

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