

Ordinance 2020 - 45
Exhibit A



Council-Mayor Government
Donald L. Mason, Mayor

The City of Zanesville

401 Market Street, Zanesville, Ohio 43701

Phone: (740) 617-4910

Email: csaunders@coz.org

Department of Public Service
Engineering Division
Charles M. Saunders, P.E., CITY ENGINEER

2020 Citywide OPWC Paving Program 7/1/21 Completion Date (cannot award before 7/20)

Canal St	Fourth to Sixth	3.0 Miles
East Main St	Ninth to Wheeling	
Moxahala Ave	SR 719 to Muskingum Ave	
Muskingum Ave	Moxahala to Putnam	
Taylor St	Oak Meadow to Maple	\$540,000

ORDINANCE NO. 2020 – 47A

AN ORDINANCE AUTHORIZING THE PROPER CITY OFFICIAL TO COMMIT CITY FUNDING AS A MATCH FOR AN APPALACHIAN REGIONAL COMMISSION FOR CONTRACTING OF A GPS DATA COLLECTION AND GIS MAPPING SERVICE.

WHEREAS, a GPS data collection and GIS mapping effort is needed to enable the creation of storm water system mapping in a digital format; and

WHEREAS, Rural Community Assistance Program (RCAP) offers staff familiar with water systems mapping and GIS software to be hired using ARC and local funds that expedites the retrieval of information; and

WHEREAS, the total project cost is estimated to be \$163,200, and ARC is offering a grant for GPS and GIS system mapping of \$81,600; and

WHEREAS, the grant requires a local match which would require \$59,100 in City funds, \$15,000 in in-kind labor, and \$7,500 in additional matching funds to be used for new GPS or computer equipment.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Zanesville, State of Ohio, that:

SECTION ONE: The proper city official is hereby authorized to commit \$66,600 of City storm water funding as necessary match to an Appalachian Regional Commission (ARC) grant, contracting through RCAP for GPS data collection and GIS mapping service and software, and to execute all documents.

SECTION TWO: This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____, 2020

ATTEST:

SUSAN CULBERTSON,
Clerk of Council

DANIEL M. VINCENT,
President of Council

APPROVED: _____, 2020

DONALD MASON,
Mayor

**THIS LEGISLATION APPROVED
AS TO FORM**



LAW DIRECTOR'S OFFICE

ORDINANCE NO. 2020 - 14

AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO ENERGY SAVINGS CONTRACTS WITH ABM TECHNICAL SOLUTIONS, LLC.

WHEREAS, The City of Zanesville's City Council (the "Council"), is authorized under Ohio Revised Code ("ORC") Section 717.02 to select a vendor for the purpose of developing an energy conservation report; and,

WHEREAS, Ordinance No. 19-77 authorized and directed the Mayor to enter into an agreement with the firm of ABM Technical Solutions, LLC for the provision of an energy conservation report; and,

WHEREAS, as a result of the energy conservation report, the Council has determined to undertake capital projects consisting of, but not limited to, all or some of the following: a guaranteed energy savings and conversion project, including the planning, design, purchase, acquisition, installation, construction, equipping and furnishing of energy savings repairs, renovations, upgrades and improvements to buildings and facilities operated by the City of Zanesville as funds are available to undertake and complete (the "Project"); and,

WHEREAS, in order to implement the Project, the Council proposes to enter into an Energy Savings Contract and an Energy Equipment Installation Contract with ABM Technical Solutions, LLC (the "Contracts"); and,

WHEREAS, the City is authorized under the Constitution and laws of the State of Ohio (the "State"), to enter into financing agreements (including lease obligations) to finance capital improvements for the governmental and miscellaneous functions of the City if so desired; and

WHEREAS, pursuant to the Contracts, the City Council desires to acquire certain equipment with a cost not to exceed \$11,800,000, constituting improvements at the various City facilities, and water metering infrastructure; and,

WHEREAS, the proposed improvements will result in an estimated savings in energy, maintenance, voided capital costs, opportunity cost, and operating expense of \$19,756,469 over twenty (20) years.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Zanesville, State of Ohio, that:

SECTION 1. That the Mayor be and hereby is authorized and directed to enter into agreements with the firm of ABM Technical Solutions, LLC for the provision of the aforementioned services.

SECTION 2. That the City Council finds that the amount of money to be spent on the Energy Conservation Measures is not likely to exceed the amount of money the City will save in energy, operating, maintenance, opportunity cost and voided capital costs over the average system life of the measures as specified in the energy conservation report.

ORDINANCE NO. 2020 - 14

SECTION 3. This ordinance shall take effect and be in force from and after its passage and publication according to law.

PASSED: _____, 2020

ATTEST: _____
SUSAN CULBERTSON,
Clerk of Council

DANIEL M. VINCENT,
President of Council

APPROVED: _____, 2020

**THIS LEGISLATION APPROVED
AS TO FORM**

DONALD MASON,
Mayor



LAW DIRECTOR'S OFFICE

ABM Building Solutions, LLC		Annual Energy Unit Savings Agreement	
Proposal Date	Proposal	Agreement Number	Page
January 19, 2020	JS200101	85050780	1 of 34
BY AND BETWEEN			
ABM Building Solutions, LLC 1817 O'Brien Rd. Columbus, OH 43228	AND	City of Zanesville 401 Market St. Zanesville, OH 43701	
Hereinafter: Contractor		Hereinafter: Customer	
PROJECT DESCRIPTION AND LOCATION			
<p>This Contract provides for certain on-going support services and Energy Unit Savings to be achieved in connection with the Work performed under the Bundled Energy Solutions Project Agreement Number 85050780 between ABM Building Solutions, LLC and The City of Zanesville dated January 19, 2020 ("BES Project Agreement") at City of Zanesville Facilities.</p> <p>Contractor will provide the on-going support services set forth in the Savings Guarantee set forth in Exhibit "B" subject to the terms and conditions set forth in Exhibits "A", "B", "C", "D" and "E" hereto.</p> <p>Beginning upon acceptance of the BES project and as an option to continue monitoring services the annual fee after year 5 of the contract will be \$58,979 There will be an automatic annual renewal of this contract, provided that this contract can be terminated at any time as set forth in Exhibit A. There is a 3% annual escalation on the fee. The annual fee is to be paid in annual installments to the contractor.</p> <p>This proposal is proprietary property of Contractor and is provided for Customer's use only subject to the requirements of the any applicable Open Records Acts. Customer shall notify Contractor of any request under applicable open records law and permit Contractor an opportunity to redact and/or respond. Contractor guarantees the price stated in this Agreement for thirty (30) days from proposal date above. The proposal will become a binding Agreement only after acceptance by Customer and approval by an officer of Contractor as evidenced by their signatures below. This Agreement, including all Exhibits and Attachments hereto, sets forth all the terms and conditions binding upon the parties hereto; and no person has authority to make any claim, representation, promise or condition on behalf of Contractor which is not expressed herein.</p>			
ABM Building Solutions, LLC		The City of Zanesville	
Signature (Authorized Representative)		Signature (Authorized Representative)	
TOM WOODRUFF Senior VP of ABM Technical Solutions			
Date		Date	

General Terms and Conditions to Savings Agreement

1. Customer shall permit Contractor free and timely access to areas and equipment and allow Contractor to start and stop the equipment as necessary to implement the Savings Measurement & Verification Plan. All work by Contractor under this Agreement will be performed during normal working hours; except that no work will interfere with Customer's activities. **If Customer fails to permit Contractor free and timely access to areas and equipment, including controls, controls systems, and controls information, or alters such equipment, including the controls or controls system, the Guarantee set forth in this Agreement shall become void.**
2. **Insurance.** Contractor shall maintain the following insurance: 1) Commercial General Liability insurance with limits for bodily injury and property damage of not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate; 2) Commercial Automobile Liability insurance with limits of liability for bodily injury and property damage of not less than \$5,000,000 combined single limit; 3) Workers' Compensation insurance with statutory limits and with an employer's liability limit of at least \$1,000,000 and 4) Excess liability limits of \$5,000,000 on above coverages. Contractor has the right to be self-insured where permitted by state law or to provide such coverage subject to a deductible or self-insured retention. Commercial General Liability and Automobile Liability policies shall apply on a primary and noncontributory basis and Customer shall be included as an additional insured under the General Liability and Automobile Liability policies, but only to the extent Customer is indemnified herein. Contractor, Customer and their insurers shall waive all rights of subrogation against one another for property damage claims. Upon request, Contractor will provide Customer with a certificate of insurance describing the coverage provided in accordance with these provisions and 30-day advance notice of cancellation/non-renewal will be provided.
3. Contractor agrees to indemnify Customer from and against any and all claims, losses, or liabilities for personal injuries or property damages, as well as costs and expenses incurred in the defense thereof (including reasonable attorney's fees), to the extent caused by Contractor's negligence, willful misconduct or other fault of Contractor in the performance of the Work under this Agreement.
4. Intentionally Omitted.
5. **LIMITATION OF LIABILITY.** EXCEPT TO THE EXTENT OF A PARTY'S INDEMNITY OBLIGATIONS FOR THIRD PARTY CLAIMS, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITY OR LOSS OF PROSPECTIVE REVENUE, ARISING OUT OF THIS AGREEMENT OR ANY WORK PERFORMED OR TO BE PERFORMED HEREUNDER.
6. Contractor expressly disclaims any and all responsibility and liability for the indoor air quality of Customer's Premises, including without limitation injury or illness to occupants of the Premises or third parties, except to the extent of Contractor's adjudicated negligent acts or omissions or willful misconduct.
7. **Maintenance by Customer.** Customer shall perform the required maintenance for all of its equipment affecting the Energy Guarantee per the terms of such equipment's' manufacturer guidelines and standards. If Contractor determines in its sole reasonable discretion that such equipment has not been maintained

according to those guidelines and standards, Contractor may terminate this Agreement and void the Guarantee.

8. EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED HEREIN, NO OTHER WARRANTIES, EXPRESS OR IMPLIED UNDER LAW, ARE PROVIDED, INCLUDING NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED.
9. **Termination Rights.** To the extent authorized under the applicable state and federal laws, regulations, ordinances or other requirements, Customer may terminate this Agreement upon thirty (30) days prior written notice. Contractor shall have the right to terminate this Agreement upon 1) a material breach by Customer (including a failure to pay any amounts owed) which remains uncured following thirty (30) days written notice or 2) if Customer's Premises is condemned or destroyed, in whole or in part and not promptly repaired or replaced in full. Upon termination, Contractor shall have no Guaranteed Energy Unit Saving obligations hereunder for any partial Measurement Years, nor shall Contractor have an obligation to refund any monthly payments made hereunder through the date of any such early termination and Customer shall have no obligation to make payments for future months.
10. **Dispute Resolution.** Any controversy, claim, counterclaim, or dispute between the parties (or their affiliates) arising out of or relating to this Agreement or the subject matter hereof (including, without limitation, any questions concerning the scope and applicability of this paragraph) shall be attempted to be resolved by one arbitrator in accordance with Commercial Arbitration Rules of the American Arbitration Association (or any successor to the functions thereof). The arbitrator shall apply the substantive laws of the state of Ohio. Any decision or award of the arbitrator shall be final, binding and conclusive on the parties to this Agreement. The parties agree that any action to compel arbitration pursuant to this Agreement, to confirm any decision or award of the arbitrator, or to enforce any other remedies which may be necessary to effectuate such decision or award, may be brought in the courts for the county of (or judicial districts for) Franklin County, Ohio and in connection with such action to compel the laws of that state (or, as applicable, the Federal Arbitration Act) shall control. The parties hereto hereby consent to the jurisdiction of the arbitrator and of such courts and waive any objection to the jurisdiction or venue of such arbitrator and courts.
11. **Payment & Price Escalation.** Payment shall be made within thirty (30) days of Customer's receipt of Contractor's invoice. If Contractor is providing recurring services, the parties agree that Contractor's compensation may be adjusted due to factors beyond its reasonable control, including but not limited to increases to minimum, prevailing or living wages, increases required by collective bargaining agreements, increases occasioned by government mandates including the Federal Affordable Care Act, increases to insurance costs and supply cost increases. For any such price increase to be effective, Contractor must provide written notice to Customer at least thirty (30) days in advance of the increase date. Should Customer determine that it does not wish to continue with the Agreement due to the anticipated price, Customer may terminate the Agreement upon thirty (30) days' written notice to Contractor.
12. **Confidentiality.** (a) As used herein, "Confidential Information" means all information, including this Agreement, that is furnished by a Discloser, its affiliates or subsidiaries, including, but not limited to: business agreements, business secrets, business information, business plans, financial and pricing information, business practices, financial statements and reports, project specifications, projections, schematics and

drawings, trade secrets, processes, materials, customer lists, supplier lists, sales volume, territories, markets, current, future or potential acquisitions, technical, production, operational, marketing or sales information or any and all other financial, business, organizational and technological information related to the Discloser's business and/or organization, whether or not such information is specifically marked "Confidential" or other similar legend. "Confidential Information" shall include all writings, notes, memoranda, media made by the Discloser or its employees, agents or servants with respect to such Confidential Information. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by the Recipient or its Representatives, or (b) information that becomes available on a non-confidential basis from a source other than a party to this Agreement and if Recipient has no reason to believe such source was subject to any prohibition against transmitting such information.

(b) Recipient shall use the Confidential Information solely in connection with the Agreement and the Recipient shall not disclose the Confidential Information to any person other than directors, officers, employees, lenders, counsel, representatives or affiliates of Recipient, if any (collectively, "Representatives"), who need to know the Confidential Information in connection with the Agreement. It is understood that (i) such Representatives shall be informed by the Recipient of the confidential nature of the Confidential Information and the requirement that it not be used other than for the purposes described above, (ii) such Representatives shall be required to agree to and be bound by the terms of this Agreement with respect to the confidentiality of such Confidential Information as a condition of receiving the Confidential Information and (iii) in any event, the Recipient shall be responsible for any breach of this Agreement by any of its Representatives. The Confidential Information shall be safeguarded from unauthorized disclosure and shall not be used in any manner by any party except as may be necessary for the purposes set forth herein. The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any corporation, company, partnership, individual or other entity.

(c) If the Recipient or its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand, Ohio Open Records Law or similar process) to disclose any Confidential Information, the Recipient will promptly notify Discloser of such request or requirement so that Discloser may seek an appropriate protective order or waiver in compliance with the provisions of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Recipient or its Representatives are, in the written opinion of counsel, compelled to disclose the Confidential Information or else stand liable for contempt or suffer other censure or significant penalty, the Recipient may disclose only such of the Confidential Information to the party compelling disclosure as is required by law.

(d) The obligations under this Section will survive any termination or expiration of this Agreement indefinitely.

13. **No Partnership.** Nothing in this Agreement shall (i) be deemed to constitute a partnership in law between the parties, (ii) constitute any party the agent of the other for any purpose or (iii) entitle any party to commit or bind the other (or any member of its respective group) in any manner.
14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.