

**CITY of ALBUQUERQUE
TWENTY SIXTH COUNCIL**

COUNCIL BILL NO. O-24-33 ENACTMENT NO. O-2024-026

SPONSORED BY: Klarissa J. Peña, by request

ORDINANCE

ACCEPTING THE INVESTMENT-GRADE AUDIT REPORT AND APPROVING THE ENERGY SAVINGS PERFORMANCE CONTRACT BY AND BETWEEN THE CITY OF ALBUQUERQUE AND YEAROUT ENERGY SERVICES COMPANY, LLC, SUBJECT TO CITY COUNCIL APPROVAL OF A SEPARATE FINANCING TRANSACTION TO FINANCE THE COSTS OF THE ENERGY PERFORMANCE CONTRACT (“EPC”); AUTHORIZING THE EXECUTION AND DELIVERY OF THE EPC AND 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 Albuquerque, New Mexico (the “City”) is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State and its home rule charter; and

WHEREAS, the City has Home Rule Powers; and

WHEREAS, pursuant to the Statewide Price Agreement No. 90-000-18-00017, the City entered into Professional Services Agreement No. (“PSA 202100819”) with Yearout Energy Services Company, LLC, a New Mexico limited liability Company (the “Contractor”), effective as of March 5, 2021 for the purpose of obtaining an investment grade audit of energy usage for various buildings and facilities owned and operated by the City, and to determine the feasibility of entering into a guaranteed utility savings contract for the purpose of installing and implementing energy efficiency measures at the City’s facilities; and

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1 **WHEREAS, pursuant to PSA 202100819, if energy conserving measures are**
2 **determined to be feasible, and if the amount of savings to be realized through**
3 **the implementation of such measures is determined to be sufficient to cover**
4 **all such costs, as determined by the City, associated with an Energy Savings**
5 **Performance Contracting project, the City and the Contractor intend to**
6 **negotiate a Guaranteed Utility Savings Contract under which the Contractor**
7 **will design, procure, install, implement, maintain and monitor such energy**
8 **conserving measures; provided, that the City, by entering into PSA 202100819,**
9 **was not committed to entering into a Guaranteed Utility Savings Contract; and**

10 **WHEREAS, the Contractor has provided the Investment Grade Audit Report**
11 **dated April 2, 2024 (the “IGA”), a copy of which has been presented to the City**
12 **Council in connection with its consideration of this Ordinance, and pursuant**
13 **to which the Contractor recommended the implementation of energy savings**
14 **measures (including both electricity and natural gas) and throughout City-**
15 **owned facilities to achieve a total of \$15,702,878 reduction in the City’s**
16 **electrical utility and natural gas energy costs resulting in 11% percent**
17 **reduction in utility costs over the useful life of the energy conserving**
18 **measures, at a total contract price of \$11,442,980 less a \$3,000,000 capital**
19 **contribution from the 3% capital outlay fund (the “Energy Conservation**
20 **Project” or “Project”); and**

21 **WHEREAS, the Contractor has proposed that the City and the Contractor**
22 **enter into a Professional Services Agreement for Energy Performance**
23 **Contracting (the “EPC”), a copy of which has been presented to the City**
24 **Council in connection with its consideration of this Ordinance, and pursuant**
25 **to which the Contractor will complete the Energy Conservation Project at a**
26 **total cost not to exceed \$11,442,980, and will guarantee utility cost savings at**
27 **a level equal to the total cost of the Energy Conservation Project; and**

28 **WHEREAS, the Energy Conservation Project consists of the following**
29 **energy savings conservation measures:**

30 **Lowering the City of Albuquerque electrical energy consumption in public**
31 **facilities by way of energy efficient equipment and devices. Removal of old**
32 **equipment, devices and fixtures and replace with new energy efficient control**

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1 devices, lighting controls, heat and cooling enhancements to minimize both
2 natural gas and electrical consumption.

3 WHEREAS, pursuant to the Public Facility Energy Efficiency and Water
4 Conservation Act, Sections 6-23-1 through -10 NMSA 1978 (the “Act”), and
5 specifically Section 6-23-5(B)(1) NMSA 1978, the City Council has been
6 advised that the EPC satisfies the requirements of the Act; and

7 WHEREAS, pursuant to Section 6-23-5(B)(2) NMSA 1978, the Energy,
8 Minerals and Natural Resources Department of the State (“EMNRD”) certified
9 to the City by letter dated April 8, 2024 that the Contractor meets the
10 experience requirements established by EMNRD and is a qualified provider of
11 energy efficiency measures, and that the energy savings measures proposed
12 in the IGA appear to have been accurately estimated and are reasonable; and

13 WHEREAS, the City intends to finance the costs of the Energy
14 Conservation Project through a separate financing arrangement with a third-
15 party financial institution (the “Financing Transaction”); and

16 WHEREAS, the City Council intends to approve the EPC and authorize its
17 execution and delivery subject to the terms and provisions of this Ordinance.
18 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
19 ALBUQUERQUE:

20 Section 1. Definitions. The terms in this section are defined for all
21 purposes of this Ordinance and of any ordinance amendatory hereof or
22 supplemental hereto, or relating hereto, and of any instrument or document
23 appertaining hereto, except where the context by clear implication herein
24 otherwise requires, shall have the following meanings:

25 “Act” means the general laws of the State, including Sections 6-23-1
26 through 6-23-10 NMSA 1978, as amended, and enactments of the Council
27 relating to the EPC and the Financing Transaction, including this Ordinance.

28 “Authorized Officer” means the following officers of the City: Mayor, Chief
29 Administrative Officer, Chief Financial Officer, or other officer of the City when
30 designated by a certificate signed by the Mayor of the City from time to time.

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

1 **“City,” “Municipal,” or “Municipality” means the Municipal Corporation and**
2 **body corporate and politic known as the City of Albuquerque, Bernalillo**
3 **County, New Mexico.**

4 **“Conservation Measures” mean, collectively or individually, as the context**
5 **may require, the energy savings and conservation equipment and**
6 **improvements of which the Energy Conservation Project is comprised.**

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

10 **“Contract Price” means \$8,442,980, the maximum amount payable**
11 **pursuant to the EPC.**

12 **“Contractor” means Yearout Energy Services Company, LLC, a New**
13 **Mexico limited liability company.**

14 **“Costs of Issuance” means all costs relating to the execution and delivery**
15 **of the EPC and the Financing Transaction, including, without limitation, costs**
16 **of advertising and publication, costs of fees and expenses of the financial**
17 **advisor, Bond Counsel, and other reasonable and necessary fees and costs,**
18 **including applicable gross receipts taxes, related to the execution and delivery**
19 **of the EPC and the Financing Transaction.**

20 **“Council” means the Council in which is vested the legislative power of the**
21 **City.**

22 **“Energy Conservation Project” or “Project” means the implementation of**
23 **energy savings (including both electricity and natural gas) and conservation**
24 **measures throughout City-owned facilities, including the following energy**
25 **savings and conservation measures:**

26 **[The project’s objective is to lower operational costs by reducing the**
27 **consumption of electrical energy and natural gas. By employing Energy**
28 **Savings Performance Contracting (ESPC), the project will facilitate the**
29 **replacement of obsolete equipment, tackle maintenance backlogs, and boost**
30 **the reliability and resilience of a designated range of city facilities.**

31 **Furthermore, this initiative will help diminish the carbon footprint of CABQ,**
32 **bolster the local economy, foster job creation, and support the objectives of**
33 **the CABQ Climate Action Plan.]**

1 **“EMNRD” means the Energy, Minerals and Natural Resources Department**
2 **of the State.**

3 **“Energy Performance Contract” or “EPC” means the guaranteed utility**
4 **savings contract by and between the City and the Contractor, the form of**
5 **which has been presented to the Council in connection with its consideration**
6 **of this Ordinance.**

7 **“Financing Transaction” means the transaction to be entered into by and**
8 **between the City and the Lender, proceeds of which shall be applied to pay**
9 **the Contract Price; the principal of, interest on and other payments due in**
10 **connection with the Financing Transaction shall be payable as provided in a**
11 **separate ordinance authorizing the Financing Transaction.**

12 **“IGA” means the Investment Grade Audit Report provided by the**
13 **Contractor to the City dated April 2, 2024 proposing the energy efficiency and**
14 **conservation measures which comprise the Energy Conservation Project.**

15 **“Lender” means the bank or other financial institution serving as the lender**
16 **in connection with the Financing Transaction, which Lender may serve as the**
17 **lessor if the Financing Transaction is a lease-purchase transaction.**

18 **“Ordinance” means this City Ordinance as amended or supplemented from**
19 **time to time.**

20 **“Utility Cost Savings” means the amounts saved by the City in the**
21 **purchase of electricity that are a direct result of the Conservation Measures.**

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

23 **1. The IGA is hereby accepted and approved.**

24 **2. All action heretofore taken (not inconsistent with the express provisions**
25 **of this Ordinance) by the Council and officers of the City directed toward the**
26 **Energy Conservation Project, the IGA, the EPC and the Financing Transaction,**
27 **including, without limitation, the publication of a notice of public meeting and**
28 **intent to adopt this Ordinance authorizing the execution and delivery of the**
29 **EPC, is hereby ratified, approved and confirmed, notwithstanding any**
30 **inconsistent prior action.**

31 **Section 3. Findings. The Council makes the following findings and**
32 **determinations:**

1 1. Pursuant to Section 6-23-3 of the Act, the amount that the City would
2 spend on the energy conservation measures proposed in the IGA is not likely
3 to exceed the cumulative amount of Utility Cost Savings and Conservation-
4 Related Cost Savings of all energy conservation measures proposed in the
5 IGA over the 15-year term of the EPC from the date of installation of the
6 measures recommended in the IGA if those recommendations are followed,
7 including the financing of those costs pursuant to the Financing Transaction,
8 and excluding the cost of normal repair and replacement of components of the
9 energy conservation measures after the Conservation Measures are installed.

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

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

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

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

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

25 Section 4. Authorization of the Energy Conservation Project; Financing
26 Transaction Condition. The Energy Conservation Project is hereby authorized
27 at a total cost not to exceed the Contract Price, excluding any such cost
28 defrayed or to be defrayed by any source other than proceeds of the Financing
29 Transaction allocable to the Contract Price; provided, that the Energy
30 Conservation Project and execution and delivery of the EPC shall be subject
31 to the authorization and closing of the Financing Transaction.

32 Section 5. Execution and Delivery of EPC. The Mayor or, in the absence of
33 the Mayor, the Chief Administrative Officer, is authorized to execute and

1 delivery the EPC, which shall be attested by the City Clerk or a deputy City
2 Clerk, in substantially the form presented to the Council in its consideration of
3 this Ordinance, with such modifications or revisions as the Mayor, in
4 consultation with the City’s municipal advisor and Bond Counsel, determines
5 are necessary or convenient to implement the Energy Conservation Project,
6 and the execution and delivery of the EPC by the Mayor, or in the absence of
7 the Mayor, the Chief Administrative Officer, shall be conclusive evidence of
8 the City’s approval thereof, as may be modified or revised.

9 Section 6. Period of Energy Conservation Project’s Usefulness. It is
10 hereby determined and recited that the average useful life of the Energy
11 Conservation Project is 15 years, as indicated in the IGA.

12 Section 7. Authorization to Execute EPC and Delegated Authority.

13 1. Approval of Documents; Ratification. The form, terms and provisions
14 of the EPC are in all respects approved, authorized and confirmed, with such
15 changes therein not inconsistent with this Ordinance as the Authorized
16 Officers of the City deem necessary or desirable.

17 2. Delegated Authority and Execution of EPC and Additional Documents.
18 The officers, agents and employees of the City are authorized, empowered and
19 directed to take all action required by this Ordinance, and all such other action
20 as may be necessary or appropriate to effectuate the provisions of this
21 Ordinance, the EPC and any other documents as may be necessary or
22 appropriate to carry out and comply with the provisions of this Ordinance.

23 Section 8. Severability. If any Section, paragraph, clause or provision of
24 this Ordinance shall be held to be invalid or unenforceable, the invalidity or
25 unenforceability of such Section, paragraph, clause or provision shall not
26 affect any of the remaining provisions of this Ordinance.

27 Section 9. Repealer Clause. All ordinances or parts of ordinances
28 inconsistent herewith are hereby repealed to the extent only of such
29 inconsistency. This repealer shall not be construed to revive any ordinance or
30 part of any ordinance heretofore repealed.

31 Section 10. Effective Date, General Summary for Publication. Upon due
32 adoption of this Ordinance, it shall be recorded and preserved by the City
33 Clerk, authenticated by the signature of the President of the Council and City

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1 Clerk, and approved by the Mayor and the seal of the City impressed hereon,
2 and the title and general summary of the subject matter contained in the
3 Ordinance shall be published in a newspaper which maintains an office and is
4 of general circulation in the City, in accordance with law. This Ordinance shall
5 be in full force and effect after its publication in accordance with law.

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

9 (Form of Summary of Ordinance for Publication)

10 CITY OF ALBUQUERQUE, NEW MEXICO

11 The City Council of the City of Albuquerque, New Mexico, hereby gives
12 notice of the adoption of its Ordinance Bill No. _____ on August __,
13 2024. Complete copies of the Ordinance are available for public inspection
14 during the normal and regular business hours of the City Clerk, at Plaza del
15 Sol, 600 2nd NW, 7th floor, Albuquerque, New Mexico 87102.

16 The title of the ordinance is:

17 ACCEPTING THE INVESTMENT-GRADE AUDIT REPORT AND APPROVING
18 THE ENERGY SAVINGS PERFORMANCE CONTRACT BY AND BETWEEN
19 THE CITY OF ALBUQUERQUE AND YEAROUT ENERGY SERVICES
20 COMPANY, LLC, SUBJECT TO CITY COUNCIL APPROVAL OF A SEPARATE
21 FINANCING TRANSACTION TO FINANCE THE COSTS OF THE ENERGY
22 PERFORMANCE CONTRACT ("EPC"); AUTHORIZING THE EXECUTION AND
23 DELIVERY OF THE EPC AND OTHER AGREEMENTS AND DOCUMENTS IN
24 CONNECTION WITH THE EPC; RATIFYING ACTION PREVIOUSLY TAKEN IN
25 CONNECTION WITH THE EPC; REPEALING ALL ORDINANCES AND PRIOR
26 ACTION IN CONFLICT HEREWITH; AND RELATED MATTERS.

27 A general summary of the subject matter contained in such ordinance is
28 set forth in the title. This notice also constitutes compliance with Section 3-
29 17-5 and Sections 6-14-4 through 6-14-7, NMSA 1978.

30 (End of Form of Ordinance for Publication)

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1 PASSED AND ADOPTED THIS 5th DAY OF August, 2024
2 BY A VOTE OF: 9 FOR 0 AGAINST.

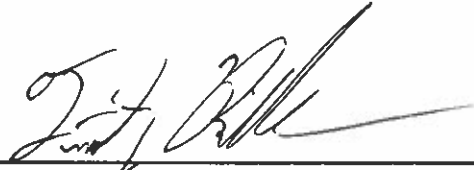
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Dan Lewis, President
City Council

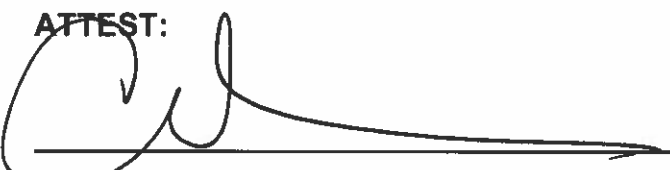
APPROVED THIS 13 DAY OF August, 2024

Bill No. O-24-33



Timothy M. Keller, Mayor
City of Albuquerque

ATTEST:



Ethan Watson, City Clerk

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