

**ACTION SHEET
CITY COUNCIL MEETING OF 03/25/09
ITEM FROM FINANCE COMMITTEE MEETING OF 03/16/09**

ISSUE:

7. REQUEST FOR APPROVAL OF EMERGENCY PROCUREMENT AND PROFESSIONAL SERVICES AGREEMENT – SALVADOR PEREZ RECREATION COMPLEX ROOF REPLACEMENT AND DECK REPAIR; KOCH CONSTRUCTION CO., INC. (PETER GREENE)

FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM

Requested approval of emergency procurement and professional services agreement for Salvador Perez Recreation Complex roof replacement and deck repair with Koch Construction Co., Inc. in the amount of \$99,302.50. Budget is available in project fund.

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR WURZBURGER	X		
COUNCILOR CALVERT	excused		
COUNCILOR CHAVEZ	excused		
COUNCILOR DOMINGUEZ	X		
CHAIRPERSON ORTIZ	X		

DISK fc1/fcissue

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, MARCH 9, 2009**

ITEM 8

CIP PROJECT #510 – SALVADOR PEREZ RECREATION COMPLEX EMERGENCY ROOF REPLACEMENT AND DECK REPAIR

- REQUEST FOR APPROVAL OF EMERGENCY PROCUREMENT AND PROFESSIONAL SERVICES AGREEMENT WITH KOCH CONSTRUCTION COMPANY TO REPAIR AND REPLACE THE ROOF IN THE AMOUNT OF \$99,302.50 (PETER GREENE)

PUBLIC WORKS COMMITTEE ACTION: Approved on Consent

SPECIAL CONDITIONS OR AMENDMENTS:

STAFF FOLLOW UP:


VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON BUSHEE			
COUNCILOR CALVERT	X		
COUNCILOR CHAVEZ	Excused		
COUNCILOR ROMERO	X		
COUNCILOR TRUJILLO	X		


City of Santa Fe, New Mexico


memo


DATE: March 9, 2009

TO: Public Works, CIP, Land Use Committee

VIA: Robert Romero, Public Works Director 

Chris Ortega, Engineering Division Director 

Martin A. Valdez, Community Facilities Manager 

FROM: Peter Greene, Special Projects Administrator 

ISSUE:

CIP # 510--Salvador Perez Recreation Complex Emergency Roof Replacement and Deck Repair

- Request approval of Emergency Procurement and Professional Services Agreement (Exhibit "A") with Koch Construction Company to repair and replace the roof at the Salvador Perez Recreation Complex in the amount of \$99,302.50.

SUMMARY:

The roof at the Salvador Perez Recreation Complex is in dire need of replacement and repair. Salvador Perez staff has reported numerous leaks and an analysis of the roof has revealed some structural damage. In its current condition, it is a threat to public health and safety.

The following price quotes were received for the roof repair:

- | | |
|-----------------------|-----------|
| • Mike Lopez Roofing | \$156,509 |
| • L.P. Roofing | \$108,750 |
| • Enchantment Roofing | \$103,570 |
| • Tremco Inc. | \$320,000 |
| • Koch Construction | \$99,302 |

Koch Construction submitted the low quote and met the required specifications.

The Public Works Department is recommending approval of the emergency procurement and the attached Professional Services Agreement in the amount of \$99,302.50 with Koch Construction Company. In addition to the roof repair, the roof system will provide

MARCH 9, 2009
CIP PROJECT NO. 510 SALVADOR PEREZ COMPLEX RE-ROOF
PW, CIP, LU COMMITTEE – MEMO
PAGE TWO

an R-38 insulation rating to meet current building code requirements and to make the building more energy efficient.

Budget

Funds are available from Business Unit/Line Item 32125.572500.

ACTION:

Please approve the emergency procurement and Professional Services Agreement with Koch Construction, so these necessary repairs to the Salvador Perez facility can be expedited.

Attachments: Exhibit "A" Professional Services Agreement

xc: Robert Rodarte, Purchasing Officer
Terrie, Rodriguez, Community Services Department Director
Gerald Martinez, Sal Perez Pool Manager
Project File

CITY OF SANTA FE
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Koch Construction Co., Inc. (the "Contractor"). The date of this Agreement shall be the date when it is executed by the City.

1. SCOPE OF SERVICES

The Contractor shall provide the following services for the City:

Install new roof covering and repair decking on the southeast corner of the roof of the pool at Salvador Perez Recreation Facility in accordance with Exhibit A attached hereto and made part of this Agreement.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered a sum not to exceed ninety nine thousand three hundred two dollars fifty cents (\$99,302.50), inclusive of applicable gross receipts taxes. Payment shall be made for services actually rendered.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed.

4. APPROPRIATIONS

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

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5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and terminate on December 31, 2009, unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon 10 days written notice to the Contractor.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, the City shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its

agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this contract.

8. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property.

Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance or other evidence of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well

as the performance of Contractor's employees, agents, representatives and subcontractors.

14. 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 sovereign immunity, do not waive any defense and 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.

15. THIRD PARTY BENEFICIARIES

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 City 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.

16. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the

State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and

understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:
Engineering Division
P.O. Box 909
Santa Fe, NM 87504-0909

Contractor:
Koch Construction Co., Inc.
6131 Edith Blvd. NE, Suite C
Albuquerque, NM 87107

IN WITNESS WHEREOF, the parties have executed this Agreement on
the date set forth below.

CITY OF SANTA FE:

DAVID COSS,
MAYOR

DATE: _____

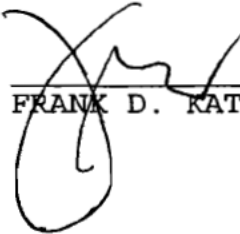
ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

CONTRACTOR:
Koch Construction
Co., Inc.

APPROVED AS TO FORM:

By: _____
Duane Koch, President



FRANK D. KATZ, CITY ATTORNEY

CRS # 01-89-7994-007
City of Santa Fe Business
Registration # 0900039594

APPROVED:

DAVID N. MILLICAN, DIRECTOR
FINANCE DEPARTMENT