

**TAB 14**



# City of Palmetto Agenda Item

**Meeting Date**

11/15/10

**Presenter:** Jim Freeman

**Department:** City Hall/PD

**Title:**

### Computer Aided Dispatch (CAD) upgrade for PD

Earlier this year, the City of Palmetto received an Energy Efficient Community Block Grant (EECBG) of approximately of \$250,000 for various energy saving projects throughout the City. As part of the grant, monies were allocated (\$20,000) to complete a City-wide energy study. Staff has met with a company called Energy Systems Group (ESG) who has local offices in Clearwater, FL. ESG is one of ten energy savings contractors on the Florida State Contract. The purpose of the Investment Grade Audit (IGA) is to confirm energy efficient projects identified by staff and identify other energy saving ideas that the City has not previously identified. During initial discussions with the vendor, conversations were also had regarding telemetry meters and potential cost savings associated with deploying these throughout the City. We communicated that funding for telemetry meters has been an obstacle for the City. The vendor indicated that they have worked on similar projects for other clients and agreed to include potential cost saving options for telemetry meters as part of the overall energy study scope. In addition, ESG has agreed to provide EECBG grant administration and reporting as part of the IGA. The cost of the IGA is \$9,000 and would be paid for as part of the grant dollars awarded to the City. At the conclusion of the energy study, the City will obtain a list of projects to consider implementing, some of which have already been identified via our grant application. If we choose to move forward with some or all of the projects and utilize ESG, the initial cost of \$9,000 is waived and we would enter into a separate agreement for them project manage all of the projects which would be brought back to Commission at a later date. If we do not choose to utilize ESG for implementation of the energy saving ideas and select someone else, we are only responsible for the \$9,000 associated with the IGA.

Any energy savings projects that are identified in the study that will not be funded by the EECBG grant dollars will be brought back to Commission for further discussion.

<b>Budgeted Amount:</b>	\$250,000	<b>Budget Page No(s):</b>	NA	<b>Available Amount:</b>	\$250,000	<b>Expenditure Amount:</b>	\$9,000
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**Additional Budgetary Information:**

The cost for the energy study and grant administration will be funded from EECBG grant dollars. The grant submission contained up to \$20,000 to fund and energy study.

<b>Funding Source(s):</b>	EECGB Grant	<b>Sufficient Funds Available:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Budget Amendment Required:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Source:</b>	
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<b>City Attorney Reviewed:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<b>Advisory Board Recommendation:</b>	<input type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> N/A	<b>Consistent With:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
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**Potential Motion/Direction Requested:** Motion to approve and authorize the Mayor to sign the Investment Grade Energy Audit between the City of Palmetto and Energy Systems Group for an amount not to exceed \$9,000.

**Staff Contact:** Jim Freeman

**Attachments:** Agreement, State Contract Information

# INVESTMENT GRADE ENERGY AUDIT AGREEMENT

BETWEEN

ENERGY SYSTEMS GROUP, LLC

AND

THE CITY OF PALMETTO, FL

This Investment Grade Energy Audit Agreement (“Agreement”), effective the last date signed below, is by and between the City of Palmetto, a municipal corporation of the State of Florida located at 516 8<sup>th</sup> Ave. W., P.O. Box 1209, Palmetto FL 34220-1209 (the “City”) and Energy Systems Group, LLC with offices at 17757 US 19 N, Suite 210, Clearwater, FL 33764 (the “Company”) (each a “Party” and collectively the “Parties”).

**Whereas**, the Company is an Energy Services Company specializing in the development and implementation of energy conservation focused projects, renewable energy projects, and guaranteed Energy Savings Performance Contracts (ESPCs), and is licensed to perform such work within the State of Florida; and

**Whereas**, the Company holds a Florida State Term Contract for Energy Services; and

**Whereas**, the City is responsible for the operation, management and maintenance of its municipal buildings (the “Facilities”); and

**Whereas**, the City has previously reviewed the qualifications of the Company and both Parties have expressed a mutual interest in the Company developing and implementing an energy conservation project; and

**Whereas**, a comprehensive investment grade technical energy audit and savings analysis (“IGA”) must be performed at the Facilities in order to determine final scope, pricing, and guaranteed savings before entering into a contract to provide for the installation and implementation of the finalized Energy Conservation Measures (“ECMs”) at the Facilities and

**Whereas**, the Parties intend to negotiate an ESPC under which the Company shall design, procure, install, implement, monitor, and guarantee the performance of such ECMs at the Facilities;

Therefore, the Parties agree as follows:

**Article 1: Scope of Energy Audit**

The Company will conduct an Investment Grade Energy Audit (“IGA”) and prepare a Report that specifically identifies the energy improvements and operational changes which are recommended to be installed or implemented at each of the facilities. The Report shall contain detailed projections of energy and cost savings to be obtained at each facility as a result of the installation of the recommended ECMs. The savings calculations must utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings for each facility. The Report shall clearly describe how utility tariffs were used to calculate savings for all ECMs. The Report shall describe Company’s plan for installing or implementing the ECMs, including all anticipated costs associated with such installation and implementation.

The facilities to be included in this study are listed in Attachment A of this Agreement. This list may be modified by mutual written agreement of both Parties.

The Company shall perform the following tasks in performing the IGA and preparing the Report:

A. Collect General Facilities Information

The Company shall collect general Facilities information such as: size, age, construction type, condition and general use. The Company shall also collect and summarize utility cost and consumption data for the most recent 24-36 month period. The impact on utility cost and consumption of any energy initiatives currently being installed or currently planned to be installed by the by the City will also be evaluated.

As part of these efforts, Company shall catalog and document energy and water usage for each Facility for the most current 24-36 month period, occupancy information, any changes in the structure of the buildings or its heating, cooling, lighting or other systems or energy requirements, descriptions of all major energy and water consuming or energy and water saving equipment; any comfort problems, code deficiencies, and description of energy management procedures presently utilized.

B. Analyze Existing Systems and Equipment

The Company shall compile an analysis based on a physical inspection of the major electrical and mechanical systems of the buildings, including:

1. Cooling systems and related equipment
2. Heating and heat distribution systems
3. Automatic temperature control systems and equipment
4. Air distribution systems and equipment
5. Outdoor ventilation systems and equipment

6. Kitchen and associated dining room equipment, if applicable
7. Exhaust systems and equipment
8. Hot water systems
9. Electric motors 5 HP and above, transmission and drive systems
10. Interior and exterior lighting
11. Laundry equipment, if applicable
12. Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.
13. Other major energy using systems, if applicable.

Interviews will be conducted operation and maintenance staff regarding the mechanical system operations, occupancy patterns, and problems with comfort levels or equipment reliability.

C. Establish Consumption Baseline

The Company shall examine the most recent 24-36 months of utility bills and establish Base Year consumption for electricity, fossil fuels and water by averaging; or selecting the most representative contiguous 12 months. The Company shall consult with Facilities' staff and account for any unusual or anomalous utility bills which may skew Base Year consumption from a reasonable representation.

D. Develop List of Potential ECMs

The Company shall:

1. Conduct a detailed rate analysis on all Facilities' utility bills to insure that each building is operating on the best available utility rate structure and identify any refunds that may be due to the City as a result of past over billing
2. Identify opportunities for no-cost, changes to Facilities operational practices that can be easily implemented by City of Palmetto staff that will lower energy consumption profiles
3. Provide the cost, savings and life expectancy of each proposed ECM
4. Provide analysis methodology, supporting calculations and assumptions used to establish savings projections
5. Provide a preliminary savings measurement and verification plan
6. Detail environmental benefits of the proposed ECMs such as reduced emissions and carbon footprint reduction
7. For all proposed ECMs, the Company shall comply with all applicable state, federal and local codes and regulations in effect at the time of this analysis

E. Select Final Recommended ECMs

The Company shall, in consultation with the City, recommend specific ECMs from its preliminary compilation for installation and implementation at the Facilities

F. Provide Cost and Fee Estimates

The Company shall provide detailed estimates of all costs and fees associated with the installation and implementation of the ECMs

G. Deliver the Report

The Company shall complete and deliver the Report to the City in the following format:

1. An executive summary which describes the Facilities, ECMs evaluated, analysis methodology, results and a summary table presenting the cost and savings estimates for each ECM
2. A discussion of ECMs not evaluated in detail and the explanation of why a detailed analysis was not performed.
3. A summary of all utility bills, Base Year consumption and how it was established, and end use reconciliation with respect to the Base Year including a discussion of any unusual characteristics and findings.
4. Detailed descriptions for each ECM including analysis method, supporting calculations (may be submitted in appendices), results, proposed equipment and implementation issues.
5. Conclusions, observations and caveats regarding cost and savings estimates.
6. Thorough appendices which document the data relied upon to prepare the analysis and how that data was collected.

H. Acceptance of the Report by the City

The City shall conduct and complete a technical review within thirty (30) days of its receipt of the Report. The City shall accept the Report if the recommended ECMs are deemed feasible. If the City determines that one or more of the recommended ECMs is not feasible, the City shall give the Company written notice of any and all said objections, in detail. The Company shall correct the Report and submit a revised draft within fourteen (14) days of said notification. The City shall have seven (7) days from receipt of the revised Report to notify the Company if any objections have not been corrected.

I. Energy Efficient Community Block Grant (EECBG) Grant Administration Services

The Company shall provide grant administration services associated with all aspects of the EECBG grant which includes but is not limited to the following; all necessary paperwork, energy savings reports, technical documentation, etc. necessary to meet reporting requirements and deadlines of the EECBG grant. City staff will also be available to assist the Company with reporting requirements of the grant as needed.

**Article 2: Project Feasibility**

For the purposes of this Agreement, a Feasible Project Package shall be defined as a project that will meet the overall intent, budget, and requirements of the City and is compliant with all state and local legislation regarding ESPC's.

**Article 3: Energy Savings Performance Contract**

The Parties intend to negotiate an ESPC under which the Company shall design, install and implement ECMs and provide performance guarantees and certain maintenance and monitoring services. The terms and provisions of such an ESPC shall be set forth in a separate agreement. This Agreement shall automatically terminate upon the Parties' execution of an ESPC to the Facilities or terms of Article 4 (below) will apply.

#### **Article 4: Payment**

The Company is undertaking work under this Agreement at cost and under consideration of the City's good faith intention to negotiate an ESPC with the Company. The at-cost value for the IGA ("**Audit Fee**") is \$9,000 and is only intended to cover the Company's anticipated costs for providing the services described in Article 1.

Company shall invoice City for the audit upon the City's final acceptance of the report. The City shall make payment to The Company for the Audit Fee within thirty (30) days of receipt of invoice.

The Parties understand and intend that the Audit Fee shall be included in the total project cost of the ESPC.

Should the IGA fail to demonstrate a Feasible Project, the City Shall have no obligation to the Company for reimbursement of the Audit Fee.

Should the IGA demonstrate a Feasible Project, but the Parties fail to negotiate and enter into an ESPC within sixty (60) days of the City's acceptance of the IGA, the Company shall have the right to invoice the City for the Audit Fee. In this event, the City shall make payment to The Company for the Audit Fee within thirty (30) days of receipt of invoice.

Should the City terminate this Agreement as defined in Article 5 subsection B, the City shall be required to reimburse Company for its efforts to date based on a prorated amount of the Audit Fee established in Article 4 of the Agreement. Company shall submit an invoice for the prorated Audit Fee to the City within ten (10) days of receipt of the City's notice of termination under Article 5 subsection B. The City shall make payment to The Company for the Audit Fee within thirty (30) days of receipt of invoice.

#### **Article 5: Termination**

##### **A. By Company:**

The Company may terminate this Agreement prior to the completion of the IGA if it determines that Company can not complete the report because of City's failure to provide necessary information and access for timely completion of the Audit Report. The Company will give the City seven (7) days notice and allow seven (7) days to cure.

Termination under this section shall be effective upon the City's receipt of written notification from the Company stating the reason for the termination.

##### **B. By City:**

The City may terminate this Agreement if the Company fails to complete the IGA and deliver the Report to the City. Termination under this subsection B shall be effective upon the Company's receipt of written notification from the City.

#### **Article 6: Standard Terms and Conditions**

##### **Section 1. Agreement Term**

This Agreement term shall commence on the effective date of the Agreement and end on upon execution of an ESPC between the Parties or payment of the Audit Fee to the Company by the City, unless earlier terminated pursuant to the above provisions.

## Section 2. Materials, Equipment and Supplies

The Company shall provide or cause to be provided all facilities, materials, equipment and supplies necessary to perform the IGA and prepare the Report.

## Section 3. Patent and Copyright Responsibility

The Company agrees that any material or design specified by the Company or supplied by the Company pursuant to this Agreement shall not knowingly infringe any patent or copyright, and the Company shall be solely responsible for securing any necessary licenses required for patented or copyrighted material utilized by the Company in the performance of the Energy Audit and preparation of the Report.

## Section 4. Release and Indemnity

The Company agrees to assume all risk of loss and to indemnify and hold the City, and its officers, agents and employees harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys' and witnesses' fees, and expenses incident thereto, for injuries to persons (including death) and for loss of, damage to or destruction of property (including property of the City) because of the Company's negligent or intentional acts or omissions. In the event that any demand or claim is made or suit is commenced against the City, the City shall give prompt written notice thereof to the Company and the Company shall have the right to compromise or defend the same to the extent of its own interest. The Company further agrees to maintain adequate insurance to protect the City against such risks. The Company also agrees to indemnify and hold the City harmless should any goods or services provided by the Company infringe upon the patent, copyright or trade secret of another.

## Section 5. Dispute Resolution

The City and the Company recognize and acknowledge that efforts should always be made to avoid or prevent disputes through effective partnering, good communications, and joint decision making; and that timely requests for clarification and for information will help ensure a better understanding of issues and problems and lead to the elimination of doubts, uncertainties, and ambiguities. Nevertheless, the City and the Company also recognize that disputes may develop between them and, in such event, wish to establish procedures to be followed to resolve such disputes in the shortest possible time and at the least possible expense to the City and the Company.

Any conflict or dispute between the City and the Company shall be resolved in accordance with the procedures specified in this Agreement, which shall be administrative procedures for the resolution of any such disputes. This Agreement establishes successive steps of conflict prevention and alternative dispute resolution prior to litigation, completion of which shall be conditions precedent to the right to commence litigation over any dispute arising out of or relating to the Agreement. The successive steps are: (1) informal negotiations between project-level management personnel; (2) formal negotiations between executive-level management,



initiated by written notice and completed within thirty days, or longer as mutually agreed; and (3) mediation, initiated by written notice.

Any legal or equitable action arising out of or relating to this Agreement shall be governed by Florida law and heard in the appropriate courts of Manatee County. In the event of litigation, Parties agree to waive jury trial and recovery fees and costs including appellate costs. The threshold issue for determination shall be whether the Party bringing the action has complied with the alternative dispute resolution processes specified above.

Notwithstanding any provision to the contrary, neither Party shall be excluded from recovering any special, consequential, or punitive damages to the extent allowed by law. The City does not waive its right to sovereign immunity under F.S. 768.28.

#### Section 6. Personnel

All Company employees, subcontractors, or agents performing work under this Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, the Company shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Agreement must comply with all security and administrative requirements of the City. The City may conduct, and the Company shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Company. The City may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the City's security or other requirements. Such approval shall not relieve the Company of its obligation to perform all work in compliance with the Agreement. The City may reject and bar from any Facilities for cause any of the Company's employees, subcontractors, or agents.

The Company, together with its agents, subcontractors, officers and employees, shall have and always retain under the Agreement the legal status of an independent contractor, and in no manner shall they be deemed employees of the City or deemed to be entitled to any benefits associated with such employment. During the term of the Agreement, the Company shall maintain at its sole expense those benefits to which its employees would otherwise be entitled to by law, including health benefits, and all necessary insurance for its employees, including workers' compensation, disability, and unemployment insurance, and provide the City with certification of such insurance upon request. The Company remains responsible for all applicable federal, state, and local taxes, and all FICA contributions.

#### Section 7. Compliance with Applicable Law

In performing this Agreement, the Company shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority.

#### Section 8. Waivers

No right of either party hereto shall be deemed to have been waived by non-exercise thereof, or otherwise, unless such waiver is reduced to writing and executed by the party entitled to exercise such right.

Section 9. Assignment

Neither Party may assign this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld.

## Section 10. Capacity to Contract

Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective Party to the Agreement. The Company warrants that it is in good standing and legally authorized to transact business in Florida. The Company warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Company's ability to satisfy its Agreement obligations. The Company shall immediately notify the City in writing if its ability to perform is compromised in any manner during the term of the Agreement.

## Section 11. Confidential Information

Each Party may have access to confidential information made available by the other Party. Each Party shall to the extent allowed by law protect such confidential information in the same manner as it protects its own confidential information of like kind.

## Section 12. Project Management

All necessary and ordinary communications, submittals, approvals, requests and notices related to Project work shall be issued or received by:

Shirley Groover Bryant

**Mayor**

City of Palmetto

516 8<sup>th</sup> Ave. W.

P.O. Box 1209

Palmetto, FL 34220-1209

941-723-4570

[mayor@palmettofl.org](mailto:mayor@palmettofl.org)

cc:

Jim Freeman

**City Clerk**

[jfreeman@palmettofl.org](mailto:jfreeman@palmettofl.org)

and

Energy Systems Group, LLC

Chris Summers, P.E., CEM, C.B.C.

Regional Director

17757 US 19 N, Suite 210

Clearwater, FL 33764

(727) 533-0403

[csummers@energysystemsgroup.com](mailto:csummers@energysystemsgroup.com)

Either Party may change its point of contact by written notice to other Party's then-current designated contact, which shall not constitute a formal amendment to this Agreement.

Section 13. Modification of Terms

The Agreement contains all the terms and conditions agreed upon by the Parties. The Agreement may only be modified or amended upon mutual written agreement of the Parties. No oral agreements or representations shall be valid or binding upon the City or the Company.

Section 14. Execution in Counterparts

The Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 15. Severability

If a court deems any provision of the Agreement void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

Section 16. Time is of the Essence

SO AGREED:

**City of Palmetto**

\_\_\_\_\_  
By: Shirley Groover Bryant  
Title: Mayor

\_\_\_\_\_  
Date

**Energy System Group LLC**

\_\_\_\_\_  
By: James L. Adams  
Title: President

\_\_\_\_\_  
Date

**Attachment A  
City of Palmetto  
List of Included Facilities**

Facilities

<b>City Of Palmetto Owned Buildings</b>		
<b>Location</b>	<b>Address</b>	<b>Sq. Ft under Roof</b>
City Hall	516 8th Ave W	7,147
Police Department	1115 10 Street W	14,408
Public Works	601 17th Street W	29,130
Parks Bldg	901 17th Street W	720
Waste Water Plant	1310 28th Ave W	2,304
	Total Sq. FT	53,709