

**INVESTMENT GRADE AUDIT AGREEMENT**

This Investment Grade Audit Agreement ("Agreement"), dated **April ##, 2024** ("Effective Date"), is entered into by and between Schneider Electric Buildings Americas, Inc. ("ESCO") and The City of Tupelo ("Customer").

WHEREAS, Customer wishes to engage ESCO to perform an Investment Grade Audit to (i) identify energy conservation measures ("ECMs") that are available to and appropriate for Customer's facilities, (ii) determine the guaranteed savings that would result from implementing such ECMs as part of a comprehensive energy conservation improvement program, and (iii) propose a scope of work and project price for ESCO's implementation of such ECMs under and pursuant to an Energy and Construction Services Contract.

WHEREAS, this Agreement pertains to design and development efforts related to optimizing mechanical systems for the Tupelo Aquatic Center and The Tupelo Police Headquarters, as well as, general efficiency upgrades across other city facilities. Additional projects can be pursued within this project or as subsequent phases of work. In the event additional projects are desired, this IGA Agreement may be amended to accommodate.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, ESCO and Customer hereby agree to the following terms and conditions:

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

IN WITNESS WHEREOF, each of the parties has caused this Investment Grade Audit Agreement to be executed as of the Effective Date by its duly authorized representative below.

**City of Tupelo, MS**

**Schneider Electric Buildings  
Americas, Inc.  
Contractor License No. 19977-MC**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

## SECTION A: GENERAL TERMS AND CONDITIONS

### 1. Entire Agreement

This Agreement constitutes 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 amended or modified except by written instrument signed by a duly authorized representative of each party.

### 2. Services

As described more fully in Section B, ESCO will conduct an Investment Grade Audit of certain Customer Facilities (defined below) in order to (i) identify ECMs that are available to and appropriate for such Facilities, (ii) determine the guaranteed savings that would result from implementing such ECMs as part of a comprehensive energy conservation improvement program, and (iii) propose a scope of work and project price for ESCO's implementation of such ECMs (the "IGA"). Upon conclusion of the IGA, ESCO will provide Customer with a report describing the scope and results of such IGA (the "IGA Report"). Customer acknowledges that the IGA is not intended to serve as a comprehensive inspection of Customer's Facilities and that, to facilitate the IGA and to assist ESCO in identifying and recommending ECMs appropriate for Customer's Facilities, Customer is responsible for providing ESCO with all such access, knowledge and history as may be relevant to ESCO's analysis, including, without limitation, with respect to Customer's Facilities, systems, and equipment, as well as its accounting, maintenance, and operation practices.

### 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 all ownership and property interest therein, including any copyrights and other intellectual property rights. Such Work Products are furnished solely for purposes of allowing Customer to evaluate whether it wishes to execute an Energy and Construction Services Contract with ESCO and, in the event Customer does enter into an Energy and Construction Services Contract with ESCO, for use in connection with ESCO's performance of the proposed Project (defined in Section B below). Work Products are not intended to be, and shall not be, used or relied upon by Customer or any third party for designing or performing any portion of the proposed Project, and Work Products may not be shared with any third parties without the written permission of ESCO, except to the extent required by law.

**7. Due Authority of Signatories**

Each party represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of such party, and that neither the execution nor performance of this Agreement violates any law, rule, regulation, or legal duty applicable to such party. Each party further represents and warrants that the execution of this Agreement is within such party's legal powers, and that each individual executing this Agreement on behalf of such party is duly authorized to do so by all necessary and appropriate action and does so with full legal authority.

## SECTION B: AUDIT SERVICES

### 1. ESCO agrees to provide Customer with the following:

- A. An IGA of each of the facilities described under Section C (each, a "Facility"; collectively, the "Facilities");
- B. An IGA Report setting forth:
  - i. a list of the ECMs recommended for each Facility;
  - ii. a description, based upon the information made available to ESCO during the IGA, of how the recommended ECMs would interact with the existing equipment in the Facilities;
  - iii. a financial analysis calculating the impact the ECMs would have on annual cash flow;
  - iv. a utility analysis outlining the impact the ECMS would have on Customer's utility expenses;
  - v. a proposed scope of work to be performed by ESCO (the "Project"); and
  - vi. proposed pricing for ESCO's performance of the Project, which such pricing will be honored by ESCO for sixty (60) days following delivery of ESCO's IGA Report to Customer; and
- C. A draft Energy and Construction Services Contract to be entered into if Customer elects to move forward with the Project.

### 2. Customer agrees to provide ESCO with the following:

- A. A list of any requirements and/or specifications that Customer expects to be included in and/or associated with the scope of work;
- B. Complete access to the Facilities (including remote network access as appropriate) and to information concerning the Facilities, including without limitation such Facility access and information as will enable ESCO to accurately perform an energy efficiency analysis, measure actual energy use, take equipment inventory, determine operating schedules, and identify known operational deficiencies;
- C. Access to key personnel to discuss operating requirements;
- D. Copies or loans of building plans and other such documents for the purpose of facilitating ESCO's understanding of the Facility characteristics and the current sequences of operation; and
- E. All other insight, knowledge and history as may be relevant to ESCO's analysis, particularly with respect to the operation, maintenance and energy efficiency of the Facilities, as well as disclosure of all known or suspected deficiencies, defects and malfunctions of or affecting the Facilities or the systems, components and equipment therein.

### 3. Payment:

- A. Within sixty (60) days of receiving the IGA Report, Customer shall either (i) execute an Energy and Construction Services Contract with ESCO, or (ii) pay ESCO an exit fee in the amount of \$240,000 (the "IGA Exit Fee").
- B. If Customer does execute an Energy and Construction Services Contract with ESCO, the costs and expenses incurred by ESCO in the performance of services under this IGA Agreement and in the development, design and/or engineering of the Project will be included in the "Project Price" to be paid by Customer under the Energy and Construction Services Contract.