systems which are sized for a
7 target offset of 80% of post-retrofit On-Peak consumption at select City facilities
8 and a 60% of post-retrofit On-Peak consumption at select Water Utilities and
9 Buckman Direct Diversion (BDD) sites;
- 10 3. Repair of underperforming existing solar PV carports at Genoveva Chavez
11 Community Center to recover lost production and available Renewable Energy
12 Credit (“REC”) payments;
- 13 4. Upgrading of approximately 760 existing domestic water fixtures to reduce water
14 consumption;
- 15 5. Remediation of approximately 200 square feet of existing air leakage in building
16 envelope;
- 17 6. Installation of 28 new high efficiency transformers;
- 18 7. Identification and correction of billing errors to reduce utility costs;
- 19 8. Replacement of the roof at the Canyon Road Water Treatment Plant in order reduce
20 energy and operational costs and support the installation of rooftop solar PV; and
21 paying the Costs of Issuance allocable to the Energy and Water Conservation Project.

22 “EMNRD” means the Energy, Minerals and Natural Resources Department of the State.

23 “Energy Performance Contract” or “EPC” means the guaranteed utility savings contract by
24 and between the City and the Contractor, the form of which has been presented to the Governing
25 Body in connection with its consideration of this Ordinance.

1 “Financing Transaction” means the transaction to be entered into by and between the City
2 and the Lender, proceeds of which shall be applied to pay the Contract Price; the principal of,
3 interest on and other payments due in connection with the Financing Transaction shall be payable
4 solely from Pledged Revenues, which may be in the form of a lease-purchase agreement, a loan
5 agreement or other form of debt obligation.

6 “Governing Body” means the members of the governing body designated as councilors
7 who, together with the mayor, are the governing body of the City.

8 “IGA” means the Investment Grade Audit Report provided by the Contractor to the City
9 dated August 21, 2020 proposing the energy efficiency and water conservation measures which
10 comprise the Energy and Water Conservation Project.

11 “Lender” means the bank or other financial institution serving as the lender in connection
12 with the Financing Transaction; if applicable, the Lender may be the lessor if the Financing
13 Transaction is a lease-purchase transaction.

14 “OSE” means the Office of the State Engineer.

15 “Ordinance” means this City Ordinance as amended or supplemented from time to time.

16 “Placement Agent” means D.A. Davidson & Co., Kansas City, Missouri.

17 “Placement Agent Agreement” means the professional services agreement by and between
18 the City and the Placement Agent for the placement of the Financing Transaction with the Lender.

19 “Pledged Revenues” means amounts generated by Utility Cost Savings pursuant to the
20 EPC, which shall be deposited monthly to the Pledged Revenue Fund as provided in Section 6 of
21 this Ordinance.

22 “Pledged Revenue Fund” means the fund created pursuant to Section 6 of this Ordinance.

23 “Related Documents” means, as applicable, the lease-purchase agreement, loan agreement,
24 promissory note, escrow agreement, account control agreement and any other document or
25 agreement containing an obligation of the City as may be required by the Lender or otherwise in

1 connection with the EPC pursuant to the Financing Transaction.

2 “Utility Cost Savings” means the amounts saved by the City in the purchase of electricity
3 or water that are a direct result of the Conservation Measures.

4 **Section 2. Acceptance of IGA; Ratification of Prior Action.**

5 1. The IGA is hereby accepted and approved.

6 2. All action heretofore taken (not inconsistent with the express provisions
7 of this Ordinance) by the Governing Body and officers of the City directed toward the Energy and
8 Water Conservation Project, the IGA, the EPC and the Financing Transaction, including, without
9 limitation, the publication of a notice of public meeting and intent to adopt this Ordinance
10 authorizing the execution and delivery of the EPC, and the engagement of D.A. Davidson as
11 Placement Agent pursuant to the Placement Agent Agreement, and the same hereby is ratified,
12 approved and confirmed, notwithstanding any inconsistent prior action.

13 **Section 3. Findings.** The Governing Body makes the following findings and
14 determinations:

15 1. Pursuant to Section 6-23-3 of the Act, the amount that the City would spend
16 on the energy and water conservation measures proposed in the IGA is not likely to exceed the
17 cumulative amount of Utility Cost Savings and Conservation-Related Cost Savings of all energy
18 and water conservation measures proposed in the IGA over the twenty-five year term of the EPC
19 from the date of installation of the measures recommended in the IGA if those recommendations
20 are followed, including the financing of those costs pursuant to the Financing Transaction, and
21 excluding the cost of normal repair and replacement of components of the energy and water
22 conservation measures after the Conservation Measures are installed; and

23 2. The Contractor is a qualified provider who can provide a written guarantee
24 that the Utility Cost Savings and Conservation-Related Cost Savings will meet or exceed the
25 costs of the Conservation Measures.

1 3. Pursuant to Section 6-23-3(B) of the Act, the EPC includes a written guaranty
2 by the Contractor that the annual Utility Cost Savings and Conservation-Related Cost Savings will
3 meet or exceed the cost of the Conservation Measures; and

4 4. The Contractor will maintain a direct financial relationship with the City,
5 irrespective of the source of financing for the Conservation Measures.

6 5. Pursuant to Section 6-23-5(B) of the Act, The EPC complies with
7 requirements of the Act;

8 6. EMNRD has certified that the Contractor is a qualified provider which
9 meets the experience requirements established by EMNRD, and that the guaranteed energy saving
10 from the Conservation Measures appear to be accurately estimated and are reasonable; and

11 7. OSE has certified that the Contractor is a qualified provider which meets
12 the experience requirements established by OSE, and that the guaranteed water saving from the
13 Conservation Measures appear to be accurately estimated and are reasonable;
14 complies with the requirements of the Act.

15 **Section 4. Authorization of the Energy and Water Conservation Project;**
16 **Financing Transaction Condition.** The Energy and Water Conservation Project is hereby
17 authorized at a total cost not to exceed the Contract Price, excluding any such cost defrayed or to
18 be defrayed by any source other than proceeds of the Financing Transaction allocable to the
19 Contract Price; provided, that the Energy and Water Conservation Project and execution and
20 delivery of the EPC shall be subject to the authorization and closing of the Financing Transaction.

21 **Section 5. Execution and Delivery of EPC.** The Mayor or, in the absence of the
22 Mayor, the Mayor *pro tem*, is authorized to execute and delivery the EPC, which shall be attested
23 by the City Clerk or a deputy City Clerk, in substantially the form presented to the Governing Body
24 in its consideration of this Ordinance, with such modifications or revisions as the Mayor, in
25 consultation with the City's municipal advisor and Bond Counsel, determines are necessary or

1 convenient to implement the Energy and Water Conservation Project, and the execution and
2 delivery of the EPC by the Mayor, or in the absence of the Mayor, the Mayor *pro tem*, shall be
3 conclusive evidence of the City's approval thereof, as may be modified or revised.

4 **Section 6. Establishment and Administration of Pledged Revenue Fund;**
5 **Assignment as Security for Financing Transaction.** A special revenue fund is hereby
6 established, to be identified as the "City of Santa Fe/Yearout EPC Pledged Energy and Water
7 Conservation Savings Revenue Fund (the "Pledged Revenue Fund"). In the first month following
8 Substantial Completion, as defined in Section 1(m) of the EPC, the City shall deposit Pledged
9 Revenues to the Pledged Revenue Fund. The assignment of the Pledged Revenues as security for
10 the payment of debt service in connection with the Financing Transaction is hereby authorized,
11 with such details as shall be provided in the Financing Transaction documentation authorized by
12 the Governing Body.

13 **Section 7. Period of Energy and Water Conservation Project's Usefulness.** It is
14 hereby determined and recited that the average useful life of the Energy and Water Conservation
15 Project is 31 years, as indicated in the IGA.

16 **Section 8. Authorization to Execute Related Documents and Delegated**
17 **Authority.**

18 1. Approval of Documents; Ratification. The form, terms and provisions of
19 the Related Documents are in all respects approved, authorized and confirmed, with such changes
20 therein not inconsistent with this Ordinance as the Authorized Officers of the City deem necessary
21 or desirable.

22 2. Delegated Authority and Execution of Documents. The officers, agents
23 and employees of the City are authorized, empowered and directed to take all action required by
24 this Ordinance, and all such other action as may be necessary or appropriate to effectuate the
25 provisions of this Ordinance, the Related Documents and any other documents as may be necessary

1 or appropriate to carry out and comply with the provisions of this Ordinance.

2 **Section 9. Severability.** If any Section, paragraph, clause or provision of this
3 Ordinance shall be held to be invalid or unenforceable, the invalidity or unenforceability of such
4 Section, paragraph, clause or provision shall not affect any of the remaining provisions of this
5 Ordinance.

6 **Section 10. Repealer Clause.** All ordinances or parts of ordinances inconsistent
7 herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be
8 construed to revive any ordinance or part of any ordinance heretofore repealed.

9 **Section 11. Effective Date, General Summary for Publication.** Upon due adoption
10 of this Ordinance, the ordinance shall be recorded and preserved by the City Clerk, authenticated
11 by the signature of the Mayor and City Clerk, and the seal of the City impressed hereon, and the
12 title and general summary of the subject matter contained in this Ordinance (set out below) shall
13 be published in a newspaper which maintains an office and is of general circulation in the City and
14 this Ordinance shall be in full force and effect after its publication in accordance with law.

15 Pursuant to Section 3-17-5 NMSA 1978, as amended, the title and a general summary of
16 the subject matter contained in this Ordinance shall be published in substantially the following
17 form:

18 (Form of Summary of Ordinance for Publication)

19 CITY OF SANTA FE, NEW MEXICO

20 NOTICE IS HEREBY GIVEN of the title and of a general summary of the subject matter
21 contained in an ordinance duly adopted and approved by the Governing Body of the City of Santa
22 Fe on February __, 2021. A complete copy of the ordinance is available for public inspection
23 during the normal and regular business hours of the City Clerk in the office of the City Clerk, City
24 Hall, 200 Lincoln Avenue, Santa Fe, New Mexico and is available online at santafe.primegov.com.

25 The title of the ordinance is:

1 **AN ORDINANCE**

2 **ACCEPTING THE INVESTMENT-GRADE AUDIT REPORT AND APPROVING**
3 **THE ENERGY SAVINGS PERFORMANCE CONTRACT BY AND BETWEEN**
4 **THE CITY OF SANTA FE AND YEAROUT ENERGY SERVICES COMPANY,**
5 **LLC, SUBJECT TO CITY COUNCIL APPROVAL OF A SEPARATE**
6 **FINANCING TRANSACTION TO FINANCE THE COSTS OF THE EPC;**
7 **AUTHORIZING THE PLEDGE OF UTILITY COST SAVINGS AS SECURITY FOR THE**
8 **EPC FINANCING TRANSACTION, AND THE EXECUTION AND DELIVERY OF**
9 **CERTAIN OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION WITH THE**
10 **EPC; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION WITH THE EPC;**
11 **REPEALING ALL ORDINANCES AND PRIOR ACTION IN CONFLICT HEREWITH;**
12 **AND RELATED MATTERS.**

13 A general summary of the subject matter contained in such ordinance is set forth in the
14 title. COMPLETE COPIES OF THE ORDINANCE ARE ON FILE IN THE OFFICE OF THE
15 CITY CLERK AT THE CITY HALL, 200 LINCOLN AVENUE, SANTA FE, NEW MEXICO,
16 ARE AVAILABLE ONLINE AT SANTAFE.PRIMEGOV.COM, AND ARE AVAILABLE FOR
17 INSPECTION AND/OR PURCHASE DURING REGULAR OFFICE HOURS. THIS NOTICE
18 ALSO CONSTITUTES COMPLIANCE WITH SECTION 3-17-5 AND SECTIONS 6-14-4
19 THROUGH 6-14-7, NMSA 1978.

20 WITNESS my hand and the seal of the City on February ___, 2021.

21 CITY OF SANTA FE

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24 (SEAL)

25 KRISTINE MIHELIC, CITY CLERK

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(End of Form of Ordinance for Publication)

PASSED, APPROVED, and ADOPTED this ___ day of _____, 2021.

(SEAL)


ALAN WEBBER, MAYOR

ATTEST:

KRISTINE MIHELICIC, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Modrall, Sperling, Roehl, Harris & Sisk, P.A. as Bond Counsel

By: 
[Peter Franklin \(Jan 29, 2021 15:50 MST\)](#)
Peter Franklin

After discussion, Councilor _____ moved for approval, with Councilor _____

seconding the motion. Bill No. 2021-3 passed upon the following roll call vote:

Those voting AYE:

- Councilor: _____
- Councilor: _____
- Councilor: _____
- Councilor: _____
- Councilor: _____
- Councilor: _____

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Councilor: _____

Councilor: _____

Those voting NAY: _____

Those not present: _____

The presiding officer thereupon declared that at least three-fourths of all the members of the Governing Body having voted in favor of adoption of Bill No. 2021- 3 the motion was carried and Ordinance No. 2021- was duly passed and adopted.

After consideration by the Governing Body of other business the meeting was duly adjourned.

GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO

(SEAL)

ALAN WEBBER, MAYOR

ATTEST:

KRISTINE MIHELIC, CITY CLERK