



## Investment Grade Audit Agreement

This Investment Grade Audit Agreement ("Agreement") is by and between Schneider Electric Buildings Americas, Inc. ("ESCO") and Scurry-Rosser Independent School District ("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, Conceptual Development Audit**  
**Section C, Design Development**  
**Section D, Preliminary Schedule**

### 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.

**6. OWNERSHIP OF WORK PRODUCTS**

All drawings, specifications and other documents and electronic data furnished by ESCO to Customer under this Agreement ("Work Products") are deemed to be instruments of service and ESCO shall retain the ownership and property interest therein, including the copyrights and intellectual property thereto. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to the guaranteed Energy Savings Contract with ESCO.

Work Products may not be shared with any third parties, except to the extent as required by law, without the written permission of ESCO as referenced in this Section A:3.

## **SECTION B: CONCEPTUAL DEVELOPMENT AUDIT**

### **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 the purpose of performing the energy efficiency analysis, 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 Conceptual Development Audit to establish project criteria and make project decisions necessary for ESCO to complete in a timely manner.
- F. Meet with ESCO for a presentation of the Conceptual Development Audit and decide the next steps moving forward in the process, including scope to be developed in the Section C: Design Development phase.

#### **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 to be considered in the Design Development Phase.
- C. Provide Customer a preliminary list of ECMs with budgetary costs ("Budgetary Cost Analysis"). Budgetary costs will be refined in Development phase based upon direction from client for development of final proposal.

### **2. FINANCIAL COMMITMENT**

- A. Schneider Electric typically provides the services above with some level of financial commitment by the Customer. For Scurry-Rosser ISD, Schneider Electric is offering to perform these services at no cost to the District.



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.

**APPROVAL TO PROCEED WITH CONCEPTUAL DEVELOPMENT (Section B):**

**Scurry-Rosser ISD**

By

James D. Scurry  
(Signature)

Print Name

JAMES D. SCURRY

Title

SUPERINTENDENT

Date

5.15.17

By

[Signature]  
(Signature)

Print Name

Glenn Gains

Title

Director

Date

5.16.17

## Section C: DESIGN DEVELOPMENT

### 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 Design Development.
- B. Provide ESCO complete access to the facilities for the purpose of performing the energy efficiency analysis, 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 Design Development 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, including a detailed measurement and verification and support services plan.

### 2. FINANCIAL COMMITMENT

- A. If ESCO fulfills responsibilities of this Agreement and Customer DOES NOT execute a guaranteed Energy Savings Contract with ESCO within thirty (30) days of receiving the contract, then Customer agrees to pay ESCO **\$ 0.25 per square foot audited, which equates to \$69,750 for the district's 279,000 square feet.**
- B. If ESCO fulfills responsibilities of this Agreement and Customer DOES execute a guaranteed Energy Savings Contract with ESCO within thirty (30) 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.
- C. Payments are due and payable thirty (30) days from invoice date. Amounts unpaid thirty (30) days after the invoice date shall bear an interest rate of 1.5% per month (18% per annum).
- D. Customer agrees that until a guaranteed Energy Savings Contract has been executed with ESCO or Customer has paid the Design Development 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.

**APPROVAL TO PROCEED WITH DESIGN DEVELOPMENT (Section C):**

**Scurry-Rosser ISD**

**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 9, 2017
ESCO supplies Agreement for Investment Grade Audit	May 9, 2017
Customer approves and signs Agreement for Conceptual Development Audit section, authorizing ESCO to proceed	May 15, 2017
Customer provides complete utility information, building plans, etc.	May 29, 2017
ESCO and Customer conduct a Project Programming and Audit Kick-Off Meeting	TBD
Conceptual Development Audit completed and presented to Customer	TBD
Customer approves moving forward to Design Development section of Agreement, authorizing ESCO to develop final project	TBD
Customer's attorney begins review/markup of Energy Services Contract template	TBD
Design Development Audit completed and reviewed with the Administration	TBD
Design Development Audit presented to the Board	TBD
Energy Services Contract reviewed and approved by the Board	TBD
Customer approves and signs Energy Services Contract, authorizing ESCO to begin implementation	TBD
Possible: Customer approves and signs financing resolution, authorizing Customer to enter into financing agreement	TBD