

City of Santa Fe, New Mexico

memo

Date: February 17, 2014
To: Public Works Committee/Finance Committee
From: Nicholas Schiavo, Public Utilities Department and Water Division Director *NSA*
RE: Additional Funding for bid number '14/23/B the Geneveva Chavez Community Center Photovoltaic Project

ITEM AND ISSUE:

The Water Division requests additional funding to complete the Geneveva Chavez Community Center Photovoltaic (PV) Project.

BACKGROUND AND SUMMARY:

The Geneveva Chavez Community Center uses over four (4) million kWhs of electricity per year which results in a yearly cost for electricity of \$361,000. Construction of a photovoltaic (PV) system to provide renewable energy for the center would replace approximately 23% of the center's electrical needs and would save the center estimated \$95,000 per year. Savings would be in the form of reduced electrical costs as well as payment for renewable energy credits.

The PV project has been designed as four carport structures (see attached rendering). Each carport holds 150KW of PV panels. We believe that it is in the City's best interest to construct all four carports under this RFB. The project is being funded through the 2011 \$1.8 million General Obligation Bond. In order to complete all four carports, additional funding in the amount of \$593,958.74 will be necessary.

Staff is recommending that the additional funding be used from the General Fund or another funding source. This funding would be repaid through the GCCC electric utility savings. Savings are estimated at \$95,000 per year. Therefore the payback to the General Fund would be under six (6) years assuming a two (1.5) percent increase in electricity.

RECOMMENDATION:

The Water Division recommends the allocation of additional funding in the amount of \$593,958.74 to allow for the construction of the entire project in a single phase.

City of Santa Fe, New Mexico

memo

Date: February 13, 2014
To: Public Works Committee/Finance Committee/Public Utility Committee
From: Nicholas Schiavo, Public Utilities Department and Water Division Director *NSA*
RE: Request to award bid number '14/23/B for the Genoveva Chavez Community Center Photovoltaic Project

ITEM AND ISSUE:

The Water Division requests award of bid number '14/23/B for the Genoveva Chavez Community Center Photovoltaic (PV) Project.

BACKGROUND AND SUMMARY:

The Genoveva Chavez Community Center uses over 4 million kWhs of electricity per year which results in a yearly cost for electricity of \$361,000. Construction of a photovoltaic system to provide renewable energy for the center would replace approximately 23% of the center's electrical needs and would save the center an estimated \$95,000 in the first year. The project would pay for itself within 21.5 years and would continue to provide electricity to the community center for an additional 3.5 years or more, resulting in significant energy savings to the City. This estimate includes an escalation cost of 1.5% per year. For the past three years we have experienced a 3% increase in PNM electric rates. It is estimated that the PV system on a yearly basis will avoid the production of 1,130 tons of CO₂ and save over 410,000 gallons of water. The contract period for the construction of this project is one hundred eighty (180) days.

The bids for this project were opened on January 21, 2014 and were subsequently evaluated for completeness and accuracy. The low bid in the amount of \$2,393,958.74 was submitted by Affordable Solar. A summary of the bids is provided below:

Bidders	Total Bid without NMGR	Bid Including Local, Resident or Veterans preference
Affordable Solar	\$ 2,393,958.74	\$
Mosher Enterprises	\$ 2,421,000.00	\$
Consolidated Solar Tech	\$ 2,482,454.00	\$
Positive Energy Solar	\$ 2,798,052.30	\$ 2,518,247.07

Funds for this work are available in Business Unit, Line Item 32600.572970.0113400 in the amount of \$2,393,958.74.

RECOMMENDATION:

The Water Division recommends:

- Review and approval of award of contract to Affordable Solar for construction of the GCCC Photovoltaic Project under RFP No. '14/23/B for the total amount of \$2,393,958.74.
- Forwarding and recommendation of approval of the award and contract at the Finance Committee, Public Utilities Committee, and the Governing Body on March 3rd, 5th and 12th respectively.

cc:

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CITY OF SANTA FE
CAPITAL IMPROVEMENTS PROGRAM

AGREEMENT BETWEEN
OWNER AND CONTRACTOR

Genoveva Chavez community Center Photovoltaic System Installation

This Agreement is entered into this ____ day of _____, 2014, by and between the CITY OF SANTA FE, herein known as the Owner, and Affordable Solar, herein known as the Contractor.

For the following:

PROJECT:

PROJECT NO.:

ARCHITECT OF RECORD: ProteckPark Solar

DISTRIBUTION:

OWNER	_____
CONTRACTOR	_____
ARCHITECT	_____
USER DIVISION	_____
OTHER	_____

Revised March 2011

RECITALS

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WHEREAS, the Owner, through its Governing Body, is authorized to enter into a construction Contract for the project; and

WHEREAS, the Owner has let this Contract according to the established State and Local Purchasing procedures for contracts of the type and amount let; and

WHEREAS, construction of this Project was approved by the Governing Body of the City of Santa Fe at its meeting of _____, 2014.

The OWNER and the CONTRACTOR agree:

ARTICLE 1
THE CONTRACT DOCUMENTS

The Contract Documents consist of: this Agreement, the Conditions of the Contract (General, Supplementary, and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

ARTICLE 2
THE WORK

The Contractor shall perform all the work required by the Contract Documents for the Genoveva Chavez Community Center Photovoltaic System Installation project.

The work is designated as City of Santa Fe Project, Genoveva Chavez Community Center Photovoltaic System Installation project, and consists of, but is not limited to: complete in place installation of 528kW and 96KW photovoltaic systems including site lighting, power improvements, and site restoration, in accordance with the drawings, specifications, and other contract documents. The location of the project is the Genoveva Chavez Community Center at 3221 Rodeo Road, Santa Fe, New Mexico 87501. Construction drawings are attached as Exhibit VI. The project shall be constructed in accordance with the Public Utilities Department Water Division Construction Standards and Specifications, attached as Exhibit V.

The work consists of furnishing all equipment, labor and materials as required by the City of Santa Fe, New Mexico.

Contractor shall be responsible for verifications of all measurements and dimensions for bidding on each subsequent Work Order.

Contractor shall provide and keep at the work site, a complete "as-built" record set of drawings that shall be corrected daily and shall show every change from the original approved drawings and specifications. These changes shall be forwarded to City periodically. The drawings shall reflect exact and actual "as-built" conditions of construction, installation, and erection as it progresses. Where drawings are not adequate to show "as-built" conditions, Contractor shall prepare sketches which delineate the necessary "as-built" information. City shall furnish two (2) sets of all paper "blue-line" print "approved" drawings for use in accomplishing specified mark-up. Final "as-built" drawings shall be delivered to City by Contractor upon completion of

the work.

The Contractor shall be responsible for maintaining traffic control at the site in conformance with the Manual on Uniform Traffic Control Devices.

Contractor shall be responsible for all permits, fees, and State and City inspections associated with the construction.

ARTICLE 3
TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The work to be performed under this Contract may commence not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Substantial Completion shall be achieved no later than One Hundred and Twenty (120) calendar days after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Owner. The 96KW system must be substantially complete by July 29th, 2014. The 528KW system must be substantially complete by August 8, 2014. Substantial completion must include interconnect and final approval of the system from PNM.

ARTICLE 4
CONTRACT SUM

The Owner shall pay the Contractor in current funds for the performance of the work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of two million three hundred ninety three thousand nine hundred fifty eight dollars and 74/100s (\$2,393,958.74).

The Contract Sum is determined as follows:

Base Bid	\$ 2,393,958.74
Gross Receipts Tax (Tax Exempt)	\$ N/A
Subtotal	\$ 2,393,958.74
TOTAL CONTRACT AMOUNT	\$ 2,393,958.74

ARTICLE 5
PROGRESS PAYMENTS

Based upon Application for Payment submitted to the Owner by the Contractor and Certificates for Payment issued by the Owner, the Owner shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows:

Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Contract sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application

for Payment, less the aggregate of previous payments made by the Owner; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract sum, less such amounts as the Owner shall determine for all incomplete work and unsettled claims as provided in the Contract documents.

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ARTICLE 6
LIQUIDATED DAMAGES

Should the Contractor neglect, refuse, or otherwise fail to achieve Substantial Completion by the contract date set forth in Article 3 herein or any extension in the Contract thereof, the Contractor agrees to pay to the Owner the amount of one thousand dollars (\$1,000) per consecutive calendar days of delay until the work is completed and accepted or until voided pursuant to the provisions of the General Conditions of the Contract, not as a penalty, but as liquidated damages for such breach of the Contract.

ARTICLE 7
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract sum, shall be paid by the Owner to the Contractor within twenty-one (21) calendar days after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Owner. In addition, the Contractor shall provide to the Owner a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings.

ARTICLE 8
SCHEDULE

The Contractor shall, within five (5) days after the effective date of Notice to Proceed, prepare and submit five (5) copies of a progress schedule covering project operations for the Thirty (30) calendar day Contract period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor, and are part of their Contract (See Article 4.10, Progress Schedules of Section 00700, General Conditions of the Contract).

ARTICLE 9
GENERAL AND SPECIAL PROVISIONS

9.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.

9.2 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

9.3 The Contractor shall defend, indemnify, and hold harmless the Owner against any and all

injury, loss, or damage, including, without limitation, costs of defense, court costs and attorney's fees, arising out of the acts, errors, or omissions of the Contractor.

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9.4 An enumeration of the Contractor's General Comprehensive Liability Insurance requirements appears in the General Conditions of the Contract for construction. Insurance requirements are also described in the Instructions to the Bidder section of the Project Manual. Contractor shall maintain adequate insurance in at least the maximum amounts which the Owner could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the City. It is the sole responsibility of the Contractor to be in compliance with the law.

9.5 This Agreement shall not become effective until: (1) approved by the Governing Body; and (2) signed by all parties required to sign this Agreement.

9.6 The Contractor and the Contractor's agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the Owner. The Contractor and the Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of Owner's vehicles, or any other benefits afforded to employees of the Owner as a result of this Agreement.

9.7 The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the Owner. If the Contractor is permitted to subcontract, the Contractor agrees to comply with the provisions of the Subcontractors Fair Practices Act, Section 13-4-31 through 13-4-43 NMSA 1978. Further, if permitted to subcontract, the Contractor shall comply with all provisions of the Prompt Payment Act, Sections 57-28-1 through 57-28-11 NMSA 1978.

9.8 The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Owner, the Department of Finance and Administration and the State Auditor. The Owner shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive illegal payments.

9.9 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Owner for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Owner, this Agreement shall terminate upon written notice being given by the Owner to the Contractor. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

9.10 The Contractor warrants that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.

9.11 The Contractor hereby warrants that the Contractor is in compliance with the Americans with Disabilities Act, 29 CFR 1630.

9.12 The Contractor, upon final payment of the amounts due under this Agreement, releases the Owner, the Owner's officers and employees, and the City of Santa Fe from all liabilities and obligations arising from or under this Agreement, including, without limitation, all damages, losses, costs, liability, and expenses, including, without limitation, attorney's fees and costs of

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litigation that the Contractor may have.

9.13 The Contractor agrees not to purport to bind the Owner to any obligation not assumed herein by the Owner, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

9.14 Notices. Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) 5 days after the same are deposited in the United States mail, postage prepaid, registered or certified mail return receipt requested, addressed to the applicable party at the address indicated below for such party or at such other address as may be designated by either party in a written note to the other party.

OWNER

City of Santa Fe, Public Utilities Department
Water Division
P.O. Box 909
Santa Fe, New Mexico 87504-0909

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CONTRACTOR

Affordable Solar
4840 Pan American E Fwy NE
Albuquerque, NM 87109

New Mexico License # 365954

9.15 Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

9.16 Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope and conditions of this Agreement.

9.17 This document shall be executed in no less than two (2) counterparts, each of which shall be deemed an original.

9.18 Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution, and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

9.19 Separability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

9.20 Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

9.21 Entire Agreement. This Agreement represents the entire Contract between the parties and except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Contract, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior conditions, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

9.22 Interchangeable Terms. For purposes of all provisions within this Agreement and all

attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

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9.23 Words and Phrases. Words, phrases, and abbreviations which have well-known technical or trade meanings used in the Contract documents shall be used according to such recognized meaning. In the event of a conflict, the more stringent meaning shall govern.

9.24 Relationship of Contract Documents. The Contract Documents are complementary, and any requirement of one Contract Document shall be as binding as if required by all.

9.25 Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) imposes civil and criminal penalties for its violation.

9.26 By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Owner and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

9.27 Pursuant to Section 13-4-11. NMSA 1978, Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.

ARTICLE 10
NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

This Agreement is entered into as of the day and year first written above.

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OWNER:
CITY OF SANTA FE

DAVID COSS, MAYOR

DATE: _____

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

APPROVED:

MARCOS A. TAPIA, DIRECTOR
FINANCE DEPARTMENT

Business Unit/Line Item 32600.572970.0113400

CONTRACTOR:
Affordable Solar

By: _____

Date: _____

NM Taxation & Revenue CRS No. 03-183098-006
City of Santa Fe Business Reg. No. 13-00111109



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

Section to be completed by department for each contract or contract amendment

1 **FOR: ORIGINAL CONTRACT** or **CONTRACT AMENDMENT**

2 Name of Contractor Affordable Solar

3 Complete information requested Plus GRT
 Inclusive of GRT

Original Contract Amount: \$2,393,958.74

Termination Date: 120NTP

Approved by Council Date: Pending

or by City Manager Date: _____

Contract is for: GC3 SolarPhotovoltaic

Amendment # _____ to the Original Contract# _____

Increase/(Decrease) Amount: _____

Extend Termination Date to: _____

Approved by Council Date: _____

or by City Manager Date: _____

Amendment is for: _____

4 **History of Contract & Amendments:** (option: attach spreadsheet if multiple amendments) Plus GRT

Inclusive of GRT

Amount \$ 2,393,958.74 of original Contract# _____ Termination Date: 120NTP

Reason: Photovoltaic

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Amount \$ _____ amendment # _____ Termination Date: _____

Reason: _____

Total of Original Contract plus all amendments: \$ 2,393,959



**City of Santa Fe
Summary of Contracts, Agreements, & Amendments**

5 Procurement Method of Original Contract: (complete one of the lines)

RFP# 14/23/B Date: January 21, 2014

RFQ _____ Date: _____

Sole Source _____ Date: _____

Other _____

6 Procurement History: _____
example: (First year of 4 year contract)

7 Funding Source: Water division **BU/Line Item:** 52305.57297

8 Any out-of-the ordinary or unusual issues or concerns:
none
(Memo may be attached to explain detail.)

9 Staff Contact who completed this form: Maya Martinez

Phone # 955-4271

10 Certificate of Insurance attached. (if original Contract)

Submit to City Attorney for review/signature

Forward to Finance Director for review/signature
Return to originating Department for Committee(s) review or forward to City Manager for review and approval (depending on dollar level).

To be recorded by City Clerk:

Contract # _____

Date of contract Executed (i.e., signed by all parties): _____

Note: If further information needs to be included, attach a separate memo.

Comments:



