

Investment Grade Audit Agreement

This Investment Grade Audit Agreement (“Agreement”), dated _____ (“Effective Date”) is entered into by and between **Schneider Electric Buildings Americas, Inc.** (“ESCO”) and **the City of Angleton, Texas** (“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 as set out in Section A and B and incorporated herein:

Section A -- General Terms and Conditions
Section B -- Audit Services

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.

City of Angleton, Texas

Schneider Electric Buildings Americas, Inc.

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

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. As described more fully in Section B, ESCO will conduct an Investment Grade Audit of certain Customer Facilities (defined below)

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. The parties acknowledge and agree that the Customer shall comply with the Texas Government Code Chapter 552, Texas Public Information Act, as amended.

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 \$1,000,000.00 each occurrence, \$2,000,000.00 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 services outlined herein and may be subject to public disclosure under Texas Government Code, Chapter 552, Texas Public Information Act, as amended

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: Audit Services

Customer agrees to provide the following:

- A. Provide ESCO with verification of incoming electrical service and service to be considered available by Customer for use to power new equipment.
- B. Provide ESCO with all pertinent design criteria, such as TECQ requirements, to be followed.
- C. Provide ESCO with drawing or computer aided design standards, and equipment specifications or guidelines for review, if available.
- D. Meet with ESCO to advise of current operations schedules and maintenance costs, and identifying known operational deficiencies.
- E. Provide ESCO access to key personnel to discuss operating requirements.
- F. Meet with ESCO to establish project criteria and make project decisions necessary for ESCO to complete the Technology Assessment, 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 deliverables identified below for each Phase of the Investment Grade Audit Services.
- I. Complete a review of the deliverables for each Phase of the Investment Grade Audit Services identified below, and provide any comments to ESCO in a timely manner, including identification and confirmation of the scope of work for continued developed in the following Phase.
- J. 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.
- K. 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.

ESCO agrees to provide the following:

- A. Develop a scope of services and an objective-by-objective cost estimate for the Oyster Creek Wastewater Treatment Plant to include the following measures, with the associated objectives:
 - 1. Aeration Blower Building Improvements - to provide electrical and operational cost savings, as well as improved process and blower reliability, with cost estimate
 - 2. Aeration Basin Aeration Process Improvements – to provide electrical and operation cost savings, as well as improved process, with cost estimate
 - 3. Plant Water Re-Use – to provide water cost savings, with cost estimate
 - 4. On-Site Sludge Dewatering Facility – to eliminate third-party sludge processing costs, and provide operational savings, with cost estimate
 - 5. Chlorine Contact Chambers Reconfiguration – to provide electrical and chemical savings, as well as improved process, with cost estimate
 - 6. Aerobic Digester Treatment Improvements – to provide electrical and operation cost savings, as well as improved process, with cost estimate
- B. Conduct a Technology Assessment kick-off meeting and personnel interview(s) to gain an understanding and verification of drawing standards and design requirements to be considered during the Technology Assessment in the Technology Assessment and Funding Workshop Phase, and incorporated throughout the Mid-Term Phase and Final Phase.
- C. Provide Customer a Technology Assessment report as described below in the Technology and Funding Assessment Phase, to include feasibility study pre-design capital costs, screening-level energy savings analysis, and screening-level operations, and maintenance comparisons.

- D. Provide Customer, and conduct a meeting to review the engineering control documents and other deliverables as outlined below for the Mid-Term Phase and Final Phase of the Investment Grade Audit Services.
- E. Work with Customer to refine performance requirements, financial criteria, and project scope of work.
- F. Work with Customer to establish design, equipment, and operation standards with final approval by Customer.
- G. Provide Customer with an Energy Savings Contract, including pricing for installation of the proposed project scope that shall be valid for sixty (60) days, a detailed scope of work, and a summary of performance savings, as described in the deliverables listed per Phase of the Audit Services below.
- H. Work with Customer to evaluate funding options and provide information required for options established (including the Texas Water Development Board requirements).
- I. Provide Customer a financial analysis of the effect on annual cash flow and M&V plan.

The Investment Grade Audit Services will include three (3) phases to develop the scope to the point where an Energy Services Contract can be offered. The three phases are Technology Assessment and Funding Workshop, Mid-Term, and Final. Upon entering into an Energy Services Contract, it is intended for ESCO, project-by-project for each of the objectives listed above, to finalize detailed design, build the project, and include a summary of performance savings for the benefit of the Customer to also include a cost estimate to better help determine appropriate project financing or funding mechanisms which shall be identified as part of the Technology Assessment and Funding Workshop.

Technology Assessment and Funding Workshop (“Phase 1”)

The goal of this phase is to Define Customer Problem(s) and potential Scope to Solve those Problem(s). Based on site investigations and interviews completed with key Customer personnel, a Preliminary List of six Energy Conservation Measures, associated scope of work description, potential magnitude of savings, HDR risk rating, and estimated project costs (AACE Class 5 Estimate) has been developed and was provided to Customer on February 3rd, 2023. The Basis of Design for these six Energy Conservation Measures will be per the data and calculations included in HDR Condition Assessment Report for the Oyster Creek Wastewater Treatment Plant, dated October 26th, 2021.

Technology Assessment

Phase 1 will also include engineering services to evaluate various technologies, solutions, options and/or manufacturers as selected by the Customer for scope presented by ESCO in the Preliminary ECM List. The Technology Assessment will evaluate the options and technologies/manufacturers at a conceptual level and as compared to the base offerings as provided in the Preliminary ECM List and the HDR Condition Assessment Report. The Technology Assessment report will include a discussion on application benefits and/or disadvantages, capital and energy savings cost comparisons, and general information on operations and maintenance differences. The cost comparisons will be relative to each other and within the accuracy of a feasibility/conceptual level estimate. The target is to narrow options based on AACE Class 4 estimate data and accuracy to further refine development and value perspective.

Funding Workshop

Phase 1 will include a funding workshop with the Customer and ESCO that reviews and discusses potential options for the Customer to fund the project based on project price estimates from the Technology Assessment. This may include, but is not limited to, consideration of any available funds the Customer has to put to this project in the current budget, private municipal financing vehicles, and/or Texas Water Development Board funding. This workshop will result in the creation of a Project Funding Plan.

Projected Timeline for Phase 1

- Technology Assessment completed and delivered – 8 weeks from agreement execution
- Funding Workshop completed and delivered – 4 weeks from Technology Assessment

Financial Commitment

- A. If ESCO fulfills responsibilities of Phase 1 of the Audit and Customer DOES NOT execute the Phase 2 of the Agreement with ESCO within ninety (90) days of receiving the Phase 1 deliverables, then Customer agrees to pay ESCO One-Hundred and Twenty-Five Thousand Dollars and No Cents (\$ 125,000.00) (the “Phase 1 Fee”).
- B. If ESCO fulfills its Phase 1 obligations as provided for in this Agreement and if Customer DOES engage ESCO to move forward with Phase 2 of this Agreement , then Customer is under no payment obligation for Phase 1 services rendered by ESCO and the Phase 1 Fee shall be later made a part of the Energy Savings Contract. Costs incurred during ESCO’s performance of the Phase 1 services will be included in the guaranteed Energy Savings Contract to the extent allowable under the terms of this Agreement and as provided for under the terms and conditions of any financing or funding mechanisms utilized by the Customer to pay for the partial or entire performance of ESCO under this Agreement, including any services or goods provided for under the 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 Phase 1 Fee, the documents, engineering information, data, and recommendations developed by ESCO 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. This provision is waived and inapplicable to any application, project plan, or other document Customer may be required to submit in order to obtain or reserve any financing or funding mechanisms utilized by the Customer to pay for the partial or entire performance of ESCO under this Agreement, including but not limited to applications, project planning reviews, audits, proofs of performance, requests for financing, requests for reimbursements, and requests for obligation of funds.

Mid-Term (“Phase 2”)

Phase 2 scope of services will focus on the development of the Customer selected scope of work as described in the Phase 1, including the Technology Assessment report. Any additional scope to be developed must be by mutual agreement between Customer and ESCO.

During Phase 2, engineering documents will be created to outline the basis of design for each Energy Conservation Measure, including the technologies selected by the Customer at the conclusion of the Technology Assessment. Upon kickoff of Phase 2, the following site evaluations have been identified to be conducted by the ESCO, subject to Customer scope of work selection:

- To be determined and amended at the completion of Phase 1.

The site evaluations determined at the completion of Phase 1 will be used in the development of the engineering documents during Phase 2. The engineering documents will be of a level of completeness to establish a budget approval level, improved cost estimate (AACE Class 3) and shall include, but not be limited to, the following:

- General Specifications (Preliminary)
- Major Equipment Specification Sections (Preliminary)
- Major Equipment List(s) (Preliminary)
- Datasheets for Major Equipment (Preliminary)
- General Drawing Index, Notes, Symbols and Legends Sheets (Preliminary)
- Process Flow Diagram(s) (Preliminary)
- Piping and Instrumentation Diagram(s) (Preliminary)
- Overall Site Plan/Location Key (Preliminary)
- General Civil and Piping Layout(s) (Preliminary)

- General Structural Plan(s) (Preliminary)
- Mechanical Plans, Sections, and Details (Preliminary)
- Electrical Single Line Diagram(s), Schematic(s) and Plan(s) (Preliminary)

A Customer review of key deliverables will be conducted during a Phase 2 Review Meeting to gain stakeholder alignment on project scope and direction before continuing into the Final Phase. The review will be critical to ensure all expectations are being met and key considerations satisfied. The intent of this stage is to advance the options down using AACE Class 3 estimates to establish the final scope that will be engineered during the Final phase of pre-contract design development.

Financial Commitment

- A. It is the intent of this Agreement that, at the end of Phase 1 of this Agreement, after ESCO ascertains and identifies appropriate financing and funding mechanisms to be utilized by Customer, that Customer then applies, at Customer's discretion, for certain financing and funding mechanisms best suited, as determined by Customer, for those projects identified by ESCO in Phase 1 and selected by Customer for further pursuit. For services performed, it is intended that ESCO then receive a certain percentage of that proportionate amount allocated to pre-design, preparation of final plans and specifications, and construction under the terms and conditions of the financing and funding mechanisms utilized by Customer so long as those services provided by ESCO meet the specific terms and conditions for qualifying, obligatable, and reimbursable costs of the selected financing and funding mechanism. At no time shall the fees paid by Customer exceed that percentage allocated to pre-design, preparation of final plans and specifications, and construction under the terms and conditions of the financing and funding mechanism utilized by Customer. ESCO understands and acknowledges that, for certain financing and funding mechanisms, such funding may either be held in escrow – until needed – or provided at closing dependent on the financing or funding mechanism.
- B. If ESCO fulfills responsibilities of Phase 2 and Customer DOES NOT execute Phase 3, as defined below, with ESCO within ninety (90) days of receiving the Phase 2 deliverables, then Customer agrees to pay ESCO that Phase 1 Fee along with an additional Three-Hundred and Ninety-Five Thousand Dollars and No Cents (\$395,000.00), that being the "Phase 2 Fee," with the total amount to be paid by Customer to ESCO not to exceed Five-Hundred and Twenty-Thousand Dollars and No Cents (\$520,000.00), subject to the terms of this Agreement.
- B. If ESCO fulfills responsibilities of Phase 2 and Customer DOES engage ESCO for Phase 3 of this Agreement, then Customer is under no payment obligation for the Phase 2 services rendered by ESCO and both the Phase 1 Fee and the Phase 2 Fee shall be later made a part of the Energy Savings Contract. Costs incurred during ESCO's performance of the Phase 2 services will be included in the guaranteed Energy Savings Contract to the extent allowable under the terms of this Agreement and as provided for under the terms and conditions of any financing or funding mechanisms utilized by the Customer to pay for the partial or entire performance of ESCO under this Agreement, including any services or goods provided for under the 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 Phase 2 Fee, the documents, engineering information, data, and recommendations developed by ESCO 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. This provision is waived and inapplicable to any application, project plan, or other document Customer may be required to submit in order to obtain or reserve any financing or funding mechanisms utilized by the Customer to pay for the partial or entire performance of ESCO under this Agreement, including but not limited to applications, project planning reviews, audits, proofs of performance, requests for financing, requests for reimbursements, and requests for obligation of funds.

Final Phase (“Phase 3”)

Phase 3 will continue to refine the level of completeness of preliminary-level deliverables listed above from Phase 2. Phase 3 documents will be produced for the purpose of establishing a detailed control and bidding level cost estimate (AACE Class 2). During Phase 3, subcontractors will be qualified. Qualified subcontractors will review design documents, walk the site, and provide proposals. In addition to final-level versions of the engineering documents listed above, the following will also be included in Phase 3 deliverables:

- Mechanical Piping Schedules
- Electrical Conduit and Wire Schedules
- Construction Phasing Plan and Preliminary Construction Schedule
- Inspection, Testing, and Commissioning Plan
- Measurement and Verification Plan
- A Guaranteed Energy Savings Contract

At completion of Phase 3, a Final Review Meeting will be conducted. This review will be critical to ensure all expectations are being met and key considerations satisfied. It is expected that this stage will produce the details necessary to provide contract grade scope, pricing, and savings (if applicable) consistent with a AACE Class 2 grade design.

Financial Commitment

- A. It is the intent of this Agreement that, at the end of Phase 1 of this Agreement, after ESCO ascertains and identifies appropriate financing and funding mechanisms to be utilized by Customer, that Customer then applies, at Customer’s discretion, for certain financing and funding mechanisms best suited, as determined by Customer, for those projects identified by ESCO in Phase 1 and selected by Customer for further pursuit. For services performed, it is intended that ESCO then receive a certain percentage of that proportionate amount allocated to pre-design, preparation of final plans and specifications, and construction under the terms and conditions of the financing and funding mechanism utilized by Customer so long as those services provided by ESCO meet the specific terms and conditions for qualifying, obligatable, and reimbursable costs of the selected financing and funding mechanism. At no time shall the fees paid by Customer exceed that percentage allocated to pre-design, preparation of final plans and specifications, and construction under the terms and conditions of the financing and funding mechanism utilized by Customer. ESCO understands and acknowledges that, for certain financing and funding mechanisms, such funding may either be held in escrow – until needed – or provided at closing dependent on the financing or funding mechanism.
- B. If ESCO fulfills responsibilities of Phase 3 and Customer DOES NOT execute a guaranteed Energy Savings Contract with ESCO within ninety (90) days of receiving the Phase 2 deliverables, then Customer agrees to pay ESCO that Phase 1 Fee, that Phase 2 Fee, and an additional Three-Hundred Thousand Dollars and No Cents (\$300,000.00), that being the “Phase 3 Fee,” with the total amount to be paid by Customer to ESCO not to exceed Eight-Hundred and Twenty-Thousand Dollars and No Cents (\$820,000.00), subject to the terms of this Agreement.
- C. If ESCO fulfills responsibilities of Phase 3 and Customer DOES move forward with the guaranteed Energy Savings Contract with ESCO, then Customer is under no payment obligation for the Phase 3 services rendered by ESCO and the Phase 1 Fee, Phase 2 Fee, and Phase 3 Fee shall be made a part of the Energy Savings Contract. Costs incurred during ESCO’s performance of the Phase 3 services will be included in the guaranteed Energy Savings Contract to the extent allowable under the terms of this Agreement and as provided for under the terms and conditions of any financing or funding mechanisms utilized by the Customer to pay for the partial or entire performance of ESCO under this Agreement, including any services or goods provided for under the Energy Savings Contract.
- D. 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).

- E. Customer agrees that until a guaranteed Energy Savings Contract, a non-binding example of which has been attached hereto as *Exhibit A*, has been executed with ESCO or Customer has paid the Phase 3 Fee, the documents, engineering information, data, and recommendations developed by ESCO 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. This provision is waived and inapplicable to any application, project plan, or other document Customer may be required to submit in order to obtain or reserve any financing or funding mechanisms utilized by the Customer to pay for the partial or entire performance of ESCO under this Agreement, including but not limited to applications, project planning reviews, audits, proofs of performance, requests for financing, requests for reimbursements, and requests for obligation of funds.

Construction Contract

Upon the City's approval and execution of a subsequent agreement for construction services with ESCO, the Phase 1 Fee, Phase 2 Fee, and Phase 3 Fee shall be waived and voided in their entirety with costs incurred during ESCO's performance of the Phase 1, Phase 2, and Phase 3 services being included in such agreement, as appropriate.