AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Contract; Active Energies Solar, LLC

Action Requested: County Manager Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

25kW solar array at AARF building. After CAO review, CM Birnie will sign and this contract will be ratified during the next Regular Meeting on 9/1.

Fiscal Impact: $29,488

Submitted by: John Cattles **Submitter's Email Address:** jcattles@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, funds identified, will request a budget amendment request. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 8/19/2020

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 8/27/20

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 8/27/2020 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 8/27/2020

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 9/1/2020

Revised April 2015

SOLAR PHOTOVOLTAIC SYSTEM CONTRACT

Gunnison County
519 Rio Grande Avenue
Gunnison CO, 81230
Friday, August 21, 2020

ACTIVE ENERGIES SOLAR, LLC

A chance to help our tomorrow, today!

PO Box 7627
Avon, CO 81620
Phone: (970) 306-4233
Fax: (866) 403-3485
info@activeenergies.com
www.activeenergies.com

This Contract is by Active Energies Solar LLC., whose address is PO Box 7627 Avon, CO 81620-7627, and **Gunnison County**, whose mailing address is _____. In this Contract, the party who is contracting to provide services, Active Energies Solar LLC., is referred to as "AES," and the party who will be receiving the services **Gunnison County** is referred to as "Customer."

1. **DESCRIPTION OF PRODUCTS AND SERVICES.** This Contract is for the premises located at **519 Rio Grande Avenue, Gunnison CO 81230**. The Customer hereby verifies that the premises on which the Customer has requested installation of a photovoltaic (PV) system is owned by said Customer. AES agrees to design and install a photovoltaic system meeting the following specifications:
   - 24.0 Kilowatt Name Plate System (**$29,488**)
   - Located on the roof of the building located at the above address (per solar proposal document).

   AES agrees to provide the following equipment:

38	Hanwha Q.PEAK-DUO L-G7.2 400 photovoltaic panels @ 400W
22	Hanwha Q.PEAK-DUO L-G7.2 400 photovoltaic panels @ 400W, provided by customer
60	SolarEdge P400 optimizers
1	SolarEdge SE14.4k-US-208 inverter (208v)
1	SolarEdge SE9k-US-208 inverter (208v)
1	Unirac racking system with S5! clamps
1	SolarEdge monitoring communication device
1	Production Meter Housing with lever bypass w/external disconnect if required by AHJ
1	Includes all AC and DC wiring, grounding and conduit to complete a grid tied PV system

   AES agrees to provide the following services:
   1. Solar site analysis and PV system design
   2. Permitting and inspections for the PV system required by the governmental entity having jurisdiction *(does not include any Additional structural and electrical professional engineering costs required for permitting, if applicable)*
   3. Mounting footings installation
   4. Complete PV system installation
   5. PV system electrical requirements and grid interconnection
   6. All relevant system documentation and manuals
   7. Cleanup of worksite

   All work shall be completed in a tidy manner and in compliance with all building codes and applicable laws. All work shall be performed by individuals duly licensed and authorized by law to perform said work. Materials will be installed in accordance with manufacturer's recommendations.

2. **PERIOD OF INSTALLATION AND SERVICES.** The permitting shall begin no earlier than 3 business days of commencement of contract. The installation which is the subject of this Contract shall commence on or about the 14th of September 2020, and shall be completed on or about September 30th, 2020, subject to factors not within the control of AES.

3. **WARRANTY.** AES will help facilitate warranty claims between the Customer and manufacturer of the equipment described above and installed on Customer's property. The Customer acknowledges that AESS serves only as a representative, not the agent, of the manufacturer and is not responsible for equipment defects or manufacturer warranties. The equipment specified above carries the following manufacturer warranties:
   - Photovoltaic (PV) panels - 12 year manufacturer warranty / 25 power output warranty
   - Optimizers - 25 year manufacturer warranty
   - Inverter - 12 year manufacturer warranty (*extension is available - http://www.solaredge.us/groups/us/service/warranty*)
   - **If SolarEdge products (optimizers & inverter(s)) are installed, owner must complete a final walkthrough and have the monitoring set up or the SolarEdge warranties will be voided.**
   - Racking system – 10-year manufacturer warranty

   If parts or equipment prove defective, AES will extend to the Customer the benefits of any warranty AES has received from the manufacturer.

   AES carries a 5-year warranty on workmanship of the system, which includes 5 years of technical support during business hours. AES offers free replacement of any equipment under warranty needing to be replaced due to conditions covered by the manufacturer's warranty for a period of one calendar year after the date the system was put into service. AES, on a billable basis, will assist with manufacturer warranty assistance if requested after the one-year period and will provide a yearly check-up if specifically requested by customer.

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4. **EQUIPMENT STORAGE.** Customer shall permit AES to store photovoltaic modules and inverter(s) at the property address. Customer shall be responsible for their safekeeping.

5. **EXCLUSIONS.** AES is *not responsible* for the following:
   - Expenses or damages associated with or caused by pre-existing conditions of the Customer's property, whether related to the current electrical system, the roof, the structure of the building, or any other cause, which (a) are (i) in violation of applicable code requirements, otherwise dangerous, or inadequate to support AES's work, or (ii) outside of the scope of AES's work, and/or (b) should or must be corrected before or after system interconnection.
   - Roof or soil stability analysis and load assessments.
   - PV system electrical output production, inverter efficiency and system output due to weather is based on manufacturer technical specification and locally collected climate data, which are not guaranteed by AES. Actual system electrical production results may vary.
   - Additional net-metering costs if required by utility company.
   - Individual eligibility or collection of Federal Tax Credit. Customer should consult with an accountant to ensure proper processing of tax credit.
   - Damage or destruction of PV system, including modules, wiring, racking, or inverter, due to an act of nature, vandalism, terrorism, theft, fire, or other circumstances not within the control of AES.
   - Delays in installation and rebate processing, and damages due to the delays, not within control of AES.
   - Consequences related to or arising from the disconnection of installed PV system by a party other than AES.
   - Damages to ground vegetation. Reasonable precautions will be taken by AES to protect ground cover.
   - Monitoring and communication devices, which are devices peripheral to the system's main operation and provide output information, will be initially commissioned during the installation of the system. AES will provide remote troubleshooting and support for monitoring and communication devices. On-site support for monitoring and communication devices is available at a paid rate, if requested by the Customer. Call support $40/hour; onsite support $125 service fee + $40/hour.

6. **PAYMENT FOR SERVICES.** Customer shall pay for the system by the following method:
   - Cash: **$29,488 Total project Cost**
     - 50% Deposit - $14,744 due upon Contract execution (non-refundable unless contractor cancels the contract)
     - 50% Final Payment - $14,744 due upon Installation Completion

   Customer will provide AES with a down payment in the amount of $14,744 upon execution of this Contract. This down payment is non-refundable after 3 business days of signed contract date. Equipment will be ordered only upon receipt of down payment. AES is not responsible for delivery or installation delays due to the delay of down payment or other factors outside the control of AES. Project price will be adjusted in the event the scope of the project changes, but such changes shall occur only upon the written agreement of Customer and AES. The final installment to be paid upon completion of system installation.

   Customers who have failed to pay within 30 days of system installation will be considered delinquent. Customers delinquent on any payment will be assessed a finance charge of 1.5% per month.

   Any additional incentives must be completed by the customer. AES will help facilitate the process.

7. **TERM.** This Contract will terminate automatically upon completion, except for terms intended to survive completion of the project, such as warranty terms and remedies.

8. **CANCELLATION / TERMINATION.** If this Contract and/or the "Description of Products and Services" is canceled by Customer before installation, AES will be compensated for any work completed based on the breakdown of its bid. The deposit paid by Customer is non-refundable upon contract cancellation by Customer.

9. **AVAILABILITY.** AES agrees to install the equipment and provide associated services described above during the "Period of Installation and Services" identified above OR within a period 1 year, unless otherwise agreed by the parties or unless a change in schedule is required for reasons not within the control of AES. If a change in schedule is required and such notice is possible, AES will give Customer five full business days notice of any such change in schedule. AES need not provide customer with five days' notice in the event the change in schedule is necessitated by weather or other circumstances not within the control of AES.

10. **INDEMNIFICATION.** To the fullest extent permitted by law, the Customer shall indemnify and hold harmless

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AES from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the work, provided that such claim, damage loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including loss of use resulting there from and is caused in whole or in part by negligent acts or omissions of any persons other than AES or any Subcontractor of AES, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this contract. Nothing herein is, or shall be construed to be, a waiver by any party of its rights, and protection on limitation on liability provided by the Colorado Governmental Immunity Act.

11. **CONDUCT AND APPEARANCE.** AES, and all its employees, agents, or representatives shall always conduct themselves in a professional manner while engaged in activities under this Contract. Appearances by the workers of AES shall meet the guidelines set forth by AES.

12. **MARKETING RIGHTS AND RESPONSIBILITIES** AES reserves the right to use photos and descriptions of the premises for marketing purposes. At the request of the Customer, AES must omit any mention of the owner's name and/or address of premises from public materials. AES reserves the right to post a lawn sign, no larger than 24"x24" on a publicly visible area on the premises during construction phases of the project.

13. **INSURANCE AND MAINTENANCE OBLIGATIONS.** AES shall, always when engaged in activities under this Contract, retain General Liability and Workers Compensation (as required by law). All AES subcontractors shall, always when engaged in the activities under this Contract, retain at a minimum, Commercial General or Business Liability insurance and Workers Compensation coverages.

    (a) Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Contractor during the term of this Agreement.

    (b) Comprehensive General Liability Insurance or the equivalent for any injury to one person in any single occurrence, Three Hundred Eighty Seven Thousand and No/100 U.S. Dollars ($387,000.00); and For an injury to two or more persons in any single occurrence, the sum One Million Ninety Three Thousand and No/100 U.S. Dollars ($1,093,000.00).

    (c) Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than $387,000 for any injury to one person in any single occurrence and in an amount no less than $1,093,000 for any injury to two or more persons in any single occurrence.

    Customer is solely responsible for the provision of insurance liability coverage for any PV equipment or system located on Customer's property, whether in accordance with utility requirements or otherwise, if applicable. Customer is hereby advised that proof of insurance coverage is required for eligibility in some utility rebate programs and that some cost recovery programs require an obligation to maintain and replace the system and elements of the system. The determination of any such requirements is the sole responsibility of the Customer, provided that Customer shall take no action and shall not fail to take action which places in jeopardy any rebate payable to AES as part of the compensation due AES.

14. **REMEDIES**. In addition to all other rights a party may have available according to law, if Customer fails to perform any obligation under this Contract, AES may terminate the Contract by providing written notice to the Customer. This notice shall describe with sufficient detail the nature of the default. The Customer shall have 10 working days from the effective date of such notice to cure the default(s). Customer shall have a mutual right of termination in the event AES fails to perform any obligation of the Contract. Unless waived by AES, the failure to cure the default(s) within such time shall result in the automatic termination of this Contract. Any controversy or claim arising out of or related to this Contract involving an amount less than the jurisdictional limit of the Small Claims Division of Eagle Colorado shall be heard in that court if that court accepts jurisdiction and venue. Disputes involving amounts in excess of that jurisdictional limit shall be resolved in the County or District courts of Eagle County, Colorado, unless the parties agree in writing that any such dispute shall be settled by binding arbitration under a procedure specified in any such agreement. Judgment upon any award may be entered in any Court having jurisdiction thereof. AES shall be entitled to payment of reasonable attorney's fees, costs, and expenses associated with any enforcement activity.

15. **ENTIRE AGREEMENT.** This Contract contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Contract. This Contract supersedes any prior written or oral agreements between the parties.

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16. **SEVERABILITY.** If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

17. **AMENDMENT.** This Contract may be modified or amended in writing if it is signed by both parties.

18. **GOVERNING LAW.** This Contract shall be construed in accordance with the laws of the State of Colorado.

19. **NOTICES.** Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing. Alternatively, either party may give the other notice by telecopier or by e-mail from any @activeenergies.com email address if the following information is completed and if the notifying party can produce evidence of receipt by the other party.

AES - Telecopier number: 866-403-3485
Telephone number: 970-306-4233
E-Mail address: info@activeenergies.com

Customer - Telephone number:
E-Mail address:

20. **ASSIGNMENT.** This contract may be assigned by AES.

ACTIVE ENERGIES SOLAR LLC.

By: **Date: 8/21/2020**
Owner of Active Energies Solar LLC.

By: _____ **Date:** _____

PRINTED CUSTOMER NAME: _____

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