

ORDINANCE NO. 1196

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A POWER PURCHASE AGREEMENT BY AND BETWEEN THE TOWN OF SILVER CITY AND NRG SOLAR SILVER CITY, LLC FOR THE PURPOSE OF OBTAINING GUARANTEED SAVINGS IN THE TOWN'S COST OF ELECTRICITY DURING THE TERM OF THE POWER PURCHASE AGREEMENT; AND PROVIDING FOR THE PLEDGE OF UTILITY COST SAVINGS FOR THE PURPOSE OF SECURING PAYMENT OF AMOUNTS DUE UNDER THE POWER PURCHASE AGREEMENT; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH; REPEALING ALL ACTION IN CONFLICT HERewith.

Sponsored by Mayor James R. Marshall.

Capitalized terms used in the following preambles have the same meaning as defined in Section 1 of this Ordinance unless the context requires otherwise.

WHEREAS, the Town is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State of New Mexico, and a governmental unit for purposes of the Public Facility Energy Efficiency and Water Conservation Act, Sections 6-23-1 through 6-23-10 NMSA 1978, as amended (the "Act"), specifically as defined in Section 6-23-2(C) of the Act; and

WHEREAS, NRG Solar Silver City LLC has proposed a form of power purchase agreement (the "PPA") providing for the installation of solar energy facilities ("SEF") to provide electric power to certain public facilities owned by the Town; and

WHEREAS, there has been on deposit with the Town Clerk and presented to the Town Governing Body the proposed form of this Ordinance and the proposed form of PPA; and

WHEREAS, the Governing Body has determined and hereby determines that it is in the best interests of the Town and its residents that the PPA be executed and delivered with a first lien on the Pledged Utility Cost Savings Revenues;

BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF SILVER CITY:

Section 1. Findings. The Governing Body hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The SEF is an Energy Conservation Measure within the meaning of Section 6-23-2(B) of the Act.

B. The amount the Town would spend on the energy measures recommended in the proposed PPA is not likely to exceed the cumulative amount of utility cost savings of all energy conservation measures in the proposal over twenty years, which is the expected useful life of the SEF, from the date of installation of the SEF, without consideration of the normal

periodic repair and replacement of components of the SEF that are required after the SEF is installed or completed.

C. NRG Solar Silver City LLC is a qualified provider within the meaning of Section 6-23-2(E) of the Act.

D. NRG Solar Silver City LLC can provide a Written Guarantee within the meaning of Section 6-23-2(D) of the Act, which will provide that the Utility Cost Savings and conservation-related cost savings will meet or exceed the costs of the Energy Conservation Measures as required by Section 6-23-4 of the Act.

E. The Pledged Revenues may lawfully be pledged to secure the payment of all amounts due under the PPA.

F. The PPA complies with the Provisions of the Act.

G. The execution and delivery of the PPA pursuant to the Act is necessary and in the interest of the public health, safety and welfare of the residents of the Town.

Section 2. Authorization, Execution and Delivery of the PPA.

A. Authorization. This Ordinance has been adopted by the affirmative vote of a super-majority of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the Town, it is hereby declared necessary that the Town execute and deliver the PPA, which execution and delivery is hereby authorized.

B. Execution and Delivery of the PPA. The Mayor, Clerk and Town Manager and Finance Director ("Authorized Officers") are hereby authorized to execute and deliver the PPA in the form presented at the meeting of the Town Council at which this Ordinance is adopted, with such modifications as the Town Manager and Finance Director, in consultation with the Town Attorney, determine are necessary or convenient to carry out the transactions contemplated hereby and thereby. Authorized Officers are further authorized to execute and deliver such additional certificates or instruments as are necessary or convenient to carry out the transactions contemplated in the PPA.

Section 3. Lien on Pledged Utility Cost Savings Revenues; Special Limited Obligations. The Pledged Utility Cost Savings Revenues and the amounts on deposit in the Pledged Utility Cost Savings Account (created pursuant to Section 10.6 of the PPA) of the Water and Sewer Fund, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the Town grants a security interest therein for, the payment of amounts due pursuant to the PPA, subject to the uses thereof permitted by, and the priorities set forth in, this Ordinance. The Pledge of Utility Cost Savings Revenues is an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Utility Cost Savings Revenues. All amounts payable by the Town pursuant to the PPA shall be special limited obligations of the Town and shall be payable and collectible solely from Pledged Utility Cost Savings.

Section 4. Effective Date. A title and general summary of this Ordinance shall be published in the *Silver City Daily Press*, a newspaper of general circulation within the Town, in substantially the form set forth in Section 5 of this Ordinance. The Ordinance shall become effective five (5) days following the date of such publication.

Section 5. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in the Bond Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

Town of Silver City, New Mexico

Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. 1196, duly adopted and approved by the Governing Body of the Town of Silver City, New Mexico, on _____, relating to the authorization of a Power Purchase Agreement and Site Lease. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the Town Clerk, Silver City Town Hall, Silver City, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A POWER PURCHASE AGREEMENT BY AND BETWEEN THE TOWN OF SILVER CITY AND NRG SOLAR SILVER CITY LLC FOR THE PURPOSE OF OBTAINING GUARANTEED SAVINGS IN THE TOWN'S COST OF ELECTRICITY DURING THE TERM OF THE POWER PURCHASE AGREEMENT; AND PROVIDING FOR THE PLEDGE OF UTILITY COST SAVINGS FOR THE PURPOSE OF SECURING PAYMENT OF AMOUNTS DUE UNDER THE POWER PURCHASE AGREEMENT; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH; REPEALING ALL ACTION IN CONFLICT HEREWITH.

A general summary of the subject matter contained in the Ordinance is set forth in its title.

This notice constitutes compliance with § 6-14-6 N.M.S.A. 1978.

(End of Form of Summary for Publication)

PASSED, ADOPTED, AND APPROVED THIS 28TH DAY OF FEBRUARY, 2012.

TOWN OF SILVER CITY, NEW MEXICO

/s/

[SEAL]

JAMES R. MARSHALL, MAYOR

ATTEST:

/s/

ANN L. MACKIE, TOWN CLERK