

15. **Entire Agreement and Disclaimer of Reliance.** This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter and any and all prior agreements, understandings or representations with respect to its subject matter in this agreement terminated and canceled in their entirety and are of no further force or effect. The parties represent that they have not relied on any promise, representation, or warranty, express or implied, not contained in this Agreement, and any such reliance is hereby disclaimed.
16. **No Third-Party Rights.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.
17. **Legal Capacity.** Each of the parties and signatories to this Agreement has the full right, power, legal capacity and authority to enter into and perform the party's respective obligations under this Agreement, and no approvals or consents of any other person are necessary in connection with that authority.
18. **Successors and Assigns.** All of the terms and provisions contained in this Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, legal representatives, successors and assigns. No party may assign, transfer, or novate any of its rights and obligations either in whole or in part to any other person or entity without the written consent of the other.
19. **Further Assurances.** Each of the parties to this Agreement shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations under this Agreement to carry out the intent of the parties to this Agreement.
20. **Intentionally Omitted.**
21. **Independent Counsel.** All of the parties warrant and represent that they have been advised that they should be represented by counsel of their own choosing in the preparation and analysis of this Agreement; that they have been represented by independent counsel or have had the opportunity to be represented by independent counsel; and that they have read this Agreement with care and believe that they are fully aware of and understand its contents and its legal effect.

General Terms and Conditions of Water Meter Accuracy

1. Customer shall permit Contractor timely access to areas and equipment and allow Contractor to test meters 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 or Customer's Client's activities.

2. The insurance required of the Contractor under this Agreement shall include, but not be limited to, the following types of insurance and coverages, and shall be written for not less than the following limits of liability.

TYPE OF INSURANCE	LIMIT OF LIABILITY	
<u>Commercial General Liability (CGL)</u>	\$4,000,000.00	General Aggregate
	\$2,000,000.00	Each Occurrence
	\$2,000,000.00	Products and Completed Operations
	\$2,000,000.00	Damage to Rented Premises – each occurrence
	\$2,000,000.00	Medical Expense (any one person)
	\$2,000,000.00	Personal and Adv. Injury
<u>Automobile Liability</u>	\$5,000,000.00	Combined Single Limit (ea. accident)
<u>Excess/Umbrella Liability</u>	\$2,000,000.00	Each Occurrence
	\$2,000,000.00	Aggregate
<u>Workers Compensation</u>	Statutory	E.L. Each Accident
	\$1,000,000.00	
	\$1,000,000.00	E.L. Disease – Ea. Employee
	\$1,000,000.00	E.L. Disease – Policy Limit

- a. All liability insurance that is required of the Contractor, including, without limitation, the Commercial General Liability insurance, the Automobile Liability insurance, and the umbrella or excess insurance, shall name the Customer, including its officers, elected officials, employees, and volunteers, as Additional Insureds, but only to the extent required by and in accordance with the terms of this contract. All insurance required to be maintained by Contractor hereunder shall contain a waiver of subrogation endorsement in favor of Customer.

 - b. Certificates of insurance in an ACORD form and naming the Customer, including its officers, elected officials, employees, and volunteers, as Additional Insureds shall be filed with the Customer prior to commencement of this Agreement and thereafter upon renewal or replacement of each required policy of insurance. The Contractor agrees that the required insurance policies shall not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Customer.

 - c. Contractor's failure to meet the insurance requirements contained in this Agreement shall constitute a breach of contract.
3. CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CUSTOMER, ITS OFFICERS, DIRECTORS, ITS AGENTS AND ITS EMPLOYEES (COLLECTIVELY, "PARTIES

INDEMNIFIED") FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LOSSES, OR LIABILITIES FOR DAMAGES, PERSONAL INJURIES (INCLUDING DEATH) OR PROPERTY DAMAGES, AS WELL AS COSTS AND EXPENSES INCURRED IN THE DEFENSE THEREOF, INCLUDING REASONABLE ATTORNEY'S FEES, EXPERT WITNESS FEES AND COURT COSTS, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK UNDER THIS AGREEMENT, PROVIDED THAT ANY SUCH CLAIM, SUIT, LOSS, OR LIABILITY FOR DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSS OR EXPENSE IS CAUSED, IN WHOLE OR IN PART, BY (1) ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, (2) THE FAULT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, (3) THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE BY THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, OR (4) THE BREACH OF CONTRACT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER. THE CONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS UNDER THIS AGREEMENT SHALL BE IN EFFECT REGARDLESS OF WHETHER OR NOT ANY SUCH CLAIM, SUIT, LOSS, OR LIABILITY FOR DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY THE NEGLIGENCE OF A PARTY OR PARTIES INDEMNIFIED HEREUNDER, EXCEPT THAT THE CONTRACTOR'S OBLIGATION SHALL BE LIMITED TO THE COMPARATIVE FAULT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER AS DETERMINED BY THE TRIER OF FACT.

4. Customer's Termination Right: Customer may terminate this Agreement upon thirty (30) days prior written notice. Should such termination occur on a date other than at the beginning of a Measurement Year, Contractor shall have no Guaranteed Meter Accuracy obligations hereunder for a partial year. Contractor shall have no 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.
5. MISCELLANEOUS PROVISIONS:
 - 5.1 If any provision or part of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law or regulation, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance.
 - 5.2 Intentionally Omitted.
 - 5.3 Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the term "including" is not limiting and the terms "hereof," "herein," "hereunder" and similar terms in this Agreement refer to the Agreement as a whole and not to any particular provision thereof, unless stated otherwise.
 - 5.4 **Notice.** All notices required to be given under this Agreement must be in writing unless otherwise noted. Any notice required or permitted to be given under this Agreement shall be deemed delivered, whether or not actually received, three days after it is deposited in the U.S. Mail, when sent by certified mail, return receipt requested, postage prepaid, and correctly addressed to the party at the address provided in this Agreement. Notice given in any other manner shall be deemed delivered when actually received. Either party may change its address for notice by giving notice of the change of address in accordance with this provision.

Exhibit A Definitions to Savings Agreement

1. **Actual Energy Use:** For a given Measurement Year, the actual energy consumption of the Premises, based on the Factors Affecting Energy Use.
2. **Agreement or Contract:** The Annual Energy Unit Savings Agreement.
3. **Base Energy Rates:** The units of dollars per energy unit per Measurement Year, as developed from the Baseline Energy Use. The Base Energy Rates are identified in Exhibit D.
4. **Baseline Energy Use:** The Baseline Energy Use is the standard against which energy savings will be measured. Initially it is obtained by measuring the average energy consumption at Customer's Premises prior to work performed by Contractor under the Project Agreement: specifically, July 2018 through and including June 2019. It shall be established by Contractor after identification and consideration of, and controlling for, the Factors Affecting Energy Use. It is understood that in the event of changes in Factors Affecting Energy Use, the Baselines will be revised from time to time as detailed in this Contract. In addition, data collected during the period before construction may indicate a change of the energy use pattern at the Premises and require a change to the Baselines. Contractor shall notify the Customer, in writing, of all such changes.
5. **Contractor** shall mean ABM Building Solutions, LLC 1817 O'Brien Columbus, OH 43228
6. **Customer** shall mean City of Zanesville 401 Market St. Zanesville, OH 43701
7. **Energy Unit Savings Term:** A period of five (5) years or until the termination of this agreement, whichever comes first.
8. **Energy Unit Savings:** The energy conservation savings in units of energy, power, water, etc., achieved in a given Measurement Year through the reduction in energy consumption, demand, energy rates, maintenance, or materials. Such units may include kW, kWh, MCF, MMBTU, Gallons, and are more specifically identified in Exhibit D. For a given Measurement Year, after taking into account any reconciliations, it is equal to the Baseline Energy Use minus the Actual Energy Use.
9. **Excess Savings:** For each Measurement Year in which the Energy Unit Savings exceed the Guaranteed Unit Savings, the value of the difference is the "Excess Savings."
10. **Factors Affecting Energy Use:** Operations, use type, hours and levels of occupancy, occupant population, adjustments in labor force, building use, operational procedures, temperature, climate, weather, humidification, ventilation levels and rates, installed lighting and scheduled use, building construction and size, general level of repair and efficiency of heating and air conditioning equipment and other energy-using equipment, amount of heating and air conditioning and other energy-using equipment, plug loads, schedule, or any other variable that may significantly change the base energy load profile. The Factors Affecting Energy Use are not limited only to those factors that are within Customer's control.

11. **Guaranteed Energy Unit Savings:** The amount of anticipated energy savings as compared to the Baseline Energy Use, expressed in units of energy, power, water, etc., which Contractor is guaranteeing under this Agreement as set forth in more detail in Exhibit D.
12. **M&V Commencement Date:** The first day of the month following the completion of both:
 - a. The signed Certificate of Final Completion of the Project in accordance with the Project Agreement; and
 - b. Contractor's receipt of all payments due and owing under the BES Project Agreement.
13. **Measurement Year:** Each twelve (12) month period beginning with the M&V Commencement Date.
14. **Pre-M&V Savings:** Prior to the M&V Commencement Date, if the Project results in any Energy Unit Savings for such period, such savings are the "Pre-M&V Savings."
15. **Premises:** The facility(ies), property(ies), or equipment, as applicable that is the subject of the Energy Conservation Measures taken in connection with this Agreement and the Project Agreement, set forth in more detail in Exhibit D.
16. **Project Agreement:** the agreement governing the Project by and between Contractor and Customer.
17. **Project:** The Bundled Energy Solution project performed by Contractor for the Customer pursuant to the Project Agreement.
18. **Savings Measurement & Verification Plan:** Contractor's process of preparing reports, taking on-site measurements, monitoring building automation systems, and/or any additional work to quantify Energy Unit Savings for the purpose of meeting the Guaranteed Energy Unit Savings as identified in Exhibit D. Contractor's measurement and verification activities shall not include maintenance of the Project or record keeping related to such maintenance, which shall be the sole responsibility of Customer.

Definitions to Annual Water Meter Accuracy

1. **This Agreement:** shall mean this Annual Water Meter Accuracy Agreement.
2. **Annual Guarantee Period or Measurement Year:** shall mean the consecutive twelve (12) month period beginning with the M&V Commencement Date.
3. **AWWA:** is the American Water Works Association and reference is made to Water Meters – Selection, Installation, Testing, and Maintenance – Manual of Water Supply Practices M6, 4th edition, c1999
4. **Baseline:** is the description that defines the baseline water volume use and facilities, systems, or equipment operations and characteristics, and environmental conditions that are to be used as the benchmark for determining normalization factors to be used in the determination of Measured System Average Accuracy.

5. **Baseline Dates:** shall mean the start and end dates determining the Baseline. The Baseline Dates shall be June 2018 to May 2019
6. **Initial Base Water Rates:** The "Base Water Rates" are the units of dollars per billed water unit developed from the Baselines and are identified in Exhibit D and shall be used by Contractor to calculate the initial Financial Benefit.
7. **Contractor** shall mean and include ABM Building Solutions, LLC,
8. **Customer** shall mean City of Zanesville 401 Market St. Zanesville, OH 43701
9. **Equipment** shall mean those meters and systems where operational cost savings and Financial Benefit will be realized.
10. **Financial Benefit:** The Financial Benefit, having units of dollars (\$), are those monies achieved through the increase in water meter accuracy, reduction in maintenance, materials, or materials replacement calculated using the Initial Base Water Rates from Exhibit "D" or the actual rates, whichever results in greater Financial Benefit.
11. **Guarantee Term:** The "Guarantee Term" shall be for a maximum of five (5) Years or until the termination of this agreement.
12. **M&V Commencement Date:** "M&V Commencement Date" shall be the first day of the month following both:
 - a. The signed Certificate of Final Completion of the Project in accordance with the Energy Services Agreement, and
 - b. Contractor's receipt of all payments due and owing under the BES Project Agreement.
13. **Project:** The District-wide Meter Replacement Project performed by Contractor for the Customer pursuant to the BES Project Agreement.
14. **Measurement & Verification (M&V) Plan:** Contractor's process of preparing reports, taking on-site measurements, and/or any additional work to quantify Weighted Average Meter Accuracy for the purpose of meeting the Guaranteed Weighted Average Meter Accuracy as identified in Exhibit D. Contractor's measurement and verification activities as identified in Exhibit E shall not include any additional work.

Exhibit B

Energy Unit Savings Guarantee

1. The annual Energy Unit Savings will be calculated using standard computerized auditing procedures, as described herein, which compares the Baseline Energy Use with that of the Actual Energy Use during the applicable Measurement Year. Published degree days will be used in the auditing process to allow for differences of weather conditions between the Baseline Energy Use dates and the Measurement Year.
2. Except to the extent of any annual maintenance program with the Contractor, the Customer shall be solely responsible to maintain the Project in a manner consistent with the manufacturer's or Contractor's recommended maintenance schedules and procedures, maintain all records associated with such maintenance, and upon request of the Contractor, provide copies of such records thereof. Such maintenance shall be a condition precedent to this Savings Guarantee. Contractor may, if it deems necessary, inspect the Premises from time to time to implement its Savings Measurement & Verification Plan.
3. For the purpose of determining Actual Energy Use and Energy Unit Savings, Contractor shall prepare reports, take on-site measurements, monitor building automation systems, and/or additional work as required by and detailed in its Savings Measurement & Verification Plan.
4. The Customer acknowledges and consents to Contractor's right to monitor Actual Energy Use, Energy Unit Savings, Factors Affecting Energy Use, and energy management performance by conducting on-site measurements, including, but not limited to, reading meters and installing and observing on-site monitoring equipment. The Customer shall cooperate fully with any such measures instituted by Contractor pursuant to this Subsection. Contractor shall not institute any measures that unreasonably interfere with the business of Customer conducted at the Customer's location.
5. For the purpose of determining Actual Energy Use and Energy Unit Savings, Customer shall cooperate with Contractor by providing utility bills and other applicable information and maintenance records, changes in Factors Affecting Energy Use, and/or additional information as requested by Contractor personnel.
6. Savings Guarantee: Subject to changes in the Factors Affecting Energy Use, Contractor guarantees that the Customer will realize total Energy Unit Savings during the Energy Unit Savings Term not less than the Guaranteed Savings set forth in Exhibit D.
7. Guarantee Payment: Should the sum of Customer's Energy Unit Savings for a given Measurement Year be less than the Guaranteed Energy Unit Savings for that Measurement Year, Contractor shall pay to the Customer, within 30 days of the acceptance of the annual Energy Unit Savings report, the difference between the Guaranteed Energy Unit Savings for such year and the Energy Unit Savings for that Measurement Year, with such amount not to exceed the Guaranteed Energy Unit Savings amount set forth in Exhibit D (the "Guarantee Payment"). The difference shall be converted from units of energy to dollars (\$) by use of the Base Energy Rates or the actual energy rates in effect during the Measurement Year, whichever results in a lesser Guarantee Payment. If in the judgment of the Customer, Customer would benefit from additional energy services or energy saving retrofits, Customer and Contractor may mutually agree upon such services or retrofits in lieu of the Guarantee Payment. For the purposes of this Contract,

such services or retrofits actually delivered by Contractor will be considered a Guarantee Payment for that Measurement Year. There shall be no carryover with respect to either Excess Savings or negative Energy Unit Savings for any Measurement Year into future Measurement Years; provided, however, that any Pre-M&V Savings shall be credited towards the Guaranteed Energy Unit Savings for the first Measurement Year.

8. Changes in Factors Affecting Energy Use

- a. The Customer shall notify Contractor in writing within ten (10) business days of any change in any Factor Affecting Energy Use. Contractor will determine the effect that any such change would have had on the obligations and rights under this agreement (such as changes to the Energy Unit Savings, Baseline Energy Use, etc....) and present to the Customer a written analysis of the effects of the changes. Changes that are long term or permanent will be reflected in a change to the Baseline Energy Use. Temporary changes that affect energy use will be calculated and added to or subtracted from the corresponding month's Energy Unit Savings.
- b. If a change in any of the Factors Affecting Energy Use occurs and results in a reduction of Energy Unit Savings, then the Guaranteed Energy Unit Savings shall be reduced accordingly.

9. Customer and Contractor may from time to time desire to make changes to the Project infrastructure for the express purpose of increasing Energy Unit Savings. It is agreed that these changes will only be made with the written consent of both parties, which will not be unreasonably withheld. The Baseline Energy Use will not be adjusted to reflect any changes agreed to under this subparagraph without the mutual agreement of the parties, except that if Contractor elects to pay for the cost of any such changes that would not unreasonably interfere with the conduct of Customer's business, and the Customer does not consent to such changes, then the Baseline Energy Use will be increased by the amount of savings projected from the changes.

10. When the Project's effect on savings cannot be accurately determined for any given period of time due to construction or other major changes to the Premises, Projected Energy Unit Savings will be used in lieu of Energy Unit Savings for the corresponding period of time.

11. Contractor has the right to charge the Customer for work required to assess the effect on Baseline Energy Use for any large-scale changes, including, but not limited to, building additions, new buildings, and new or changed HVAC equipment, that require more than forty (40) hours per year to be spent in calculating their effect on the Energy Unit Savings. Such hours will be billed at current Contractor engineering rates. Current rates for engineering are based at \$90/hr. starting in March 2020 and shall be escalated at 4% annually for the years following years guaranteed not to exceed \$155/hr. in 2030. Before initiating such work, Contractor will notify the Customer in writing of the intent and cost associated with the work. The Customer will, within 45 days in writing, notify Contractor with permission to proceed or, alternatively at no charge, to stipulate that the Guaranteed Energy Unit Savings for the existing Premises in question be used for the purpose of calculating the Energy Unit Savings. If Contractor does not receive written notice within 45 days, the Guaranteed Energy Unit Savings for the existing Premises in question will be used as Energy Unit Savings until such time that the Customer approves the work, as long as the scope of the work has not changed.