

RESOLUTION NO. 24-2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLUTE, TEXAS AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN THE CITY AND SCHNEIDER ELECTRIC FOR AN INVESTMENT GRADE AUDIT RELATED TO ENERGY SAVING CAPITAL PROJECTS AT CITY FACILITIES.

WHEREAS, the City of Clute, Texas has previously benefited from work conducted by Schneider Electric; and

WHEREAS, the City of Clute is a member of the The Interlocal Purchasing System (TIPS) Cooperative and therefore is able to procure these services in an expedient and efficient manner; and

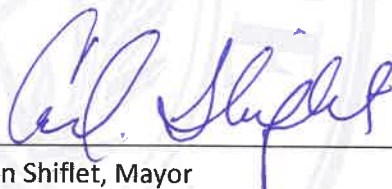
WHEREAS, the City of Clute, Texas stands to realize a significant savings over the life span of the proposed Performance Based Energy Savings Capital Project conducted by Schneider Electric; and

WHEREAS, exercising fiscal responsibility, the City Council of the City of Clute, Texas has determined that participating in an Investment Grade Audit for Energy Savings will be of long-term benefit to the City.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLUTE, TEXAS THAT:

The Mayor and/or City Manager are hereby authorized to execute the Investment Grade Audit Agreement so that Capital Projects can be undertaken to ensure Energy Conservation Measures enhance the City's long-term financial health.

READ, PASSED AND ADOPTED THIS 13th DAY OF JULY 2019.



Calvin Shiftet, Mayor

ATTEST:



Rosie Poitevint, City Clerk



Investment Grade Audit Agreement

This Investment Grade Audit Agreement ("Agreement") is by and between Schneider Electric Buildings Americas, Inc. ("ESCO") and The City of Clute, Texas ("Customer") for the performance of an Investment Grade Audit to determine the scope of work, guaranteed savings amount, energy conservation measures ("ECMs"), and project price for a comprehensive improvement program.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, ESCO and Customer agree with the following terms and conditions.

Section A, General Terms and Conditions Section B, Audit Services

IN WITNESS WHEREOF, the individual signing this Agreement on behalf of its respective party represents that s/he has the authority to execute this Agreement as a duly authorized representative of such party as set forth below.

The City of Clute, Texas

Schneider Electric Buildings
Americas, Inc.

By


(Signature)

Print Name

C. J. WIPES

Title

CITY MANAGER

Date

7/12/2019

By


(Signature)

Print Name

KENT KIRCHSTEIN

Title

SALES DIRECTOR

Date

7/17/19

SECTION A: GENERAL TERMS AND CONDITIONS

1. ENTIRE AGREEMENT

This Agreement, and any documents incorporated by reference, constitute the entire understanding between ESCO and Customer and supersedes all prior oral or written understandings relating to the subject matter herein. This Agreement may not be altered or modified except by written instrument signed by a duly authorized representative of each party.

2. ADDITIONAL SERVICES

Customer may request additional services, whereby ESCO's compensation and scope of services shall be adjusted accordingly. Any such modifications shall be negotiated in good faith and authorized via a written amendment to this Agreement signed by Customer and ESCO. Any such amendment must be properly executed by Customer and ESCO prior to any changes being implemented by ESCO. Upon execution of the amendment by Customer and ESCO, such additional services will become part of this Agreement and subject to the terms and conditions contained herein.

3. CONFIDENTIALITY

Neither party shall disclose to others any Confidential Information. "Confidential Information" shall mean all information or material, whether revealed orally, visually, or in tangible or electronic form, that is

competitively sensitive material not generally known to the public that relates to the business of a party to this Agreement, or any of their respective interest holders, unless such information: (i) was already rightfully known and in possession of the receiving party at the time of disclosure by the disclosing party; or (ii) is in or has or will be entered into the public domain through no breach of this Agreement or other wrongful act of the receiving party; or (iii) has been rightfully received by the receiving party from a third party who is not known by the receiving party to be under obligation of confidentiality to disclosing party and without breach of this Agreement; or (iv) is independently developed by receiving party without reference to the Confidential Information; or (v) is approved for release by written authorization from the disclosing party. This confidentiality obligation shall terminate two (2) years from the date of this Agreement.

4. INSURANCE

ESCO and Customer shall each maintain insurance coverage, including without limitation, workers' compensation and employer's liability at statutory limits and commercial general liability insurance covering public liability and property damage with limits generally required for its respective industry with not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate. Such insurance shall be with reputable and financially responsible carriers authorized to transact business in the state in which the facilities are located and the services are being performed with an A.M. Best's rating of at least A- VII.

5. GOVERNING LAW

This Agreement will be governed, interpreted and construed by, under and in accordance with the laws, statutes and decisions of the state in which the facilities are located, without regard to its choice of law provisions.

SECTION B: AUDIT SERVICES

1. RESPONSIBILITIES

Customer Will:

- A. Provide ESCO a minimum of twenty-six (26) months of utility invoices for each facility serving each facility, etc. Utilities include natural gas, electric, water, fuel oil, propane, wood, coal, or any other fuel source used on the premises.
- B. Provide ESCO complete access to facilities for performing the analysis, reviewing actual energy use, equipment inventory, operating schedules, identifying known operational deficiencies, etc.
- C. Provide ESCO access to key personnel to discuss operating requirements.
- D. Provide ESCO equipment lists and copies, or the loan of facility plans, for facilitating understanding of the characteristics and the current sequences of operation.
- E. Meet with ESCO to establish project criteria and make project decisions necessary for ESCO to complete in a timely manner.
- F. Inform ESCO at the point in which Customer becomes aware of any portions of scope that will not be included or funding that will not be available for final project implementation.

ESCO Will:

- A. Conduct a facilities walk-through(s) and personnel interview(s) to gain an understanding of facility operations, concerns, needs, and desired performance criteria.
- B. Work with Customer to refine performance requirements, financial criteria, & project scope.
- C. Provide Customer energy, revenue & cost savings analysis demonstrating the effect of the ECMs.
- D. Provide Customer a financial analysis cash flow.
- E. Provide Customer a Performance Assurance Support Services (PASS) plan for the facilities.
- F. Provide Customer a completion schedule for the scope of work.

2. FACILITIES INCLUDED (as studied in the Business Case – Preliminary Audit)

The audit for this development phase will be performed at the following Customer facilities:

Site	Sq.Ft.
City Hall	10,000
Courthouse	5,128
Library	12,467
Police Department	8,400
Parks and Rec	14,588
Service Center	7,227
TOTAL	57,810

3. FINANCIAL COMMITMENT

The IGA is priced utilizing the customer's identified facility's square footage of **57,810** at an audit cost of **\$0.39 /sq. ft.** for a total audit cost of **\$22,545.90**

- A. If ESCO fulfills responsibilities of the Audit and Customer DOES NOT execute an Energy Conservation Design Build Contract with ESCO within one hundred twenty (120) days of receiving the Audit deliverables, then Customer agrees to pay ESCO **\$22,545.90** (**\$.22/SF** of **57,810** Square Feet included in Audit). If the Customer executes an Energy Conservation Design Build Contract with ESCO, any costs associated with development will be included in that contract amount.
- B. Customer agrees that until an Energy Conservation Design Build Contract has been executed with ESCO or Customer has paid the Audit fee, the documents, engineering, data, and recommendations developed by ESCO are the intellectual property of ESCO and may not be shared with any third parties (except to the extent as required by law) without the written permission of ESCO.