



# City of Santa Fe, New Mexico



## SOLE SOURCE REQUEST AND DETERMINATION FORM

This sole source request form **must** be submitted to the City of Santa, Purchasing Division for authorization, determination and processing by the Chief Procurement Officer (CPO).

*Please ensure to complete this form in its entirety - (\*) must be completed.*

\*Date: August 6, 2020

\*Prepared By: De Alva Calabaza

\*Title: Contracts Administrator

\*Vendor Name: Ameresco Asset Sustainability Group LLC

\*Address: 111 Speen Street, Suite 401

\*City: Framingham

\*State: MA

\*Zip Code: 01701

### \*Description of Goods/Service to be procured:

Facility maintenance and capital planning software license including the Asset Planner, Asset Planning, and Maintenance Management Modules.

\*Estimated Cost:

26,395.88 plus NMGR

Term of Contract:

(One (1) year from award) 1 year

### \*Sole Source Request Justification Questions 1-4.

1. Explain the purpose/need of purchase. Ensure to include a thorough scope of work for the services, construction or items of tangible personal property (if this is an amendment request to an existing contract, attach current contract).

In 2015, Public Works-Facilities Division was given a directive by City Council through Resolution No. 2015-048 for staff to obtain services to examine the capital funding needs for the City's buildings over the next 30 years; identifying potential funding strategies to meet those needs and prepare the city to meet the growing funding requirements of its aging infrastructure. The department contracted with Ameresco, Inc. through the State Price Agreement method of procurement.

Since the implementation of this software in 2015, thousands of hours of staff time have been dedicated to populating the database, learning the tool and generating workflow around the software. Implementation of a new software would take at least 1 year and require additional staff to manage the migration and implementation. The Facilities Division will plan to perform a procurement to evaluate other software solutions in 2022.



# City of Santa Fe, New Mexico



2. Provide a detailed explanation of the criteria developed and specified by the department as necessary to perform and/or fulfill the contract.

☐

The contractor has affirmed sole source for the services, construction or items of tangible personal property (*Attach memo from vendor*). Provide documentation of due diligence for other possible vendors/contractors to provide the requested services/goods proved unsuccessful; or

☒

Other: explanation of the reasons, qualifications, proprietary rights or unique capabilities (*unique and how this uniqueness is substantially related to the intended purpose of the contract*) of the prospective contractor that makes the prospective contractor *the one source* capable of providing the required professional service, service, construction or item(s) of tangible personal property. (Please do not state the source is the “best” source or the “least costly” source. Those factors do not justify a “sole source.”) *Unique and how this uniqueness is substantially related to the intended purpose of the contract.*

The Facilities Division has incorporated the Ameresco asset planning and management software into their everyday maintenance work and capital planning. The software provides for data collection and reporting that: a) utilizes industry standard life cycle models for short and long term planning for facility capital investments; b) provides a work order system to ensure responsiveness and document work performed by qualified maintenance staff as required by CID; and c) generates reports on maintenance trends and costs for use in operational optimization and prudent decision making. The specific features of this software are essential for the continuation of the Facilities Division performance.

The Ameresco Asset Planner software integrates and maintenance work order system with capital planning features so that daily work on our facilities updates the long term capital needs City facilities. Extensive and accessible reporting capabilities support work flow management, trend and compliance reporting, optimization of operations and capital planning.

3. Explain why other similar professional services, services, construction or item(s) of tangible personal property *cannot* meet the intended purpose of the contract.

Procurement and implementation of a new solution would take at least 1 year and require additional staff to manage the migration and implementation.



# City of Santa Fe, New Mexico



## \*Approvals:

Based on the above facts, the City of Santa Fe Purchasing Officer has made the determination that the justification for a Sole Source procurement is in accordance with the State Procurement Code, Section 13-1-126 Sole source procurement., NMSA 1978 and shall be posted for a 30-day period prior to award.

  
Fran Dunaway (Aug 27 2020 22:10 MDT)

Fran Dunaway, CPO                      Date  
Purchasing Officer for the  
City of Santa Fe

**Pursuant to the State Procurement Code, Section 13-1-126 Sole source procurement., NMSA 1978, the 30-day posting period of the Notice of Intent to Award this Sole Source request was met and no obligation to the award to the above referenced contractor were received. *This Sole Source determination will be valid for a period of one (1) year from the date of the award.***

\_\_\_\_\_  
Fran Dunaway, CPO                      Date  
Purchasing Officer for the  
City of Santa Fe

## \*Required Attachments:

- \*Letter from Contractor acknowledging they are the only source (on their business letterhead and signed by the head of business or financial operations),*
- \*Quote from sole source Contractor*
- \*Agenda Item to be presented to City Council if over \$60,000 for Professional Services and \$60,000 for Goods and Non-Professional Services*

# City of Santa Fe, New Mexico

# memo

**DATE:** August 10, 2020

**TO:** Jarel LaPan- Hill, City Manager

**VIA:** Mary McCoy, Finance Department Director  
Fran Dunaway, Purchasing Officer  
John Romero, Acting Public Works Department Director

**FROM:** Michael Rodriguez, Facilities Division Director

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**ITEM AND ISSUE:**

Request for the Approval of a Services Agreement in the Total Amount of \$26,395.88 plus NMGRF for FY21 (\$131,665.93 Total for a 4 year contract) for the City of Santa Fe Asset Management Plan; Ameresco Asset Sustainability Group LLC; Michael Rodriguez, [mrrodriguez1@santafenm.gov](mailto:mrrodriguez1@santafenm.gov); 505-955-5932.

**BACKGROUND AND SUMMARY:**

Since 2015, Asset Management Plan Software provided through Ameresco has supported Facilities Division by examining the Capital funding needs for the City's buildings over the next 30 years, identifying potential funding strategies to meet those needs and prepare the city to meet the growing funding requirements of its aging infrastructure. The City currently occupies 130 buildings and approximately 1,000,000 square feet.

The PSA via Statewide Price Agreement with Ameresco has since expired and contractual obligations for annual renewal of the Asset Management Plan Software lapsed. Public Works – Facilities Division would like to continue to use the Asset Management Plan Software established in 2015 to track capital needs of the City.

**ACTION REQUESTED:**

Public Works Department respectfully requests your review and approval the funding source is General Fund - FUND: 100/ORG: 1000435 OBJ: 510310 for FY 21 Munis contract number is 3202083. Thank you in advance for your assistance.



17081 Barium Street NW  
Andover, MN 55304  
P: 763.516.3905  
ameresco.com

March 19, 2020

City of Santa Fe, NM  
Attn: Fran Dunaway, Director of Purchasing  
2651 Siringo Rd # H  
Santa Fe, NM 87505

Dear Ms. Dunaway,

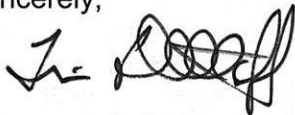
AssetPlanner® Suite of software is a proprietary set of applications developed and supported by Ameresco and is the only vendor that can provide support and training on AssetPlanner® software. We have collaborated with City staff by providing template configuration, action prioritization and quality assurance reviews representing the City's building portfolio. Since 2015 the City has invested time and resources into the AssetPlanner®. Functionality which make Ameresco's AssetPlanner® and advisory services truly unique are:

Functionality	Unique Quality	Benefit
Life Cycle Data developed through templates and modeling	Ability to pre-populate a database with predictive Life Cycle cost models and templates based on a Life Cycle data repository representing approximately 3 billion square feet of data.	<ul style="list-style-type: none"> <li>• Quick and cost-effective implementation.</li> <li>• Consistency in nomenclature using Unifomat II.</li> <li>• Standardization of life cycle profiles</li> <li>• Substantial resource savings</li> </ul>
Funding Analysis	Graphical presentation allows for prioritized decision making related to capital investments. Analysis allows greater visibility of funding appropriation strategies and scenarios – simplifying the business planning process.	<ul style="list-style-type: none"> <li>• Measure and analyze impact of funding on current and forecasted liabilities</li> <li>• Analyze alternative funding scenarios and the expected impact on unfunded liability and Facility Condition Index</li> </ul>
Handheld (mobile) data gathering technology that links to AssetPlanner®	<p>Mobile based software for on-site data gathering with direct upload to AssetPlanner®. Asset data produced from life cycle templates and modeling is accessible from secure log-in on device via AuditPlanner™ application.</p> <p>eDashboard™ gives managers and executives a simple interface on a mobile device to see AssetPlanner® data and reports on-the-go.</p>	<ul style="list-style-type: none"> <li>• AuditPlanner™ is designed for ease of use and simplified training. Camera on the mobile device is used to take pictures and upload seamlessly to AssetPlanner® database.</li> <li>• Cost effective and consistent implementation.</li> <li>• eDashboard™ makes it easy for executives and managers to access the data from a mobile device, without having to access the robust AssetPlanner® application.</li> </ul>

Functionality	Unique Quality	Benefit
Report Generation	<p>AssetPlanner® has a number of unique and easy to understand reports:</p> <ul style="list-style-type: none"> <li>• Facility Condition Index report</li> <li>• Unfunded Liability</li> <li>• Asset Sustainability Targeting, et al.</li> </ul> <p>AssetPlanner® also has reporting capabilities to benchmark clients against themselves. Benchmarking capabilities including FCI comparisons, cost per square foot profiles, capital renewal needs per square foot profiles, unfunded liability comparisons</p>	<ul style="list-style-type: none"> <li>• Provides on-going dynamic data reporting</li> <li>• Reporting allows the City to maximize their life cycle and total cost of ownership data.</li> <li>• Allows the City to see their data in various graphical presentations.</li> <li>• Enables Executive and Boardroom communications.</li> <li>• Provides data for redevelopment/consolidation/disposition discussions.</li> <li>• Brings comparative operational performance for leadership.</li> </ul>
AssetPlanner® Integration with Strategic Capital Planning and Tactical Demand Maintenance Data Energy and Sustainability	<p>AssetPlanner® can include work order and preventative maintenance data in the review of Asset's life cycle profiles.</p> <p>AssetPlanner® can track and provide analysis on utility cost and consumption to optimize building performance and benchmarking</p>	<ul style="list-style-type: none"> <li>• Insight in the City's operations and maintenance practices and the net effect on life cycle profiles.</li> </ul>
AssetPlanner® Executive Presentation	<p>Using data developed and the robust report engine in AssetPlanner® the Executive Presentation brings support, analysis, reporting, and targeted results/outcomes to Executive Teams and Boardrooms.</p>	<ul style="list-style-type: none"> <li>• Ameresco's Asset Sustainability Group has tremendous experience working with executive teams and leadership organizations. The Executive Presentations leverage decades of experience and are driven by industry leading best practices.</li> <li>• Presentations by a 3rd Party provide an outside, neutral perspective.</li> </ul>

AssetPlanner® provides the dynamic database intelligence that is necessary for the Public Works Department to track facilities and assets over the long-term in an accurate, efficient and cost-effective manner.

Sincerely,



Tim Dettlaff, P.Eng  
Senior Vice President & General Manager  
Mobile: 763-516-3905  
tdettlaff@ameresco.com



# Quotation

Ameresco Asset Sustainability Group LLC  
 111 Speen Street, Suite 401  
 Framingham, MA 01701

**DATE:** August 6, 2020

**Quotation For:**

City of Santa Fe, NM  
 Building Maintenance  
 200 Lincoln Avenue  
 Santa Fe, NM 87504

**Comments or Special Instructions:**

Quotation good for 60 days.

P.O. NUMBER	CURRENCY	PAYMENT TERMS
	USD	Net 30 Days on Approval

DESCRIPTION: City of Santa Fe One (1) Year Renewal Subscription for Software	AMOUNT
<p><u>Four (4) year Software Subscription Fee - Based on Annual 12-month Period:</u></p> <ul style="list-style-type: none"> <li><b>AssetPlanning™ Module \$8,980.21**+ NM Tax</b> <ul style="list-style-type: none"> <li><b>AuditPlanner™ (Smart Mobile tool) included with AssetPlanning™</b></li> <li><b>eDashboard (Smart Mobile tool) included with AssetPlanning™</b></li> </ul> </li> <li><b>Maintenance Planner™ Modules \$22,694.84** + NM Tax (includes Preventative Maintenance™ and Service Request™)</b></li> <li><b>(4) Hours of WebEx AssetPlanner™ support annually</b></li> <li><b>Annual Executive Summary Refresh via WebEx</b></li> </ul> <ul style="list-style-type: none"> <li>The fees listed are valid for a period of 60-days.</li> <li>Fees are based on Ameresco's standard terms and conditions.</li> <li>Fees are exclusive of all applicable taxes.</li> </ul> <p><b>*FY21 Annual price of \$31,675.05 is prorated to reflect payment already through 8/30/2020 and to align invoicing to Fiscal Year</b></p> <p><i>Reports or documents delivered by Ameresco are not Section 508 or WCAG 2* conformant and not intended to be used. Ameresco can provide conformant reports on a fee basis upon request.</i></p>	<p>Annual Subscription fees</p> <p>July 1,2020 – June 30,2021</p> <p>\$26,395.88* + NM tax</p>
<p><b>Approval: City of Santa Fe, NM</b></p> <p>Name: _____ Date: _____</p> <p>Signature: _____</p> <p>Invoice Contact and Address: _____</p>	<p><b>\$26,395.88 + NM Tax</b></p> <p>Contracted 1-Year Total</p>



City of Santa Fe Contract  
Services

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and **Ameresco Asset Sustainability, Inc.** herein after referred to as the "Contractor."

**IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

1. **Definitions**

A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. "You" and "your" refers to **Service**. "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

2. **Scope of Work**

A. The Contractor shall perform the following work as described in Exhibit A attached hereto and incorporated herein :

1) Software Licensing Fee (Annual Term Period):

- i. Provide AssetPlanning Module;
- ii. Provide AuditPlanner and eDashboard (Smart Mobile tools);
- iii. Provide Maintenance Management Modules/Trainings;
- iv. Provide (4) Hours of WebEx Asset Planner support annually; and
- v. Provide Annual Executive Summary Refresh

3. **Compensation**

The City shall pay to the Contractor based upon fixed prices for each Deliverable item as listed here.

<u>Deliverable item:</u>	<u>U/I (unit of issue)</u>	<u>Price</u>
Asset Planning Module	1 EA	
Maintenance Management Modules	1 EA	<u>\$26,395.88</u>
		\$26,395.88
	NMGRT (8.4375%)	<u>\$ 2,227.16</u>
	Total	\$28,623.04

The total compensation under this Agreement shall not exceed twenty eight thousand six hundred twenty three dollars and four cents (\$28,623.04) - including New Mexico gross receipts tax.

4. **Payment Provisions**

All payments under this Agreement are subject to the following provisions.

- A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the City shall determine if the product or services provided meet specifications. Until the products or services have been accepted in writing by the City, the City shall not pay for any products or services. Unless otherwise agreed upon between the City and the Contractor, within thirty (30) days from the date the City receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the City shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.
- B. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The City agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.

5. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall begin on date approved by the City, and end on June 30, 2021. The City reserves the right to renew the contract on an annual basis by mutual Agreement not to exceed a total of four years in accordance with NMSA 1978, §§ 13-1-150 through 152.

6. **Default and Force Majeure**

The City reserves the right to cancel all or any part of any orders placed under this contract without cost to the City, if the Contractor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

7. **Termination**

A. Grounds. The City may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the City's uncured, material breach of this Agreement.

B. Notice; City Opportunity to Cure.

1. Except as otherwise provided in Paragraphs 7.A and 17, the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City's material breaches of this Agreement upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

8. Amendment

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

9. Status of Contractor

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's 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. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax.



The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

10. **Assignment**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

11. **Subcontracting**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

12. **Non-Collusion**

In signing this Agreement, the Contractor/Contractor certifies the Contractor/Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City.

13. **Inspection of Plant**

The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. **Appropriations**

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the legislature, this Agreement, and any orders placed under it, 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. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

18. **Release**

The Contractor, upon 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, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

19. **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 prior written approval by the City.

20. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other

remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

21. **Approval of Contractor Representative(s)**

The City reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

22. **Scope of Agreement; Merger**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

23. **Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

24. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

25. **Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

26. **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.

27. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

28. **Limitation of Liability**

The Contractor's liability to the City, for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the City's, claim. The foregoing limitation does not apply to paragraph 25 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

29. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

30. **Workers' Compensation**

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection

and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

A. Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

(1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or

(2) terminate the contract for default.

33. **Insurance**

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured as indicated below.

A. Workers Compensation at the statutory limit and Employer's liability insurance with limits of not less than \$500,000 per accident or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City.

B. Commercial General Liability which shall be written on an occurrence basis with coverage as broad as ISO CG 00 01 against claims for bodily injury, personal and advertising injury, and property damage. Said policy shall include contractual liability and products-completed operation, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in

the aggregate. The policy shall be endorsed to include The City, its officials, directors, employees, and agents as additional insureds.

C. Automobile Liability insurance covering all owned, non-owned, and hired automobiles used in Contractor's performance of services under this Agreement with a combined single limit of not less than \$1,000,000 per accident.

D. Umbrella/Excess Liability insurance with limits of not less than \$1,000,000 per occurrence or claim. The City, its officials, directors, employees, and agents shall be included on such Excess/Umbrella policy(ies) as additional insureds.

E. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

F. Independent Contractors/Subcontractors. Contractor shall require all contractors/subcontractors performing services for or on behalf of Contractor to maintain the same insurance coverage and limits required of Contractor under this Agreement. Contractor shall require such contractors/subcontractors to provide certificates of insurance evidencing the coverage required, and shall make same available to the City upon the City's request.

G. Primary and Non-contributory requirement – all insurance must be primary and non-contributory to any insurance or self-insurance carried by the City.

H. Claims Made Coverage. If any coverage is maintained on a claims-made basis, the following shall apply:

(i). The retroactive date must be shown, and must be before the date of the contract or the beginning of the contract services.

(ii). Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract services.

(iii). If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the contract, Contractor must purchase an extended reporting period for a minimum of three (3) years after completion of the contract services.

#### 34. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

#### 35. **Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.



36. **Enforcement of Agreement**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

37. **Patent, Copyright and Trade Secret Indemnification**

A. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim; and
- iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

- i. provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or,
- iii. accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

38. **Survival**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

39. **Disclosure Regarding Responsibility**

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any City for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. The Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City may terminate the involved contract for cause. Still further the City may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City.

#### 40. **Suspension, Delay or Interruption of Work**

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Agreement.

#### 41. **Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed

to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the City:

City of Santa Fe  
Facilities Division  
2651 Siringo Road, Bldg E  
Santa Fe, NM 87501

To the Contractor:

Ameresco, Inc.  
111 Speen Street, Suite 401  
Framingham, MA 01701

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

42. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

CONTRACTOR:  
AMERESCO, INC.

\_\_\_\_\_  
JAREL LAPAN HILL, CITY MANAGER

\_\_\_\_\_  
NAME AND TITLE

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_  
Fed Tax ID # 04-3512838  
City of Santa Fe Business  
Registration # \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

Marcos Martinez

Marcos Martinez (Aug 7, 2020 10:47 MDT)

\_\_\_\_\_  
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

\_\_\_\_\_  
MARY MCCOY, FINANCE DIRECTOR

1000435.510310

MUNIS Org/Object

Ameresco Asset Sustainability Group LLC  
 111 Speen Street, Suite 401  
 Framingham, MA 01701

## Quotation

DATE: August 6, 2020

**Quotation For:**

City of Santa Fe, NM  
 Building Maintenance  
 200 Lincoln Avenue  
 Santa Fe, NM 87504

**Comments or Special Instructions:**

Quotation good for 60 days.

P.O. NUMBER	CURRENCY	PAYMENT TERMS
	USD	Net 30 Days on Approval

DESCRIPTION: City of Santa Fe One (1) Year Renewal Subscription for Software	AMOUNT
<p><u>Four (4) year Software Subscription Fee - Based on Annual 12-month Period:</u></p> <ul style="list-style-type: none"> <li>AssetPlanning™ Module \$8,980.21** + NM Tax               <ul style="list-style-type: none"> <li>AuditPlanner™ (Smart Mobile tool) included with AssetPlanning™</li> <li>eDashboard (Smart Mobile tool) included with AssetPlanning™</li> </ul> </li> <li>Maintenance Planner™ Modules \$22,694.84** + NM Tax (includes Preventative Maintenance™ and Service Request™)</li> <li>(4) Hours of WebEx AssetPlanner™ support annually</li> <li>Annual Executive Summary Refresh via WebEx</li> </ul> <ul style="list-style-type: none"> <li>The fees listed are valid for a period of 60-days.</li> <li>Fees are based on Ameresco's standard terms and conditions.</li> <li>Fees are exclusive of all applicable taxes.</li> </ul> <p><b>*FY21 Annual price of \$31,675.05 is prorated to reflect payment already through 8/30/2020 and to align invoicing to Fiscal Year</b></p> <p><i>Reports or documents delivered by Ameresco are not Section 508 or WCAG 2* conformant and not intended to be used. Ameresco can provide conformant reports on a fee basis upon request.</i></p>	<p>Annual Subscription fees</p> <p>July 1, 2020 – June 30, 2021</p> <p>\$26,395.88* + NM tax</p>
<p><b>Approval: City of Santa Fe, NM</b></p> <p>Name: _____ Date: _____</p> <p>Signature: _____</p> <p>Invoice Contact and Address: _____</p>	<p><b>\$26,395.88 + NM Tax</b></p> <p><b>Contracted 1-Year Total</b></p>

If you have any questions concerning this quotation, contact Amy Thompson Asset Sustainability at [athompson@ameresco.com](mailto:athompson@ameresco.com) or call directly at (303) 588-5725.

# 2020 08 07 Ameresco Asset Sustainability

Final Audit Report

2020-08-07

Created:	2020-08-07
By:	Irene Romero (ikromero@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAf5CqWtHfXbSidygUbbF3rSS2elg_BH6

## "2020 08 07 Ameresco Asset Sustainability" History

-  Document created by Irene Romero (ikromero@ci.santa-fe.nm.us)  
2020-08-07 - 4:42:43 PM GMT- IP address: 63.232.20.2
-  Document emailed to Marcos Martinez (mdmartinez@santafenm.gov) for signature  
2020-08-07 - 4:43:26 PM GMT
-  Email viewed by Marcos Martinez (mdmartinez@santafenm.gov)  
2020-08-07 - 4:46:51 PM GMT- IP address: 75.161.253.38
-  Document e-signed by Marcos Martinez (mdmartinez@santafenm.gov)  
Signature Date: 2020-08-07 - 4:47:09 PM GMT - Time Source: server- IP address: 75.161.253.38
-  Signed document emailed to Irene Romero (ikromero@ci.santa-fe.nm.us), Marcos Martinez (mdmartinez@santafenm.gov) and De Alva Calabaza (dxcalabaza@santafenm.gov)  
2020-08-07 - 4:47:09 PM GMT



# PWD SOLE AMERESCO ASSET PLANNER

Final Audit Report

2020-08-28

Created:	2020-08-27
By:	YODEL CATANACH (yocatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAQL8H4QB21ZcG35ueTT9_3hPDBHekDCCM

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-  Document created by YODEL CATANACH (yocatanach@ci.santa-fe.nm.us)  
2020-08-27 - 11:35:33 PM GMT- IP address: 63.232.20.2
-  Document emailed to Fran Dunaway (fadunaway@santafenm.gov) for signature  
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2020-08-28 - 4:10:06 AM GMT- IP address: 174.237.137.6
-  Document e-signed by Fran Dunaway (fadunaway@santafenm.gov)  
Signature Date: 2020-08-28 - 4:10:25 AM GMT - Time Source: server- IP address: 174.237.137.6
-  Signed document emailed to Fran Dunaway (fadunaway@santafenm.gov), jjchavez@santafenm.gov and YODEL CATANACH (yocatanach@ci.santa-fe.nm.us)  
2020-08-28 - 4:10:25 AM GMT