

TEMPORARY RESOLUTION NO. 97-15

PERMANENT RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE SERVICE-SAFETY DIRECTOR TO ENTER INTO AN ENERGY SERVICES DEVELOPMENT AGREEMENT WITH SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC., FOR THE CITY OF LANCASTER

BE IT RESOLVED BY COUNCIL OF THE CITY OF LANCASTER, OHIO

SECTION 1. That the Service-Safety Director be and is hereby authorized to enter into an Energy Services Development Agreement with Schneider Electric Buildings Americas, Inc., for the City of Lancaster, attached as Exhibit A.

SECTION 2. That this resolution shall take effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_ after \_\_\_\_\_ reading. Vote: Yeas \_\_\_\_\_ Nays \_\_\_\_\_

Date Approved: \_\_\_\_\_

Clerk: \_\_\_\_\_

\_\_\_\_\_  
President of Council

Offered by: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Second by: \_\_\_\_\_

Requested by Law Committee

## ENERGY SERVICES DEVELOPMENT AGREEMENT

THIS Energy Services Development Agreement (the "Agreement") is entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between Schneider Electric Buildings Americas, Inc. ("ESCO") and the City of Lancaster, an Ohio municipal corporation (the "City"), for the performance of an energy audit and the preparation of an energy conservation report.

### RECITALS

WHEREAS, the City is perpetually looking for ways to make better use of taxpayer dollars;

WHEREAS, the City believes that the implementation of energy conservation measures will reduce the City's energy costs, shrink the City's carbon footprint, and will positively impact the City's long term financial outlook;

WHEREAS, Section 717.02 of the Ohio Revised Code provides, in relevant part, that "a legislative authority of an Ohio municipal corporation may contract with an architect, professional engineer, energy services company, contractor, or other person experienced in the design and implementation of energy conservation measures for an energy conservation report";

WHEREAS, the City has solicited and reviewed, through the bidding process, the qualifications of various energy services companies for the performance of an energy audit and preparation of an energy conservation report, and has determined ESCO to be the most qualified bidder in that regard;

NOW, THEREFORE, for adequate consideration, the receipt and sufficiency of which is acknowledged, and to be legally bound, the City and ESCO agree as follows:

### TERMS

#### **SECTION A: GENERAL TERMS**

- 1. Entirety Clause.** This Agreement, and any documents incorporated by reference, constitute the entire understanding between ESCO and the City 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 is being executed and delivered in the City of Lancaster, County of Fairfield, State of Ohio, and shall be governed by, construed and enforced in accordance with the substantive laws of the State of Ohio exclusive of the laws in Ohio relating to conflict of laws. In addition, any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement of any provision hereof shall be instituted only in the Municipal Court or Court of Common Pleas located in Fairfield County, Ohio and in no other state or federal court.
- 3. Insurance.** ESCO shall maintain insurance coverage including, without limitation, workers' compensation and employer's liability insurance at or in excess of the 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 of Ohio with an A.M. Best's rating of at least A- VII.

**4. Additional Services.** The City may, at its sole discretion, request additional services from ESCO thereby requiring a change in the Agreement or a change in the compensation to ESCO. Any such change(s) in the Agreement, or any agreement between the parties which results in a change in ESCO's compensation, shall be authorized by WRITTEN amendment to the Agreement and shall be mutually agreed to and signed by both the City and ESCO. The amendment to the Agreement must be fully executed in writing by the City 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.

**5. Term.** This Agreement shall commence as of the date set forth above and shall continue in full force in effect until the earlier of: (1) delivery of a Notice of Termination signed by the City's Service-Safety Director; or (2) December 31, 2015.

**6. Indemnification and Hold Harmless by ESCO.** Other than the City's engaging in an intentional tort or other wrongful act or omission, ESCO hereby agrees to indemnify and hold the City harmless for any injury or death suffered by any person, including ESCO, in connection with any work performed by ESCO in relation to this Agreement.

**7. Assignment; Subcontractors.** Neither the City nor ESCO may assign or subcontract its duties or obligations under this Agreement without first obtaining the written consent of the other interested party hereunder, which consent may be withheld in such parties' sole discretion.

**8. No Waiver of Rights.** Failure by either party to insist on or enforce any of their rights shall not constitute a waiver of those rights by such party, and nothing shall constitute a waiver of that party's right to insist on strict compliance with the provisions of this Agreement.

**9. No Agency Relationship.** ESCO is, under all circumstances, a private corporation acting independent of the City, and nothing in this Agreement shall be construed so as to create any employment or other agency relationship between the City and ESCO.

**10. Notices.** Any notice desired or required to be given to any party under this Agreement shall be in writing and shall be deemed received when delivered in person, by fax or email, by private air courier with receipt, or three days after being deposited with the United States Postal Service first class, registered or certified, return receipt requested, with postage prepaid and:

If addressed to the City: Office of the Service-Safety Director  
104 E. Main Street, Room 102  
Lancaster, Ohio 43130  
Fax: 740.687.6698  
Email: [bkuhn@ci.lancaster.oh.us](mailto:bkuhn@ci.lancaster.oh.us)

If addressed to ESCO: Schneider Electric Building Americas, Inc.  
c/o David Kramer  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: [david.kramer@schneider-electric.com](mailto:david.kramer@schneider-electric.com)

## SECTION B: PROPOSED SCHEDULE

Following is the PROPOSED schedule for the Energy Services Development Process:

ITEM	SCHEDULE	STATUS
ESCO sends Energy Services Development Agreement to City	May 29, 2015	Completed
Agreement introduced at Lancaster City Council with accompanying legislation (1 <sup>st</sup> reading)	July 13, 2015	
Agreement approved by Lancaster City Council (3 <sup>rd</sup> reading); ESCO authorized to proceed with audit	August 24, 2015	
Customer provides documentation from Request for Information		
ESCO and Customer conduct Project Programming session(s)		
Phase I completed and reviewed with City Administration		
Phase I presented to City Council 1 <sup>st</sup> reading of Agreement for Phase II – Project Development section		
2 <sup>nd</sup> reading of Agreement for Phase II – Project Development section		
3 <sup>rd</sup> reading and Customer approves and signs Phase II - Project Development section of the Agreement, authorizing ESCO to develop final project		
Phase II completed and reviewed with City Administration		
Phase II presented to the City Council 1 <sup>st</sup> reading of Energy Services Contract		
2 <sup>nd</sup> reading of Energy Services Contract		
3 <sup>rd</sup> reading and Customer approves and signs Energy Services Contract, authorizing ESCO to begin implementation		
Possible: Customer approves and signs financings resolution		

## SECTION C: PHASE I – PROJECT PROGRAM AND BUSINESS CASE DEVELOPMENT

1. **City Obligations.** As part of this Agreement, the City will perform as follows:
  - A. Provide data outlined on the “Request for Information” attached as Exhibit “A”;
  - B. Provide ESCO Certified Energy Managers and Energy Analysts with access to City facilities, at a time and in a manner that is mutually agreeable to the parties and which does not disrupt or interfere with the City’s normal operations, for the purpose of surveying types of equipment and operating characteristics;
  - C. Provide ESCO representatives with access to key personnel to discuss operating requirements, at a time and in a manner that is mutually agreeable to the parties and which does not otherwise disrupt or interfere with the City’s normal operations; and
  - D. Schedule and perform project programming session(s), at a time and in a manner that is mutually agreeable to the parties and which does not otherwise disrupt or interfere with the City’s normal operations, to establish project goals and criteria.
  
2. **ESCO Obligations.** As part of this Agreement, the City will perform as follows:
  - A. Conduct project programming session(s), facility walk-through(s) and personnel interview(s) to gain an understanding of the City’s goals, facility operations, and financial criteria;
  - B. Provide a preliminary list of energy conservation measures and facility improvements;
  - C. Provide preliminary financial information including, but not limited to, annual energy savings, project cost, and cash flow analysis;
  - D. Provide a preliminary Performance Assurance Support Services (“PASS”) plan for the facilities, including measurement and verification as well as sustainability support; and
  - E. Provide a work schedule for the Project Development and Energy Services Contract.
  
3. **Departments and Facilities.** ESCO will conduct a Phase I audit, as set forth in Section (C)(2) above, of the following City facilities:

Departments & Facilities
Annex Building
Cemetery
City Hall
Fire
Gas
Parks & Recreation
Police
Sanitation

Transit
Transportation
Water
Water Pollution Control

The addition of any other City facilities must be by mutual agreement of the parties.

**4. Financial Commitment.** The City is under no obligation to pay or otherwise compensate ESCO for any product or service until such time that ECSC and City execute, upon mutually agreeable terms, a subsequent Energy Services Contract. The City agrees that, until a subsequent Energy Services Contract has been executed with ESCO, 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 City and ESCO have entered into this Agreement by and through their respective agents, each of whom by signature below represents that s/he has the authority to execute this Agreement as a duly authorized representative of such party as set forth below.

**City of Lancaster, Ohio**

**Schneider Electric Buildings Americas, Inc.**

By \_\_\_\_\_  
 (Signature)  
 Print Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_

By \_\_\_\_\_  
 (Signature)  
 Print Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_