

CITY COUNCIL STUDY SESSION

TO: Mayor and City Council
FROM: Mari E. Macomber, City Manager ^{MSM}
SESSION DATE: June 4, 2012
TIME: 4:30 p.m.
PLACE: Second Floor Conference Room of City Hall

AGENDA:

- **PERFORMANCE CONTRACTING REPORT AND PRESENTATION FROM SCHNEIDER ELECTRIC**
- **YARD WASTE AND BRUSH PILE**
- **REVIEW COUNCIL AGENDA**
- **REVIEW NEWSLETTERS (May 11, May 18 and June 3, 2012)**

PERFORMANCE CONTRACTING REPORT AND PRESENTATION FROM SCHNEIDER ELECTRIC

In 1997, the state legislature enacted legislation that allows governmental units including local governments within the state of Missouri to pursue energy savings through performance contracting. Performance contracts provide the governmental entity a guaranteed energy cost savings contract over a specified period of time. If the savings are not generated as outlined, then the performance contractor is liable to the governmental entity to make up the difference.

Performance contracting is a way to improve efficiency in operations giving the government additional funds to use for other operational costs. City staff began discussing performance contracting with three vendors starting in 2010. Face to face interviews with these firms were held in January of 2011 to learn more about performance contracting and to determine if this is something that should be considered further. After evaluating the information provided by each vendor, staff determined that there was some merit in taking the next step.

That step was to bring the concept forward to the City Council to discuss. The Council discussed this in March of 2011 directing staff to move forward with a Request for Qualifications from performance contractors.

A request was made followed by a tremendous amount of work on the part of Brad Selby to meet one-on-one with the vendors showing them the City's properties, proving data and answers questions. A committee consisting of several department managers, the City Manager and Mayor Pro Tem Fajkus conducted interviews, followed by an

evaluation of each firm. Schneider Electric was selected as the top vendor through the process.

To date, the time and effort that has been expended by both the City and the various vendors has been without cash outlay from the City. We are now to the point where a decision has to be made by the Council, as to whether or not to pursue this program. Representatives from Schneider Electric, Peter Hinkle and Megan Berry will be in attendance at the Study Session to present the program to the Council and discuss a proposed agreement. It is their desire that the City Council chooses to move forward with the project. From a staff perspective this is a way to get some needed projects completed using the savings generated from energy savings. The biggest concern is extending our debt to complete the projects.

Recommendation Council is asked to listen to the presentation asking questions as you deem necessary and then discuss with staff the direction in which you would like to go.

YARD WASTE AND BRUSH PILE

The second item that we wish to discuss with the City Council concerns the brush site and yard waste drop-off. Please review the Staff Report provided at the end of this Study Session Packet. Public Works Buckwalter outlines the problems and proposed long and short term solutions.

Recommendation: We are expending funds for both yard waste disposal and for the brush site. We have little control as to who is using it and are concerned that the City is paying for costs that should be borne by non-residents and businesses.

REVIEW COUNCIL AGENDA

NEWSLETTER REVIEW – May 11, May 18 and June 3, 2012

Attachments

- Performance Contract
- Missouri Statute Regarding Performance Contracting
- Brush Collection and Disposal Staff Report – John Buckwalter



Investment Grade Audit Agreement

This Investment Grade Audit Agreement (“Agreement”) is by and between Schneider Electric Buildings Americas, Inc. (“ESCO”) and the City of Kirksville, Missouri (“Customer”) for the performance of an Investment Grade Audit to determine the scope of work, guaranteed savings amount, energy conservation measures (ECMs), revenue generation amount, revenue generation measures (RGMs), and project price for a comprehensive improvement program.

Section A, General Terms and Conditions

Section B, Conceptual Engineering

Section C, Development Engineering

Section D, Preliminary Schedule

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

1. ENTIRETY CLAUSE

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 in any way except by written instrument signed by a duly authorized representative of each party.

2. 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 Customer is located, without regard to its choice of law provisions.

3. INSURANCE

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

4. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER. The remedies of Customer set forth herein are exclusive where so stated and the total cumulative liability of ESCO with respect to this Agreement or anything done in connection therewith, such as the use of any deliverable furnished hereunder, whether in contract, in tort (including negligence or strict liability) or otherwise, shall not exceed the contract price for the specific deliverable or service work performed that gives rise to the claim on which such liability is based.

5. ADDITIONAL SERVICES:

Customer may request the addition of services, whereby, ESCO compensation amount and Agreement scope shall be adjusted accordingly. Such changes in the Agreement shall be authorized by written amendment to the Agreement and shall be mutually agreed to and signed by Customer and ESCO. The parties shall negotiate in good faith and use their best efforts to execute an amendment. The amendment to the Agreement must be fully executed in writing by Customer and ESCO prior to any actual changes being implemented. These services will become part of this Agreement and thereby, subject to terms and conditions herein.

Section B: CONCEPTUAL Engineering

1. RESPONSIBILITIES

CUSTOMER WILL:

- A. Provide ESCO a minimum of twenty-six (26) months of utility invoices for each facility or utility meter serving each facility. Utilities include natural gas, electric, water, fuel oil, propane, wood, coal, or any other fuel source used on the premises.
- B. Provide ESCO a comprehensive electronic copy of the most recent twenty-six (26) months of city-wide water meter readings.
- C. Provide ESCO access to the facilities for the purpose of performing the energy efficiency analysis, measuring pump and motor efficiency, measuring actual energy use, taking equipment inventory, determining operating schedules, identifying known operational deficiencies, etc.
- D. Provide ESCO access to key personnel to discuss operating requirements.
- E. Provide ESCO equipment lists and copies, or the loan of facility plans, for the purpose of facilitating understanding of the characteristics and the current sequences of operation.
- F. Meet with ESCO during the Conceptual Engineering to establish project criteria and make project decisions necessary for ESCO to complete in a timely manner.
- G. 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.
- H. Meet with ESCO for a presentation of the Conceptual Engineering and decide the next steps moving forward in the process.

ESCO WILL:

- A. Conduct a project programming meeting, facility 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, and project scope of work.
- C. Provide Customer a preliminary list of ECMs/RGMs with estimated costs.
- D. Provide Customer a preliminary energy and cost savings analysis demonstrating the effect of the ECMs/RGMs.
- E. Provide Customer a preliminary financial analysis cash flow.

- F. Provide Customer a preliminary Performance Assurance Support Services (PASS) plan for the facilities and RGMs, including measurement and verification.
- G. Provide Customer a preliminary completion schedule for the Section C: Development Engineering.

2. FACILITIES AND WATER METERS INCLUDED

The Conceptual Engineering will be performed for Customer’s following facilities and water meters. Any additional facilities and water meters to be added in the future must be by mutual agreement between Customer and ESCO:

Facilities and Water Meters
Water Meters: 7643 meters
Facilities: Airport (3,200 ft ²), Aquatic Center (5,000 ft ²), City Hall (16,770 ft ²),
Fire Department (12,300 ft ²), Police Station (6750 ft ²), Public Works (11,641 ft ²), and
TCRC (9,062 ft ²).

3. FINANCIAL COMMITMENT

- A. If ESCO fulfills responsibilities of the Conceptual Engineering and Customer DOES NOT execute the Development Engineering section of the Agreement with ESCO within thirty (30) days of receiving the Conceptual Engineering deliverables, then Customer agrees to pay ESCO \$45,000.
- B. Payments are due and payable sixty (60) days from invoice date. Amounts unpaid sixty (60) days after the invoice date shall bear an interest rate of 1.5% per month.
- C. If ESCO fulfills responsibilities of the Agreement and Customer DOES execute the Development Engineering section of the Agreement with ESCO within thirty (30) days of receiving the Conceptual Engineering deliverables, then the cost for the Conceptual Engineering will roll forward to the Development Engineering phase as described in Section C, Paragraph 3, letters A and B. Furthermore, all costs incurred during the Conceptual Engineering service will be included in the guaranteed Energy Savings Contract.
- D. Customer agrees that until a guaranteed Energy Savings Contract has been executed with ESCO or Customer has paid the Conceptual Engineering fee, the documents, engineering, data, and recommendations developed 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.

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.

**Customer Legal Name
Here**

**Schneider Electric Buildings
Americas, Inc.**

By	_____	By	_____
	(Signature)		(Signature)
Print Name	_____	Print Name	_____
Title	_____	Title	_____
Date	_____	Date	_____

Section C: DEVELOPMENT ENGINEERING

1. RESPONSIBILITIES

CUSTOMER WILL:

- A. Ensure legal review of any contract documents and provide comments to ESCO for negotiation of final guaranteed Energy Savings Contract thirty (30) days prior to projected completion date of Development Engineering.
- B. Provide ESCO access to the facilities for the purpose of performing the energy efficiency analysis, measuring pump and motor efficiency, measuring actual energy use, taking equipment inventory, determining 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 the purpose of facilitating understanding of the characteristics and the current sequences of operation.
- E. Meet with ESCO during the Development Engineering to establish project criteria and make project decisions necessary for ESCO to complete development 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. Work with Customer to establish design, equipment, and operation standards with final approval by Customer.
- B. Provide Customer a guaranteed Energy Savings Contract, including pricing for a turnkey installation of the proposed project scope that shall be firm for sixty (60) days, detailed scope of work, and a guaranteed energy savings amount.
- C. Provide Customer a financial analysis of the effect on annual cash flow by the ECMs.
- D. Provide Customer a Performance Assurance Support Services (PASS) plan for the facilities and RGMs including a detailed measurement and verification and support services plan.

2. ECMS/RGMS TO BE INCLUDED IN DESIGN DEVELOPMENT

Development Engineering will be performed for the ECMs/RGMs identified from the Conceptual Engineering that have been agreed upon by Customer and ESCO and listed below. Any additional ECMs/RGMs or scope of work to be added in the future must be by mutual agreement between Customer and ESCO:

ECMs/RGMs and Scopes of Work

3. FINANCIAL COMMITMENT

- A. If ESCO fulfills responsibilities of the Agreement and Customer DOES NOT execute a guaranteed Energy Savings Contract with ESCO within forty-five (45) days of receiving the contract, then Customer agrees to pay ESCO an additional \$45,000 for a total of \$90,000.
- B. Payments are due and payable sixty (60) days from invoice date. Amounts unpaid sixty (60) days after the invoice date shall bear an interest rate of 1.5% per month.
- C. If ESCO fulfills responsibilities of the Agreement and Customer DOES execute a guaranteed Energy Savings Contract with ESCO within forty-five (45) days of receiving contract, then Customer is under no payment obligation for the Agreement. Furthermore, all costs incurred during the Investment Grade Audit service will be included in the guaranteed Energy Savings Contract.
- D. Customer agrees that until a guaranteed Energy Savings Contract has been executed with ESCO or Customer has paid the Development Engineering fee, the documents, engineering, data, and recommendations developed 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.

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.

**Customer Legal Name
Here**

**Schneider Electric Buildings
Americas, Inc.**

By _____
(Signature)

By _____
(Signature)

Print _____

Print _____

Name

Title

Date

Name

Title

Date

Section D – preliminary schedule

Following is the proposed schedule for the Investment Grade Audit Process:

Item	Target Schedule
ESCO meets with the Administration to consult on Investment Grade Audit process	May 8
ESCO supplies Agreement for Investment Grade Audit; Utility and Data Collection/Analysis	May 14 – June 8
Customer approves and signs Agreement for Conceptual Development Audit section, authorizing ESCO to proceed	June 4
ESCO and Customer conduct a Project Programming and Audit Kick-Off Meeting	Week of June 4
ESCO proceeds with water meter testing, facility surveys, and engineering/analysis.	June 11- June 29
Conceptual Engineering completed and presented to Customer	July 2
Customer approves and signs Development Engineering section of the Agreement, authorizing ESCO to develop final project	July 9
Customer’s attorney completes review of Energy Services Contract template	July 23
Development Engineering completed and reviewed with the Administration	August 14
Financing and funding components finalized with Customer	August 14
Development Engineering presented to the City Council	August 20
Energy Services Contract reviewed and approved by the City Council	August 20
Customer approves and signs Energy Services Contract, authorizing ESCO to begin implementation	August 24
Construction period begins, customer kickoff meeting	Week of August 27

Missouri Revised Statutes

Chapter 8 State Buildings and Lands Section 8.231

August 28, 2010

Guaranteed energy cost savings contracts, definitions--bids required, when--proposal request to include what--contract, to whom awarded, to contain certain guarantees.

8.231. 1. For purposes of this section, the following terms shall mean:

- (1) "Energy cost savings measure", a training program or facility alteration designed to reduce energy consumption or operating costs, and may include one or more of the following:
- (a) Insulation of the building structure or systems within the building;
 - (b) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing reductions in glass area, or other window and door system modifications that reduce energy consumption;
 - (c) Automated or computerized energy control system;
 - (d) Heating, ventilating or air conditioning system modifications or replacements;
 - (e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;
 - (f) Indoor air quality improvements to increase air quality that conforms to the applicable state or local building code requirements;
 - (g) Energy recovery systems;
 - (h) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
 - (i) Any life safety measures that provide long-term operating cost reductions and are in compliance with state and local codes;
 - (j) Building operation programs that reduce the operating costs; or
 - (k) Any life safety measures related to compliance with the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., that provide long-term operating cost reductions and are in compliance with state and local codes;
- (2) "Governmental unit", a state government agency, department, institution, college, university, technical school, legislative body or other establishment or official of the executive, judicial or legislative branches of this state authorized by law to enter into contracts, including all local political subdivisions such as counties, municipalities, public school districts or public service or special purpose districts;

(3) "Guaranteed energy cost savings contract", a contract for the implementation of one or more such measures. The contract shall provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the energy cost savings are guaranteed to the extent necessary to make payments for the systems. Guaranteed energy cost savings contracts shall be considered public works contracts to the extent that they provide for capital improvements to existing facilities;

(4) "Operational savings", expenses eliminated and future replacement expenditures avoided as a result of new equipment installed or services performed;

(5) "Qualified provider", a person or business experienced in the design, implementation and installation of energy cost savings measures;

(6) "Request for proposals" or "RFP", a negotiated procurement.

2. No governmental unit shall enter into a guaranteed energy cost savings contract until competitive proposals therefor have been solicited by the means most likely to reach those contractors interested in offering the required services, including but not limited to direct mail solicitation, electronic mail and public announcement on bulletin boards, physical or electronic. The request for proposal shall include the following:

(1) The name and address of the governmental unit;

(2) The name, address, title and phone number of a contact person;

(3) The date, time and place where proposals shall be received;

(4) The evaluation criteria for assessing the proposals; and

(5) Any other stipulations and clarifications the governmental unit may require.

3. The governmental unit shall award a contract to the qualified provider that provides the lowest and best proposal which meets the needs of the unit if it finds that the amount it would spend on the energy cost savings measures recommended in the proposal would not exceed the amount of energy or operational savings, or both, within a fifteen-year period from the date installation is complete, if the recommendations in the proposal are followed. The governmental unit shall have the right to reject any and all bids.

4. The guaranteed energy cost savings contract shall include a written guarantee of the qualified provider that either the energy or operational cost savings, or both, will meet or exceed the costs of the energy cost savings measures, adjusted for inflation, within fifteen years. The qualified provider shall reimburse the governmental unit for any shortfall of guaranteed energy cost savings on an annual basis. The guaranteed energy cost savings contract may provide for payments over a period of time, not to exceed fifteen years, subject to appropriation of funds therefor.

5. The governmental unit shall include in its annual budget and appropriations measures for each fiscal year any amounts payable under guaranteed energy savings contracts during that fiscal year.

6. A governmental unit may use designated funds for any guaranteed energy cost savings contract including purchases using installment payment contracts or lease purchase agreements, so long as that use is consistent with the purpose of the appropriation.

7. Notwithstanding any provision of this section to the contrary, a not-for-profit corporation incorporated pursuant to chapter 355 and operating primarily for educational purposes in cooperation with public or private schools shall be exempt from the provisions of this section.

KIRKSVILLE CITY COUNCIL STUDY SESSION ATTACHMENT

SUBJECT: Brush Collection and Disposal

STUDY SESSION MEETING DATE: June 4, 2012

CITY DEPARTMENT: Public Works

PREPARED BY: John R. Buckwalter, PW Director and Brad Selby, Codes Administrator

The City conducts a limb and brush pick-up twice a year, typically in April and October. Crews will pick up limbs and brush that citizens place at curb side. The collected debris is transported to the old landfill site, and is stored in a brush site until it is ground into wood chips by a contracted tub grinder. Depending on volume, brush is ground either once or twice each year.

In 2011 the City was given permission to burn collected brush after the June windstorms. The city cleared all brush in the pile, and began the fall pick-up with essentially an empty site. This has afforded us the opportunity to evaluate the brush collection situation.

The fall pick was conducted from October 3 to October 5. Fifty-nine loads of limbs and brush were hauled to the landfill. This is less than normal, but because so much debris was cleared in July and August, it was not unexpected. The spring pick up was completed between April 2, 2012 and April 5, 2012. One hundred and forty four loads of brush were collected. The total brush picked up by city crews in the two collections was 203 loads. It is estimated that another 20 loads were transported by city crews from tree work in parks and on right of way, for a total of 223 loads. The average load, depending on truck is between 10 and 15 cy. Using an estimate of 12 yards per load, then City work and collection from curbside totaled 2676 cy, or rounded to 2700 cubic yards of debris.

The city contracted for tub grinding following the spring clean-up. Tub grinding was completed the week of April 17, 2012. The total material in the brush pile was estimated to be 9000 cy. That means that delivery by citizens and others was in excess of 6000 cy, in less than 10 months.

Costs for the two collections and tub grinding are:

Labor Fall	\$2,876.28
Equipment Fall	\$9,292.00
Labor Spring	\$4,909.92
Equipment Spring	\$16,448.00
Contract, Tub Grinder	\$9,500.00
Labor Supt Tub Grinder	\$3,916.06

Equipment Supt. Tub Grinder	\$7,780.00
Total	\$54,722.26

Tub grinding costs are \$2.36/cy.

Cost to grind city collected material	\$6,372
Cost to grind other material	\$14,868

We are spending a significant amount to handle material which is not from Kirksville citizens. It is obvious that tree maintenance companies are dumping limbs, entire trees, and chipped material at the brush site for the City to dispose of. Many trucks from outside Kirksville have been observed dropping off brush at the site during the day. People using the site no longer follow the directional signs, and are mixing chipped material, lawn clippings, and bagged leaves with the brush. Recently someone dumped the debris from a home remodeling project into the brush site, including wood framing, doors, carpet, and sheet rock. Staff had to remove this material and then place it in the City's roll-off dumpster at public works for disposal, at City expense. Contractors and others who drop off large trees, which cannot be ground, pose another problem. Today, staff hauls these large trees to the back of the landfill, but that will no longer be an option soon, as space is filled. These costs are not captured in the figures above.

The brush site is not secured, anyone can access it. Citizens legitimately need access after the normal workday and on weekends, but 24 hour unsupervised access is being abused. It is obvious that people are trespassing on the landfill property, posing a significant liability and an environmental violation if they disturb the cap on the closed landfill with off-road vehicles.

I need guidance on how restrictive we should make access to the brush site. I would like to physically separate the rest of the landfill from the brush site, limiting access to authorized personnel only beyond the brush site. Any decision will have to wait until review of use of the landfill for KPD training is resolved, however.

A related issue is the yard waste collection. The City provides 30 cubic yard roll-off dumpsters at the public works site for citizens to dump yard wastes and small limbs and twigs. Veolia then dumps these when full as part of the trash contract. Citizens have the option of contracting with Veolia for yard waste pick up at \$7.00 per month.

Fall and spring, when people are working on their yards outside, drop offs can overtake Veolia's ability to change out dumpsters. City crews are constantly trying to compact the loads to get more in. On weekends, when the public works gates are locked, citizens will often just dump their bags in front of the gates. If in paper bags, city crews will load the bags and put in the dumpster. If left in plastic bags, city crews must cut each bag open, dump contents in the dumpster, and then dispose of the plastic bag. The current contract only requires Veolia to dump 30 loads a year at no charge. Last

year we went over this limit. Each load over the limit is \$225, payable by the City. This fee was waived in 2011, but will be imposed in 2012.

The Codes Administrator and Public Works Director have identified some possible short and long term solutions.

Long Term.

1. Build a concrete pad large enough for 3 yard waste dumpsters outside the city gates, for 24 hour use.
2. Eliminate Landscaping and Tree Services companies from using this free service. Offer the Landscaping and Tree Services companies an option to pay a flat annual fee of \$500-800 in order to dump yard wastes here.
3. Set up a video surveillance camera to identify violators.
4. Eliminate plastic bags entirely at the end of the current contract.
5. Consider doing away with the dumpsters completely at the next Trash Contract time. Veolia's fee for curbside pickup of \$7.00 a month is reasonable. This would force people to sign up if they want to get rid of this type of waste.
6. Provide curb side pick-up with city forces; this will cost \$2,825 per week for equipment and labor, plus the cost of disposal (estimated at \$225/week). It would require adding two employees on at least a part time basis. This is roughly \$2.05/household per month for 6000 households. It would be in direct competition with Veolia's curbside program.

Short Term.

1. Visit other cities and look at their sites and see what they do, what works, what doesn't.
2. Put up signs that say "Dumpsters for use of Citizens of Kirksville only"
3. Emphasize to people that some of the best fertilizer for a yard is the grass that is cut off. Don't bag it. Let it feed the yard. That is what DNR suggests.