

GUARANTEED ENERGY, WATER, AND WASTEWATER PERFORMANCE SAVINGS  
CONTRACT

By and Between

ABM Building Services, LLC

and

Town of Belleair Florida

March 6, 2018

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## **GUARANTEED ENERGY, WATER, AND WASTEWATER PERFORMANCE SAVINGS CONTRACT**

This Guaranteed Energy, Water, and Wastewater Performance Savings Contract (this “Contract”) is made and entered into as of March 6, 2018 (the “Effective Date”), by and between ABM Building Services, LLC, a Delaware limited liability company ("Company"), having its principal offices at 9326 Florida Palm Drive, Tampa, Florida 33619, and the Town of Belleair, Florida (“Town”), for the purpose of installing certain equipment, and providing other services designed to reduce energy or water consumption, wastewater production, or energy related operating costs for Town.

### **RECITALS**

WHEREAS, the Parties wish to enter into an agreement pursuant to the “Guaranteed Energy, Water, and Wastewater Performance Savings Contract Act” as set forth in § 489.145, Florida Statutes (the “Act”); and

WHEREAS, following a competitive process in compliance with Section 287.055, Florida Statutes, Town chose Company to negotiate an agreement pursuant to the Act, and has received and accepted from Company an audit that (i) recommends certain Energy Conservation Measures at certain Town-owned facilities, (ii) summarizes the costs of those Energy Conservation Measures, and (iii) provides an estimate of the amount of cost savings resulting from those Energy Conservation Measures; and

WHEREAS, Town finds that the amount it would spend on the Energy Conservation Measures will not likely exceed the amount of the cost savings for up to fifteen (15) years after the date of installation, based on the calculations required under the Act; and

WHEREAS, Company and its corporate parent, ABM Industries Incorporated, a public company listed on the New York Stock Exchange are providing Town with a written guarantee that the cost savings will meet or exceed the costs of the system and the actual cost savings must meet or exceed the estimated cost savings provided in the executed contract; and

WHEREAS, the Town has published notice of its intent to enter into this Contract in accordance with § 489.145(4), Florida Statutes; and

WHEREAS, all selection criteria, notice requirements, certifications and approvals set forth in the Act have been satisfied or obtained; and

WHEREAS, Company has made an assessment of the energy, water and/or wastewater performance characteristics of the facilities and existing equipment described in Schedule B, which Town has approved; and

WHEREAS, the Parties desire that Company install the Energy Conservation Measures at the Facilities in accordance with and subject to the terms set forth in this Contract.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Town and Company agree as follows:

## SECTION 1. DEFINITIONS.

Section 1.1 Definitions. The following terms have the meanings specified below unless the context clearly requires otherwise:

**“Annual Excess Savings”** means the amount of any actual annual Cost Savings that exceeds total annual savings set forth in Schedule C.

**“Annual Reconciliation”** means a determination pursuant to §489.145(5)(e), Florida Statutes, and Section 4.5 of this Contract, as to whether a shortfall in annual Cost Savings or an excess in annual Cost Savings exists based on the provisions of Company’s written savings guarantee reflected in Schedule C (Savings Guarantee) with savings calculated according to Schedule E (Savings Calculation Formula) and measured according to Schedule P (Town Measurement & Verification Plan).

**“Baseline”** means Town’s fuel, energy or water consumption, wastewater production for each Facility. The initial Baseline shall be for each month of the calendar year preceding the year this Contract is entered and is set forth in Schedule G (Baseline). To the extent the Baseline may be adjusted, it shall be adjusted in accordance with Schedule G.

**“Town”** means the Town identified in the first paragraph of this Contract.

**“Commencement Date”** means, with respect to the installation of ECMs, the first day of the calendar month after which all of the following events have occurred: (i) all ECMs are installed in final form and accepted by Town; (ii) Company has delivered a notice to Town that it has completed all of the installation in accordance with the provisions of Schedule F (Construction and Installation Schedule); and (iii) Town has inspected and accepted said installation and operation as evidenced by an executed Certificate of Acceptance as set forth in Schedule N.

**“Company”** means the contractor identified in the first paragraph of this Contract.

**“Cost Savings”** means a measured reduction in the cost of fuel, energy or water consumption, or wastewater production; stipulated operation and maintenance savings; improvements in supplied utility systems, including, without limitation, revenue enhancements or reduction in net operating costs resulting from increased meter accuracy or performance; and identified capital savings, created from the implementation of one or more energy, water, or wastewater efficiency or conservation measures when compared with an established baseline for the previous cost of fuel, energy or water consumption, wastewater production, stipulated operation and maintenance, meter accuracy or performance, and identified capital costs. The Cost Savings shall be determined in accordance with the formulas and methodologies set forth in Schedule E and measured according to Schedule P (Town Measurement & Verification Plan).

**“Energy”** means the resource delivered by the utility service provider and consumed by Facilities expressed in various units of measure, including kW & kWh.

**“Energy Conservation Measure”** or **“ECM”** means each of the facility alterations or equipment purchases set forth in Schedule A as delivered and installed by Contractor, together with any training programs incidental to this Contract, which reduces energy or water consumption,

wastewater production, or energy-related operating costs at the Facilities.

**“Equipment”** means all items of property described in the Schedule A (ECMs to be installed by Company) and any other items of property pursuant to §489.145(3)(b), Florida Statutes.

**“Facilities”** means the Town-owned buildings located at the following addresses within the Town of Belleair, Town Hall – 901 Ponce de Leon, Dimmitt Community Center – 918 Osceola Rd, John J. Osborne Public Works Building – 1075 Ponce De Leon Blvd , Water Treatment Operations – 107 Belleair Ave. The term Facilities includes the equipment set forth in Schedule B (Pre-existing Equipment Inventory). A Facility must be a distinct auditable unit, measurable by the FEMP standards referenced in Section 5.2.

**“Fiscal Year”** means the annual period from October 1<sup>st</sup> through September 30<sup>th</sup>.

**“Guarantee”** means Company’s guarantee reflected on Schedule C (Savings Guarantee), whereby Company and its publicly traded corporate parent, ABM Industries Incorporated, guarantee that the savings will meet or exceed the costs of the ECMs and the estimated cost savings established under this Contract.

**“Guarantee Service”** means the services provided by the Company to ensure the Cost Savings as specified in Schedule C (Savings Guarantee), of this Contract. These services include measurement and verification, ongoing training and warranty management services.

**“Interim Period”** means the period from the date the contract is signed until the Commencement Date.

**“Investment Grade Energy Audit”** or **“Audit”** means the detailed energy, water and/or wastewater audit performed by Company for Town, along with an accompanying analysis of the Energy Conservation Measures, and their costs, savings, and benefits prior to entry of this Contract. The Audit includes a narrative describing and justifying the need for the ECMs. The Audit is attached as Appendix 1 and has been accepted by Town as set forth in Schedule L (Certificate of Acceptance Investment Grade Audit).

**“Legally Available Funds”** means funds duly appropriated or otherwise legally available for the purpose of making payments under this Contract.

**“Maintenance Requirements”** means the services to be performed to Equipment in Facilities in order to ensure the Savings Guarantee under this Contract.

**“Nonconforming Work”** means Work that is not conforming to the specifications specifically described in this Contract, Schedules, Appendixes and other performance standards incorporated into this Contract by way of reference. Equipment and material failures covered under warranty are not considered Nonconforming Work.

**“Parties”** means both the Town and the Company collectively.

**“Project Administrator”** means the person that will represent and will be authorized to act on behalf of the Town as the primary point of contact to the Company for the Installation of the

ECMs in order to execute the specific provisions contained in this Contract.

**“Occupancy”** means the times Facilities or specific locations in Facilities are being utilized by staff, citizens or other persons.

**“Savings Calculation Formula”** means the Company’s Savings Calculation Formula reflected on Schedule E.

**“Term”** means the term of this Contract, beginning on the Effective Date and continuing until 15 years after the Commencement Date or until the Contract is terminated according to the provisions of the Contract in Section 5.

**“Utility Rate”** means the unit costs set forth by the utility service provider.

**“Work”** means the delivery, installation, construction and other actions necessary to render fully operative all of the ECMs set forth in Schedule A of this Contract.

## SECTION 2. INCORPORATION OF OTHER DOCUMENTS

Section 2.1. This Contract incorporates and makes a part hereof the following documents, listed in their order of precedence in the event of a conflict between any of their terms and conditions:

- 1- This Contract
- 2- All Schedules and Appendixes listed in the Table of Contents
- 3- The Investment Grade Energy Audit (Appendix 1)
- 4- Guaranteed Professional Maintenance Agreement (Appendix 2)

Section 2.2. Investment Grade Energy Audit. Company has completed the Investment Grade Energy Audit (Appendix 1), which has been accepted by Town as set forth in Schedule L (Certificate of Acceptance Investment Grade Energy Audit). The Investment Grade Energy Audit includes all Energy Conservation Measures agreed upon by the parties.

## SECTION 3. SCOPE OF WORK

### Section 3.1 Installation of ECMs

- (a) Company shall construct and install the ECMs in the Facilities pursuant to specifications in Schedule A (ECMs) and Appendix 1 (IGEA). Construction and installation of all ECMs shall be in conformance with manufacturer’s specifications, written instructions and applicable construction industry standards. All Work shall be performed in a good and workmanlike manner, free of defects.
- (b) Construction and installation shall proceed in accordance with the Construction Schedule approved by Town and attached hereto as Schedule F (Construction and Installation Schedule). With respect to the performance of

the Work, time is of the essence. The Company will commence the energy savings Guarantee and produce quarterly reports according to the Measurement and Verification Plan (Schedule P) upon substantial completion of Installation, but no later than October 1, 2018. In the event the Work is not completed by this date and the actual energy savings are less than the quarterly projections for the period in the quarterly report, the Company will be responsible to reimburse the Town for the missed, projected energy savings as specified in this Contract until such time as the Work is completed and accepted by the Town. Any reimbursement due the Town will be paid by the Company within the following quarter. To the extent that the Town requests or causes delays in the agreed upon installation schedule, such reimbursement will be adjusted accordingly.

- (c) Town will make payments to Company during installation according to Section 4 (Payments to Company), and Schedule D (Compensation to Company and Deliverables). Town is not obligated to make final payment (10%) to Company until Schedule N (Town Certificate of Acceptance of Project) has been issued to Company by Town.
- (d) Company shall perform all tasks/phases under this Contract in such a manner so as not to harm the structural integrity of the buildings that comprise the Facilities or their operating systems and so as to conform to the Standards of Comfort set forth in Schedule H and the Construction Schedule specified in Schedule F (Construction and Installation Schedule). Company shall repair and restore to its pre-installation condition any damage caused by Company's performance under this Contract. Town reserves the right to direct Company to take certain corrective action if the structural integrity of any of the Facilities or their operating systems is or will be harmed. All costs associated with such correcting damage caused by Company's performance of the work shall be borne by Company.
- (e) Company shall remain responsible for the professional and technical accuracy of all Work, whether performed by Company or its subcontractors or others on its behalf.
- (f) The Town Manager shall designate a Project Administrator to represent the Town as the primary point of contact to the Company for the Installation of ECMs. The Project Administrator will be authorized to act on behalf of the Town in order to execute the specific provisions contained in this Contract. All correspondence required by the Company in this Contract to the Town will be through the Project Administrator.
- (g) Town shall permit Company free and timely access to the Facilities in which ECMs are to be installed, and allow Company to start and stop the equipment as necessary to perform the Work. Unless the parties mutually agree to special extended hours for performance of certain portions of the Work, all Work under this Contract will be performed during the Company's normal working hours, which are 8am – 5pm Monday to Friday. To the best of its ability, Company will perform the Work in a manner that will have minimal impact to Town functions, programs and staff.

- (h) Company's obligation under this Contract does not include the identification, abatement or removal of any asbestos products or other hazardous substances. Company acknowledges that as of the date of execution of this Contract, it is unaware of the existence of any such asbestos products or other hazardous substances in the Facilities. In the event such products or substances are encountered, Company's sole obligation will be to notify the Town of the existence of such products and materials. Company shall have the right thereafter to suspend the Installation until such products, materials and the resultant hazards are removed.

Section 3.2 Acceptance of Work.

- (a) When Company considers the Work completed in accordance with all contractual requirements, Company shall provide Town with a Notice of Final Completion and written request for Town Certificate of Acceptance of Installation, to be executed by the Town in substantially the form attached as Schedule N.
- (b) The Company shall include all of the following documents with its Notice of Final Completion:
  - (1) All Project Record Documents required in Section 3.2 of the Contract.
  - (2) Releases of liens for all Work performed under this Agreement ("Releases"), or evidence of payment in full for Work performed in lieu thereof in a form acceptable to the Town ("Receipts"), which were not previously delivered to Town as part of the Company's pay applications, and an affidavit stating that so far as the Company has knowledge or information, the Releases and Receipts include all labor and material for which a lien could be filed.
  - (3) Lien waivers, sworn statements, guarantees, full releases, or other evidence reasonably satisfactory to Town that there are no liens, claims, or stop notices pending, filed, or threatened against Town, the Company, or the Work.
  - (4) Warranty documents for all Work.
  - (5) Certificates of inspection for all Work requiring local government inspection.
  - (6) Operation and Maintenance Manuals for all equipment installed.
  - (7) Asbestos abatement compliance records, if applicable.
- (c) Within ten (10) business days from receipt of Company's Notice of Final Completion, Town will make an inspection to determine whether the Work is complete. If Town determines the Work is not complete or is otherwise defective, Town will provide Company with a specific material performance deficiency list ("Punch List") of all items that must be corrected or completed before Town would consider the Work.
- (d) An executed Certificate of Acceptance or Punch List will be provided to Company within fifteen (15) business days from receipt of Company's delivery of the Notice of

Final Completion. If Company receives a Punch List, once Company has completed all items on the Punch List, Company shall provide Town with a second Notice of Final Completion and request that Town verify that the Work is complete. The Town shall perform a re-inspection within ten (10) business days of receipt of the Notice of Final Completion and provide Company a written response within fifteen (15) business days. When the Work is considered completed, and Town has received from Company all appropriate documentation relating to the Work Town will provide the Company Schedule N (Town Certificate of Acceptance of Installation), which shall establish the Commencement Date, and pay Company all funds held as retainage.

### Section 3.3 Correction of Warranted Work.

Beginning on the Commencement Date and continuing for a minimum of one year for each ECM, or for such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Project Documents, the Company shall, at its own expense, correct or replace all Nonconforming Work in accordance with the timeframes set forth in this Section, and remove from the Facilities all portions of defective and Nonconforming Work. After receipt of written notice from the Town to correct such fault or defect, whether it was observed before or after acceptance of the Work, the Company will correct the Nonconforming Work unless the Town has given the Company a written waiver of the specific fault or defect. Notice may be given by telephone in the event of an emergency situation.

If the Company fails to correct Nonconforming Work as provided in this Section within twenty-four (24) hours after notice, in the case of emergency conditions, or within five (5) business days in all other cases after the Company's receipt of written notice from the Town of such Nonconforming Work, the Town may repair, correct or replace such Nonconforming Work at the Company's expense, including, but not limited to, costs incurred to remove, store or dispose of Nonconforming Work. Notwithstanding and without waiving any other rights or remedies available to the Town, if the Company does not pay the cost incurred by the Town for such repair, removal and storage within ten (10) days of written demand therefor, the Town may upon ten (10) additional days' written notice, sell any material and equipment directly associated with the Nonconforming Work, not removed by the Company at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Company. If such proceeds of sale do not cover all costs which the Company should have borne, the difference shall be paid to the Town by the Company.

The Company shall bear the cost of correcting damage to the Facilities caused by its performance of the Work.

The establishment of the time periods set forth in this Section relates only to the specific obligation of the Company to correct the Work. Nothing contained in this Section shall be construed to establish or modify the time periods within which the Company is obligated to install the ECMs and perform the Work. Notwithstanding the provisions of this Section, the Company shall, upon receipt of written demand made by the Town, at any time within the ten (10) year period following Acceptance, promptly repair or replace all defective or non-conforming work resulting from fraudulent misrepresentation, fraudulent concealment or gross negligence by the Company or its subcontractors in the performance of the Work.

Section 3.4 Maintenance. Concurrent with the execution of this Contract, Town and Contractor shall execute a Guaranteed Professional Maintenance Agreement (“Maintenance Agreement”) for a period of one year, which shall renew annually for a period of five years unless one of the parties gives notice of intent not to renew according to its terms. During the term of the Maintenance Agreement, Town shall have no maintenance responsibilities for the systems covered in the Guaranteed Professional Maintenance Agreement. Upon the termination or nonrenewal of the Maintenance Agreement, Town shall provide service, repairs, and adjustments to the ECMs pursuant to Schedule I, Town’s Maintenance Responsibilities. During the term of the Maintenance Agreement, Company shall provide service, repairs, and adjustments to the ECMs pursuant to Schedule J, Company’s Maintenance Responsibilities and Training and the terms of the Maintenance Agreement. Town shall incur no cost obligations to Company for service, repairs, and adjustments, except as set forth in Schedule D (Compensation to Company and Deliverable); provided, however, that when the need for Company maintenance or repairs principally arises due to the negligence or willful misconduct of Town or any employee or other agent of Town, and Company can so demonstrate such causal connection, Company may charge Town for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds based upon the rates set forth in Schedule D. Nothing in this Section shall relieve the obligation of Company to correct Nonconforming Work as required by Section 3.3.

#### Section 3.4 Records and Data

(a) Town has furnished or shall furnish (or cause its suppliers to furnish) to Company, upon its request, all of its records reasonably available concerning energy or water usage and energy/water-related maintenance for the Facilities described in Schedule B (Pre-existing Equipment Inventory). During the Term, Town will provide Company copies of all energy and water bills relevant to ECMs on a regular basis so that Company may provide the Cost Savings report identified in subsections 3.4(b) and 4.3 below.

(b) The reports to be issued by Company to Town are more particularly delineated in Schedule D, Compensation to Company and Deliverables. At a minimum, Company shall provide an annual Cost Savings and reconciliation report calculated in accordance with Schedule E (Savings Calculation Formula).

(c) Company shall also furnish Town with a full set of diagrams, instructions, manuals, reports and other documentation needed to maintain and operate the ECMs.

(d) If this Contract is terminated for any reason, all finished or unfinished documents, data, studies, correspondence, reports and any other products prepared for the purpose of performing this Contract, shall be made available to, or delivered to, Town for its use before any additional payments are made for any reason.

(e) During and for a period of 3 years after the term of the Contract, and upon reasonable advance written request, Town or its designee shall have the right to inspect those books and records of Company directly relating to this Contract and pertinent to verify specs or billing under this agreement, the Work, and the performance of this Contract at Company’s principal place of business located within Hillsborough County during Company’s normal business hours. Under no circumstances Town shall have access to Company’s trade secrets, pricing or

commercial strategy or the make-up of prices and mark-ups (except to the extent they directly relate to verification of time and material billing under this Contract) If Town receives a public records request related to the Contract, Company shall be solely responsible for taking whatever action it deems appropriate to legally protect its claim of exemption from the public records law.

Section 3.5 Training. Company shall conduct the training program described in Schedule J (Company's Maintenance Responsibilities and Training) hereto. The training specified in Schedule J (Company's Maintenance Responsibilities and Training) must be completed prior to acceptance of the Installation. Company shall provide ongoing training whenever needed with respect to updated or altered equipment, including upgraded software as defined by the software manufacturer. Such training shall be provided at no additional cost to Town.

Section 3.6 Permits and Approvals. Company shall be responsible for obtaining all governmental permits and approvals as may be required for installation of the ECMs and for the performance of its obligations hereunder. Town shall cooperate with Company in obtaining all such permits and approvals. In no event shall Town, however, be responsible for payment of any permit fees. The equipment and the operation of the equipment and all work performed under this Contract by Company shall at all times conform to all federal, state and local code requirements. Company shall furnish copies of each permit or license which is required to perform the work to Town before Company commences the portion of the work requiring such permit or license.

#### SECTION 4. PAYMENTS TO COMPANY

Section 4.1 Progress Payments. Town will make progress payments to Company for Work performed pursuant to Schedule D, Compensation to Company and Deliverables. Pay applications in a form acceptable to Town reflecting the Work performed shall be submitted by Company to the Project Administrator, who shall be responsible for promptly reviewing and, if appropriate, approving such pay applications. Failure to use the appropriate technical requirements as identified in Schedule A (ECMs to be Installed by Company & Description of Facilities) and Appendix 1 (Investment Grade Energy Audit) will result in task rejection and may not be invoiced or paid until correction of the task. Failure to complete the required duties as outline in this Contract may result in the rejection of the invoice.

Section 4.2 Ongoing Service Payments. Town will pay for ongoing services, which includes Measurement and Verification services in four (4) quarterly installments to Company for the Ongoing Service Costs outlined in Schedule D.

Section 4.3 Energy Performance Savings Guarantee. Company has formulated and provided a written Guarantee that the Cost Savings will meet or exceed the costs of the Energy Conservation Measures and the estimated cost savings set forth in the Audit pursuant to § 489.145(4)(c), Florida Statutes. The Savings Guarantee is attached as Schedule C, providing the annual level of Cost Savings to be achieved by Town as a result of the Energy Conservation Measures provided for in this Contract and in accordance with the Savings Calculation Formula as set forth in Schedule E, which is calculated in compliance with Florida law. The Guarantee is set forth in annual increments for the term of the Contract as specified in Schedule C.

Section 4.4 Measuring Cost Savings. The Parties will measure the Cost Savings using the cost savings formula set forth in Schedule E and the Measurement and Verification plans set forth in Schedule P. Company will ensure that the reported Cost Savings have in fact been recognized or the guarantee set forth in Section 4.3 shall apply. In the case of energy-related ECMs, the Measurement and Verification and Cost Savings shall be based on the Federal Energy Management Program's (FEMP) *M&V Guidelines: Measurement and Verification for Federal Energy Management Projects version 3.0* and measured according to Schedule P (Town Measurement & Verification Plan). Any adjustments to the Baseline are subject to Town approval, must be substantiated by actual measurements, and may not be based solely on computer-based simulations.

#### Section 4.5 Annual Reconciliation.

(a) Reconciliation Reports. Pursuant to Section 489.145(5)(e), Florida Statutes, Company is required to provide to Town an annual reconciliation of the Cost Savings. Within sixty (60) days after each year from the Commencement Date, Company will deliver to Town's Contract Manager, identified in Section 19.9 below, an Annual Reconciliation report for such calendar year, reflecting the amount guaranteed and the amount of actual Cost Savings achieved. Upon delivery of the report and all supporting documentation, Town will have thirty (30) business days to accept or reject the report. Town shall provide written notice of such rejection within the stated acceptance period specifying the basis of the deficiency. Company shall have twenty (20) business days to cure such deficiency and deliver to Town a corrected reconciliation report. If the Town fails to reject any report (including corrected reconciliations) within 60 business days of receipt of all required documentation, Town shall be deemed to have accepted the Annual Reconciliation contained in the report as of the last day of the 60th business day period, unless a longer acceptance period is mutually agreed upon in writing. The Annual Reconciliation report verification requirements of the Town's Measurement and Verification plan (M&V Plan) is in the form attached, see Schedule P (Town Measurement & Verification Plan to Monitor Cost Savings).

(b) Annual Shortfalls. If the Annual Reconciliation reveals a shortfall in guaranteed Cost Savings, Company is liable for such shortfall and shall pay to Town the amount of the shortfall, together with interest calculated at the rate set pursuant to Section 55.03, Florida Statutes, to be calculated based on the monthly shortfall. Town shall submit to Company a written statement as to the amount of the shortfall (Town Shortfall Payment Demand) to the extent the Annual Reconciliation or an Town M&V Plan review reveals such shortfall, which may be incorporated into the Town's response to Company's Annual Reconciliation. Company shall remit such payments to Town within sixty (60) days of written notice by Town of such monies due. If Company fails to make such payment to Town within 60 days after demand therefore, Town may, without waiving any other remedies available to it, offset the amount due against payments required under Schedule D.

(c) Annual Excess Savings. Annual Excess Savings shall be distributed as follows: (1) 100% shall first be applied to reimburse Company for any payment Company made to Town under the Annual Shortfall provisions in Section 4.6(b) for the immediately preceding year (but not subsequent years), (2) then to the Parties as follows: 100% of the remainder to Town.

#### Section 4.6 Town Payment. Town shall pay Company as set forth in Schedule D

(Compensation to Company and Deliverables). In the event Town fails to make payment within forty (40) days of the due date, Town shall pay, as late charges, any interest assessed for untimely payment. The interest rate will be the rate set pursuant to Section 55.03, Florida Statutes. Town shall not be required to begin payments for Measurement and Verification to Company under this Contract unless and until a Town Certificate of Acceptance of Installation as set forth in Schedule N has been issued.

Section 4.7 Current Expense. Town's obligations hereunder shall be payable exclusively from Legally Available Funds and shall not be construed to be debt, liability or obligation within the meaning of any applicable constitutional or statutory limitation or requirement. The Town has not and shall not be considered to have pledged any of its full faith and credit or its taxing power to make any payments under this Contract.

Section 4.8 Baseline Costs. Actual savings are measured against baseline costs, the expenses that the Town would have incurred had the delivery order not been implemented. The parties agree that baseline costs shall be calculated using the Baseline set forth in Exhibit G, which has been based on the Federal Energy Management Program's (FEMP) *M&V Guidelines: Measurement and Verification for Federal Energy Management Projects version 3.0*. Details of the Measurement and Verification methodology shall be agreed upon by the Parties and documented in Schedule P.

## SECTION 5. TERMINATION

Section 5.1 Termination Upon Default. This Contract is subject to termination upon the occurrence of an event of default, as provided in Section 13 below.

Section 5.2 Termination for Lack of Funding or Convenience. Subsequent to the Commencement Date and all payments made to Company for the installation of ECMs, the Saving Guarantee and Guarantee Services may be terminated in the event the Town no longer has Legally Available Funds or wishes to otherwise cancel for convenience. The Company shall be notified in writing of the termination date. Such notification will terminate the Company's obligation for Guarantee Services and the Savings Guarantee. In the event of Termination, the Company and Town may mutually agree to reinstate any scope of services in the Contract.

## SECTION 6. WARRANTIES

Section 6.1 Equipment and Work Warranties. Company warrants that all ECMs designed, procured, fabricated, constructed and installed pursuant to this Contract are new, in good and proper working condition and are of merchantable quality and fit for the purpose of enabling the Town to reduce energy consumption and operating costs. The Company further warrants that the ECMs are protected by appropriate written warranties covering all parts and equipment performance, which shall be delivered to the Town concurrent with or prior to the Notice of Final Completion. Company warrants that Work performed under this Contract will be in conformance with the Project Documents and free from defects for the period commencing with the date of the beneficial use of each ECM to the Town and continuing for a minimum period of one year from the Commencement Date.

For the Term of the Contract, Company shall be responsible for pursuing rights and remedies

against the manufacturers and sellers of the ECMs under the warranties in the event of equipment malfunction, improper or defective function, or defects in parts, workmanship, or performance, and the Company shall manage all warranty claims and activity during the warranty periods. Company shall notify the Town whenever defects or malfunction in equipment, parts or performance occur which give rise to warranty rights and remedies and shall keep the Town apprised of its activities in exercising those rights and remedies on the Town's behalf. Town shall notify the Company, in writing, whenever any defects or malfunction in equipment, parts or performance have been identified. The cost of any damage, loss or claims by any person arising out of the use or operation of the ECMs or damage to the ECMs and their performance, including damage to other property and equipment of the Town due to the Company's failure to exercise its warranty rights shall be borne solely by the Company.

All warranties shall be transferable and extend to Town. The warranties shall specify that only new, and not reconditioned parts, may be used and installed when repair is necessary. The warranties shall be in force for a minimum of one year from the Commencement Date.

Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve Company from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

Section 6.2 Labor Warranties. Company warrants that all Work performed under this Contract complies with customary, reasonable and prudent standards of care in accordance with standards in the industry and are performed in a professional manner and consistent with Contract supplied specifications and standards.

## SECTION 7. INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 7.1 Indemnification by Company. Company shall hold and save Town, its officers, agents, and employees harmless against claims by third parties resulting from Company's breach of this Contract or Company's negligence, solely to the extent of Company's negligent acts or omissions.

Section 7.2 Indemnification by Town. Both Parties recognize that Town is prohibited from entering into indemnification agreements. Subject to that prohibition, the Parties agree that Company shall not be responsible for damages resulting solely and exclusively from Town's negligence.

Section 7.3 Limitation of Liability: Neither Party shall be liable to another for special, indirect, consequential or punitive damages, even if the Party has been advised that such damages are possible. No Party shall be liable for lost profits, lost revenue, or lost operating savings. Notwithstanding the foregoing, nothing in this section will be construed to limit any of the remedies afforded to Town under Rule 60A-1.006(3), Florida Administrative Code.

## SECTION 8. OWNERSHIP

Section 8.1 Ownership of Certain Proprietary Property Rights. Town shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property

which are or may be used in connection with the ECM. Company shall grant to Town all rights for the duration of this Contract for any and all software or other intellectual property rights necessary for Town to continue to operate, maintain, and repair the ECM in a manner that will yield maximal consumption reductions.

Section 8.2 Ownership of Existing Equipment. Ownership of the equipment and materials presently existing at the Facilities at the time of execution of this Contract shall remain the property of Town even if it is replaced or its operation made unnecessary by Work performed by Company pursuant to this Contract. Company shall be responsible for the disposal of all equipment and materials designated by Town as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

Section 8.3 Ownership of Installed Equipment; Risk of Loss. Upon the issuance of a Certificate of Acceptance for Installation, Town shall have all legal title to and ownership of all underlying equipment and Company shall take all actions necessary to vest such title and ownership in Town. Prior to this date, the risk of loss or damage to all items shall be the responsibility of Company, unless loss or damage results from negligence by Town, and Company shall be responsible for filing, processing and collecting all damage claims.

Section 8.4 Patent and Copyright. Company, without exception, shall indemnify and save harmless Town and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process or article supplied by Company. Company has no liability when such claim is solely and exclusively due to the combination, operation or use of any article supplied hereunder with equipment or data not supplied by Company or is based solely and exclusively upon Town's alteration of the article. Town will provide prompt written notification of a claim of copyright or patent infringement and will afford Company full opportunity to defend the action and control the defense. Further, if such a claim is made or is pending Company may, at its options and expenses procure for Town the right to continue use of, replace or modify the article to render it noninfringing. (If none of the alternatives are reasonably available, Town agrees to return the article on request to Company and receive reimbursement, if any, as may be determined by a court of competent jurisdiction.) If Company uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the negotiated prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

## SECTION 9. FACILITIES MAINTENANCE AND EQUIPMENT SERVICES

Section 9.1 Conservation and Maintenance Procedures. Town agrees that it shall adhere to, follow and implement the maintenance responsibilities to be set forth on Schedule I (Town's Maintenance Responsibilities), methods of operation and energy conservation procedures that will be provided in Company provided training outlined in Schedule J. Failure to comply with the maintenance responsibilities, methods of operation, energy conservation procedures and Standards of Comfort (Schedule H), will impact the Baseline as described in Section 9.2 and Schedule G.

Section 9.2 Changes to ECMs and Facilities by Town. To the extent Company is responsible for maintenance under Section 3.3, Town shall not move, remove, modify, alter, or

materially change in any way the ECMs or any part thereof without the prior written approval of Company, which consent shall not be unreasonably withheld, except as set forth in Schedule I (Town's Maintenance Responsibilities). Notwithstanding the foregoing, Town may take reasonable steps to protect an ECM if, due to an emergency, it is not possible or reasonable to notify Company before taking any such actions. In the event of such an emergency, Town shall take reasonable steps to protect the ECM from damage or injury and shall follow instructions for emergency action provided in advance by Company. Town agrees to maintain the Facilities in good repair and to protect and preserve all portions thereof that may in any way affect the operation or maintenance of the ECM. If Company contends that Town is not performing maintenance responsibilities in accordance with Schedule I (Town's Maintenance Responsibilities), or that Town has made any other material changes, including a change in manner of use, hours of operation for the equipment, permanent changes in the comfort and service parameters, occupancy or structure of the Facilities, types and quantities of equipment at the Facilities, then Company shall submit a report to Town describing in detail the conditions set forth in the preceding sentence which may adjust the Baseline, and shall determine what, if any, adjustments to Baseline will be made. Adjustments to the Baseline must be approved by the Town and approval of adjustments will not be unreasonably withheld.

Section 9.3 Changes to ECMs by Company. Notwithstanding anything to the contrary in this Contract or elsewhere, Company shall at all times have the right, subject to Town's prior written approval, which approval shall not be unreasonably withheld, to change the ECM, revise any procedures for the operation of the equipment or implement other saving actions in the Facilities, provided that (i) such modifications or additions to, or replacement of the ECM, and any operational changes, or new procedures are necessary to enable Company to achieve the Cost Savings at the Facilities and; (ii) any cost incurred relative to such modifications, additions or replacement of the ECM, or operational changes or new procedures shall be the responsibility of Company. All modifications, additions or replacements of the ECM or revisions to operating or other procedures shall be made by written amendment to this Contract, duly approved and executed by the Parties.

## SECTION 10. PROPERTY/CASUALTY/INSURANCE

Section 10.1 Insurance. At all times during the Term, Company shall maintain in full force and effect all insurance coverages customary for companies in its industry of comparable size, to the extent of the indemnities assumed by Company under this Agreement, including: (1) Workmen's Compensation Insurance sufficient to cover all of the employees of Company working to fulfill this Contract, and (2) Commercial General Liability Insurance covering Company's Work as performed by its employees and subcontractors under this agreement. The limits of such insurance shall be not less than \$2,000,000 per occurrence for bodily injury, including death, or property damage. Such Commercial General Liability policy shall name Town as an additional insured to the extent indemnified herein. Company shall insure the equipment to be installed under a Builders Risk insurance policy.

Prior to commencement of work under this Contract, Company will be required to provide Town with current certificates of insurance specified above. These certificates shall contain a provision that coverages afforded under the policies that are agreed to under this contract, will not be canceled or reduced until at least thirty (30) days' prior written notice has been given to Town.

The policies for Bodily Injury and Property Damage Liability Insurance shall be written to include Contractual Liability Insurance to protect Company against claims from the operations of subcontractors. Certificates of Company's insurance shall evidence that Company's Commercial General Liability policy includes coverage for contractual liability. Certificates shall be filed with the Town and shall be subject to its approval for adequacy of protection.

Section 10.2 Damage. Company shall be responsible for (i) any damage to the equipment to be installed or to any other property on or at the Facilities and (ii) any personal injury where such damage or injury occurs as a result of Company's performance under this Contract, but only to the extent caused by the acts or omissions of Company

## SECTION 11. BOND

Section 11.1 Town shall be provided with the following bonds, within 30 days of the date of this Contract:

(a) Construction Bond: Company shall furnish Town a Public Construction Bond ("Bond") pursuant to Section 255.05, Florida Statutes, substantially in the form provided in Schedule K, in the amount of \$1,112,390.

Section 11.2 Bond Provisions. The following provisions shall apply to the bonds in this Section:

(a) Town shall be named as the beneficiary of the bonds. Company's bonds shall provide that the insurer or bonding company shall pay losses suffered by Town directly to Town. Company or its insurer shall provide Town thirty (30) days prior written notice that the bond(s) has been renewed together and of any attempt to cancel or to make any other material changes in the status, coverage or scope of the required bond or of Company's failure to pay bond premiums. The cost of bonds shall be reflected as a project cost and included in the Energy Conservation Measures to be installed.

(b) Company shall follow § 255.05 "Bond of contractor constructing public buildings; form; action by materialmen" of the Florida Statutes.

(c) No payments shall be made to Company until the bond is in place as per § 255.05 Florida Statutes.

(d) To be acceptable to Town as surety for performance bonds, the surety company shall:

(i) Have a currently valid Certificate of Authority, issued by the State of Florida, Department of Financial Services, authorizing it to write surety bonds in the State of Florida

(ii) Have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.

(iii) Be in full compliance with the provisions of the Florida Insurance Code

(iv) Have a minimum Best's Policyholder Rating of A- or Performance Index Rating of VI from Best's Key Rating Guide.

## SECTION 12. EVENTS OF DEFAULT

Section 12.1 The following are events of default under this Contract:

- (a) Any failure by either Party to timely pay any amount required to be paid under this Contract.
- (b) Any failure by either Party to observe and/or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Contract.
- (c) Company initiates a proceeding in any court, seeking liquidation, reorganization, debt arrangement, dissolution, winding up, appointment of trustee, receiver, custodian, or the like for substantially all of its assets, and such proceeding continues undismissed, unstayed and in effect for a period of 60 consecutive days; or an order for relief is entered in an involuntary case under the federal bankruptcy laws or other similar laws now or hereafter in effect.

## SECTION 13. REMEDIES UPON DEFAULT

Section 13.1 Opportunity to Cure Defaults. With the exception of a payment default, each Party shall have a period of thirty (30) days unless otherwise mutually agreed by both parties after being notified of an event of default to cure said default. With respect to payment defaults, each party shall have a period of ten (10) days after being notified of an event of default to cure said default.

Section 13.2 Remedies upon Default by Town. If a default by Town is not cured in accordance with Section 13.1, Company may, without a waiver of other remedies which exist in law or equity, exercise all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by Town, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy.

Section 13.3 Remedies Upon Default by Company. If a default by Company is not cured in accordance with Section 13.1, Town shall have the following remedies in law or equity:

- (a) Town may exercise any and all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include, among other damages, all costs and expenses reasonably incurred in exercise of its remedy.
- (b) Town may take any and all steps necessary to cure Company's default including the hiring or contracting of third parties to fulfill Company's obligations. In the event Town takes any action to effect such cure, Company shall be obligated to reimburse Town for Town's costs and expenses, including cost of cover pursuant to Fla. Admin. Code Rule 60A-1.006 (3).

- (c) Town may terminate the Contract and seek damages arising from Company's breach of the Contract.

#### SECTION 14. ASSIGNMENT

Section 14.1 Assignment by Company. Company acknowledges that Town is induced to enter into this Contract by, among other things, the professional qualifications of Company. Company agrees that neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of Town; provided Company can without prior approval from Town assign this Contract to ABM Industries, Inc., or one of its wholly owned affiliate companies.

Company may, with prior written approval of Town, which consent shall not be unreasonably withheld, delegate its duties and performance under this Contract, and/or utilize subcontractors, provided that any assignee(s), delegee(s), or subcontractor(s) shall fully comply with the terms of this Contract. Notwithstanding the provisions of this paragraph, Company shall remain jointly and severally liable with its assignees(s), or transferee(s) to Town for all of its obligations under this Contract.

Section 14.2 Assignment by Town. Town may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Facilities or an interest therein subject to the prior written approval of Company. If Company rejects new assignee Town will continue to make the payments associated with the facility or Town can pay the remaining principal on the loan for the equipment installed in that facility. Notwithstanding the foregoing, Town's rights and responsibilities may be transferred in the event that the Town/department that originally executed this Contract is transferred, moved or absorbed by another State of Florida entity to such succeeding entity.

#### SECTION 15. LITIGATION

Any dispute, controversy, or claim arising out of or in connection with, or relating to this Contract, or any breach or alleged breach hereof, shall be litigated in the appropriate court in Hillsborough County, Florida, and the parties hereby agree that venue for any and all causes of action arising out of or in connection with this Contract shall be in Hillsborough County. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY OF ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING OUT OF OR OTHERWISE RELATING TO THIS CONTRACT.

#### SECTION 16. REPRESENTATIONS AND WARRANTIES

Section 16.1 Mutual Representations. Each Party warrants and represents to the other that:

- (a) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

- (b) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed

and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

(c) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or

(d) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

Section 16.2 Town Representations. Town hereby warrants and represents that:

(a) it has provided or shall provide timely to Company, all records relating to energy and/or water usage and energy/water-related maintenance of Facilities requested by Company and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and

(b) it has not entered into any leases, contracts or agreements with other persons or entities regarding the leasing of efficiency equipment or the provision of energy/water management services for the Facilities or with regard to servicing any of the related equipment located in the Facilities except as disclosed to Company.

Section 16.3 Company Representations. Company hereby warrants and represents that:

(a) before commencing performance of this Contract it shall have (i) become licensed or otherwise permitted to do business in the State of Florida, and (ii) provided proof and documentation of required insurance pursuant to Section 10, and (iii) made available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;

(b) it shall use qualified subcontractors and delegees, licensed and bonded in this state to perform the work so subcontracted or delegated pursuant to the terms hereof;

(c) it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to perform its obligations under this Contract.

## SECTION 17. MISCELLANEOUS

Section 17.1 Waiver of Liens. Company will obtain and furnish to Town a Waiver of Liens from each vendor, material manufacturer and laborer in the supply, installation and servicing of each ECM, and shall provide partial lien waivers with each pay application. Should liens or claims be filed against the Facilities by reason of Company's acts or omissions, Company shall cause same to be discharged by bond or otherwise within ten (10) days after filing.

Section 17.2 Compliance with Law and Standard Practices. Company shall perform its

obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of Town relative to the Facilities.

Company shall not use, store, dispose of or otherwise handle any Hazardous Substance (as defined in 42 U.S.C. Sections 9601, 9603, 6921, 7412, 49 U.S.C. Sections 1802 and 33 U.S.C. Sections 1321 and 1317 as now or hereinafter amended) or Hazardous Material in or on the Facilities except in a lawful manner and so as not to cause Town any cost, loss, obligation or liability or expose Town to any claim or suit with respect to same. "Hazardous Materials" shall mean petroleum, or any fraction thereof, asbestos, polychlorinated biphenyls, or any other substance identified either as a "hazardous substance", "hazardous waste", "pollutant", "contaminant" or other similar term in any applicable federal, state or local law or regulation, as such law or regulations may be now or hereafter amended.

Section 17.3 Independent Capacity of Company. The Parties agree that Company, and any agents and employees of Company, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of Town.

Section 17.4 No Waiver. The failure of Company or Town to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of Company or Town.

Section 17.5 Severability. In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable or unconscionable.

Section 17.6 Complete Contract. This Contract, including all Schedules, Exhibits and Appendices attached hereto, when executed, shall constitute the entire Contract between both Parties and this Contract may not be amended, modified, or terminated except by a written Contract signed by the Parties.

Section 17.7 Further Documents. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

Section 17.8 Applicable Law. This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of Florida.

Section 17.9 Notice. Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, or delivered to a nationally recognized express mail service, postage prepaid to the address shown below or to such other persons or addresses as are specified by similar notice. Town's Contract Manager for this project will serve as liaison for the ongoing administration of this Contract and the resolution of any problems related thereto.

TO COMPANY: ABM Building Services, LLC,  
Guaranteed Energy, Water, & Wastewater Performance Savings Contract

Attention: Dan Klein  
9326 Florida Palm Drive  
Tampa, FL 33619

TO TOWN: Town of Belleair  
Attention: JP Murphy  
901 Ponce de Leon, Blvd.  
Belleair, Fl 33756

Section 17.10 Statutory Notices and Requirements. Town shall consider the employment by Company of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this Contract. An entity or affiliate who has been placed on the public entity crimes list or the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Company, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity pursuant to limitations under Chapter 287 Florida Statutes.

Wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto will be adjusted to exclude any significant sums by which Town determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of this Contract.

Company warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Company to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Company any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, Town shall have the right to terminate this Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

Section 17.11 Energy Policy Act. If applicable, any tax benefits such as, but not limited to, those under section 179D of the Internal Revenue Code regarding the Energy Policy Act of 2005 are assigned to Company as part of this Agreement. Customer will use commercially reasonable efforts to assist with executing any necessary documents for Company to obtain such benefits.

Section 17.12 Offer Extended to Other Government Entities. Town encourages and agrees to the Company extending the pricing, terms and conditions of this Contract to other governmental entities at the discretion of the Company.

Section 17.13 Public Records. Town shall have the right to suspend payment for services, including, but not limited to, Measurement and Verification services during the time

period that Company fails to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes and made or received by Company in conjunction with this Contract. To the extent that Section 119.0701, Florida Statutes, is applicable to the services performed under this Agreement, Company shall:

- A. Keep and maintain public records according to GS1SL that ordinarily and necessarily would be required by the Town in order to perform the service.
- B. Provide the public with access to public records on the same terms and conditions that the Town would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

Meet all requirements for retaining public records and transfer, at no cost, to the Town all public records in possession of the Company upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Town in a format that is compatible with the information technology systems of the Town.

Section 17.14 Force Majeure. Neither Party will be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in the United States; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party (“Force Majeure Events”); provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaroud plans or other means, including disaster recovery plans. Performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay, provided that in the event Company is delayed in its performance by reason of such cause, no such extension shall be made unless notice thereof is presented by Company to Town in writing within ten (10) business days after the start of the occurrence of such delay, no payment shall be made by Town for any fees or expenses incurred by Company by reason of such delay, and Company shall use best efforts to perform its obligations during such period of delay, and notify Town of its abatement or cessation.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers on March 6, 2018.

**TOWN:**

**TOWN OF BELLEAIR**

By: \_\_\_\_\_

Name: JP Murphy

Title: Town Manager

**ATTEST:**

\_\_\_\_\_  
Christine Torok, Town Clerk

**COMPANY:**

**ABM Building Services, LLC**  
a Delaware limited liability company,

By: \_\_\_\_\_

Name: Dan Klein

Title: Senior Vice President

## Schedule A

### ECMs and Performance Specifications to Be Installed by Company and Description of Facilities

The ECMs listed in this Schedule will be installed under this Contract as described in Appendix 1 – Investment Grade Energy Audit (IGEA). The performance specifications for the ECMs will comply with all performance specifications outlined in this schedule and in the IGEA.

In addition to the specifications described in this Contract and the scope of Work described in the IGEA, the HVAC equipment shall meet the requirements of Table C403.2.3(1) below, incorporated from Chapter 4 [CE] Commercial Energy Efficiency from the Florida Building Code 5<sup>th</sup> Edition (2014) Energy Conservation.

Final selection of the HVAC equipment will be approved by the Town Project Administrator.

TABLE C403.2.3(1) MINIMUM EFFICIENCY REQUIREMENTS: ELECTRICALLY OPERATED UNITARY AIR CONDITIONERS AND CONDENSING UNITS

EQUIPMENT TYPE	SIZE CATEGORY	HEATING SECTION TYPE	SUBCATEGORY OR RATING CONDITION	MINIMUM EFFICIENCY	TEST PROCEDURE <sup>a</sup>		
Air conditioners, air cooled	< 65,000 Btu/h <sup>b</sup>	All	Split System	13.0 SEER	AHRI 210/240		
			Single Package	13.0 SEER			
Through-the-wall (air cooled)	≤ 30,000 Btu/h <sup>b</sup>	All	Split system	12.0 SEER			
			Single Package	12.0 SEER			
Small-duct high-velocity systems (air cooled)	< 65,000 Btu/h <sup>b</sup>	All	Split System	11.0 SEER (before 1/1/2015) 12.0 SEER (as of 1/1/2015)			
Air conditioners, air cooled	≥ 65,000 Btu/h and < 135,000 Btu/h	Electric Resistance (or None)	Split System and Single Package	11.2 EER 11.4 IEER		AHRI 340/360	
		All other	Split System and Single Package	11.0 EER 11.2 IEER			
	≥ 135,000 Btu/h and < 240,000 Btu/h	Electric Resistance (or None)	Split System and Single Package	11.0 EER 11.2 IEER			
		All other	Split System and Single Package	10.8 EER 11.0 IEER			
	≥ 240,000 Btu/h and < 760,000 Btu/h	Electric Resistance (or None)	Split System and Single Package	10.0 EER 10.1 IEER			
		All other	Split System and Single Package	9.8 EER 9.9 IEER			
	≥ 760,000 Btu/h	Electric Resistance (or None)	Split System and Single Package	9.7 EER 9.8 IEER			
		All other	Split System and Single Package	9.5 EER 9.6 IEER			
	Air conditioners, water cooled	< 65,000 Btu/h <sup>b</sup>	All	Split System and Single Package	12.1 EER 12.3 IEER		AHRI 210/240
		≥ 65,000 Btu/h and < 135,000 Btu/h	Electric Resistance (or None)	Split System and Single Package	12.1 EER 12.3 IEER		AHRI 340/360
All other			Split System and Single Package	11.9 EER 12.1 IEER			
≥ 135,000 Btu/h and < 240,000 Btu/h		Electric Resistance (or None)	Split System and Single Package	12.5 EER 12.7 IEER			
		All other	Split System and Single Package	12.3 EER 12.5 IEER			
≥ 240,000 Btu/h and < 760,000 Btu/h		Electric Resistance (or None)	Split System and Single Package	12.4 EER 12.6 EER			
		All other	Split System and Single Package	12.2 EER 12.4 EER			
≥ 760,000 Btu/h		Electric Resistance (or None)	Split System and Single Package	12.2 EER 12.4 EER			
		All other	Split System and Single Package	12.0 EER 12.2 EER			

TABLE C403.2.3(1) – continued MINIMUM EFFICIENCY REQUIREMENTS: ELECTRICALLY OPERATED UNITARY AIR CONDITIONERS AND CONDENSING UNITS

EQUIPMENT TYPE	SIZE CATEGORY	HEATING SECTION TYPE	SUB-CATEGORY OR RATING CONDITION	MINIMUM EFFICIENCY	TEST PROCEDURE <sup>a</sup>		
Air conditioners, evaporatively cooled	< 65,000 Btu/h <sup>b</sup>	All	Split System and Single Package	12.1 EER 12.3 IEER	AHRI 210/240		
	≥ 65,000 Btu/h and < 135,000 Btu/h	Electric Resistance (or None)	Split System and Single Package	12.1 EER 12.3 IEER	AHRI 340/360		
		All other	Split System and Single Package	11.9 EER 12.1 IEER			
	≥ 135,000 Btu/h and < 240,000 Btu/h	Electric Resistance (or None)	Split System and Single Package	12.0 EER 12.2 IEER			
		All other	Split System and Single Package	11.8 EER 12.0 IEER			
	≥ 240,000 Btu/h and < 760,000 Btu/h	Electric Resistance (or None)	Split System and Single Package	11.9 EER 12.1 IEER			
		All other	Split System and Single Package	11.7 EER 11.9 IEER			
	≥ 760,000 Btu/h	Electric Resistance (or None)	Split System and Single Package	11.7 EER 11.9 IEER			
		All other	Split System and Single Package	11.5 EER 11.7 IEER			
	Condensing units, air cooled	≥ 135,000 Btu/h				10.5 EER 14.0 IEER	AHRI 365
	Condensing units, water cooled	≥ 135,000 Btu/h				13.5 EER 14.0 IEER	
	Condensing units, evaporatively cooled	≥ 135,000 Btu/h				13.5 EER 14.0 IEER	

Facility Name:	Town Hall
Address:	901 Ponce de Leon Blvd
Owned by the Town or Leased?	Owned

List Energy Conservation Measures to be installed at this facility:

ECM	Description of Conservation Measure	Useful Life of the Equipment
3	Controls	>15 Years
4	HVAC Upgrades	15 Years
5	Lighting Upgrades (LED)	> 10 Years
5.1	Daylighting	>15 Years
6	Building Envelope	>15 Years
6.1	Roof & Skylight	>20 Years
8	Electrical Panels	>30 Years
17	Commissioning	N/A

Facility Name:	Dimmitt Community Center
Address:	918 Osceola Rd
Owned by the Town or Leased?	Owned

List Energy Conservation Measures to be installed at this facility:

ECM	Description of Conservation Measure	Useful Life of the Equipment
3	Controls	>15 Years
4	HVAC Upgrades	15 Years
5	Lighting Upgrades (LED)	> 10 Years
5.2	Sport Field Lighting Upgrades (LED)	>25 Years
6	Building Envelope	>15 Years
17	Commissioning	N/A

Facility Name:	John J. Osborne Public Works Building
Address:	1075 Ponce De Leon Blvd
Owned by the Town or Leased?	Owned

List Energy Conservation Measures to be installed at this facility:

ECM	Description of Conservation Measure	Useful Life of the Equipment
3	Controls	>15 Years
17	Commissioning	N/A

Facility Name:	Water Treatment Operations
Address:	107 Belleair Ave
Owned by the Town or Leased?	Owned

List Energy Conservation Measures to be installed at this facility:

ECM	Description of Conservation Measure	Useful Life of the Equipment
3	Controls	>15 Years

6	Building Envelope	>15 Years
17	Commissioning	N/A
20	Variable Frequency Drives (VFD)	>10 Years
20.1	Well Pump Control Integration	>10 Years

Schedule B  
Pre-existing Equipment Inventory

Facility Name:	Town Hall			
Address:	901 Ponce de Leon Blvd			
List of Equipment:	<b>Tag:</b>	<b>Manufacturer</b>	<b>Model</b>	<b>Serial</b>
	SS1 CU	ICP	N4A360GHC300	E151808517
	SS1 AHU	Carrier	FEM4X6000XL	A152091085
	SS2 CU	Carrier	Unable to get	
	SS2 AHU	Carrier	FB4ANF036	1892H03678
	SS3 CU	Carrier	N4H360GHB400	E122918364
	SS3 AHU	Carrier	FXM4X6000AT	A123384404
	SS 4 CU	ICP	CAS091HAA0A00	C150591845
	SS4 AHU	ICP	FAS091MAAA0A0	U144506371
	SS5 CU	Carrier	38CKC060-571	0604E22726
	SS5 AHU	Carrier		
	SS 6 CU	Rheem	RAND-018JAZ	7292M380706821
	SS 6 AHU	Rheem		
	SS 7 CU	Carrier	N2H324AKA100	E071924902
	SS 7 AHU	Carrier		
	SS 8 CU	Rheem	RAND-048JAZ	7303M320616232
	SS 8 AHU	Rheem		
	RTU 1 (Old)	Rheem	RSNL-BO30JK-00	7419F3417213
	RTU 1 New	ICP	PHR5360000H000	C151525292
	RTU 2	ICP	PHR5360000H000	C151348364
	RTU 3	ICP	PHR560000H000	C151348694
	RTU 4	ICP	PHR560000H000	C151348695
	Exhaust Fan 1	Greenheck		
Exhaust Fan 2	Greenheck			

Facility Name:	Dimmitt Community Center			
Address:	918 Osceola Rd			
List of Equipment:	<b>Tag:</b>	<b>Manufacturer</b>	<b>Model</b>	<b>Serial</b>
	CU 1	Carrier	CR28K6-TF5-130	05J02721H
	AHU 1	Carrier	Unable to read	smaller split sys.
	RTU 1	Carrier	50TC-E12A2B5A0	2313G10182
	RTU 2	ICP	RAS121H0AA0AAA	P163135189
	RTU 3	Carrier	50HJ-008-531	0506G20718
	RTU 4	Carrier	50HJ-007-541	5105G20284
	RTU 5	Carrier	50HJ-007-541	5105G20282
	RTU 6	Carrier	50HJ-008-531	0506G20718
	RTU 7	ICP	RAS072H0AAA0	G113030217
	RTU 8	Carrier	50HJ-007-541	0106G30358
	RTU 9	Carrier	50TC-A07A2B5A0	2614C81572
	HEF 1	Greenheck	CUBE-101HP-5-6	06CO3900

	TEF-1A	Greenheck	G-095-D-X	06C04395
	TEF-1B	Greenheck	G-095-D-X	

Facility Name:	John J. Osborne Public Works Building			
Address:	1075 Ponce De Leon Blvd			
List of Equipment:	<b>Tag:</b>	<b>Manufacturer</b>	<b>Model</b>	<b>Serial</b>
	IM 1	Hoshizaki		
	MS1	Mitsubishi	MUZ-HE12NA	4000414
	MS2	Mitsubishi	MUZ-HE09NA	4000085
	SS1	Trane		
	SS2	Trane		
	SS3	Trane		

Facility Name:	Water Treatment Operations			
Address:	107 Belleair Ave			
List of Equipment:	<b>Tag:</b>	<b>Manufacturer</b>	<b>Model</b>	<b>Serial</b>
	CU 1			
	AHU 1	Trane		
	CU 2	Carrier	25HCD348A310	2613E11130
	AHU 2	Carrier		

Schedule C  
Savings Guarantee

Company has formulated and hereby guarantees the following annual levels of Cost Savings to be achieved as a result of the installation and acceptance of the ECMs in the amounts guaranteed and for the Annual Savings Periods stated below. Pursuant to § 489.145 (3) (c) Florida Statutes, there will be no stipulation as to savings amounts achieved other than as allowed. This Savings Guarantee is supported by a corporate guaranty of ABM Industries, Inc.

The Cost Savings is set forth as follows:

Year	Energy Savings (Escalated at 2%)	Operation and Maintenance Savings (Escalated at 2%)	Identified Capital Savings	Total Annual Savings
0			\$ 350,000	\$ 350,000
1	\$ 20,464	\$ 44,209	\$ 53,000	\$ 117,673
2	\$ 20,873	\$ 45,093	\$ 53,000	\$ 118,966
3	\$ 21,291	\$ 45,995	\$ 53,000	\$ 120,286
4	\$ 21,717	\$ 46,915	\$ 53,000	\$ 121,632
5	\$ 22,151	\$ 47,853	\$ 53,000	\$ 123,004
6	\$ 22,594	\$ 48,810	\$ 53,000	\$ 124,404
7	\$ 23,046	\$ 49,787	\$ 53,000	\$ 125,832
8	\$ 23,507	\$ 50,782	\$ 53,000	\$ 127,289
9	\$ 23,977	\$ 51,798	\$ 53,000	\$ 128,775
10	\$ 24,456	\$ 52,834	\$ 53,000	\$ 130,290
11	\$ 24,946	\$ 53,891	\$ 53,000	\$ 131,836
12	\$ 25,444	\$ 54,968	\$ 53,000	\$ 133,413
13	\$ 25,953	\$ 56,068	\$ -	\$ 82,021
14	\$ 26,472	\$ 57,189	\$ -	\$ 83,661
15	\$ 27,002	\$ 58,333	\$ -	\$ 85,335
<b>Total</b>	<b>\$ 353,892</b>	<b>\$ 764,525</b>	<b>\$ 986,000</b>	<b>\$ 2,104,417</b>

Actual savings achieved will be calculated according to Schedule E. Company will guarantee the annual reduction of kWh. The kWh Savings from Project:

Lighting and Building Envelope Upgrade Savings*	122,116 kWh
All other ECM Savings	82,647 kWh
Total Energy Savings**	204,763 kWh

\* kWh savings includes stipulated savings associated with lighting and building envelope ECMs

\*\* Total kWh includes both the Energy (kWh) and Demand (kW) reduction savings

Power consumption (kW) for Lighting shall be measured both on existing fixtures and after replacement, the reduction shall represent the actual power savings for each retrofit type. Measurements shall be taken on a sample population of 5% of each retrofit type.

Lighting kWh savings are calculated utilizing the “Burn” hours specified in the Investment Grade Energy Audit (Appendix 1).

For value received, the Contractor guarantees the payment of any amounts due Customer for any failure to achieve these levels according to the Terms and Conditions of this Contract.

Schedule D  
Compensation to Company and Deliverables

**Installation Costs**

ECM	Facility	Description of Deliverable	Cost
Base Scope	Town Hall Recreation Center Public Works Water Treatment Operations	HVAC Controls, Equipment, GPS, Coating and Re-commissioning LED Lighting and Lighting Controls, Building Envelope Well Pump VFDs, Monitoring and Control	\$ 557,505
Option Add	Town Hall	Re-roof and Skylight	\$ 148,840
Option Add	Town Hall	Electrical Panel Replacements and Safety Labeling	\$ 80,506
Option Add	Recreation Center	Replace Soccer Field Lights and Poles	\$ 245,910
Option Add	Recreation Center	Replace Tennis Court Lights	\$ 79,628
		<b>Total</b>	<b>\$ 1,112,390</b>

**Installation Payment Schedule**

Stage	Timing	Percentage	Amount
Project Initiation <sup>1</sup>	Contract Signing	31.46%	\$ 350,000
1 <sup>st</sup> Progress Payment	25% Complete	14.38%	\$ 160,000
2 <sup>nd</sup> Progress Payment	50% Complete	20.23%	\$ 225,000
3 <sup>rd</sup> Progress Payment	75% Complete	17.98%	\$ 200,000
Final Payment	Project Signoff	15.95%	\$ 177,390
	<b>Total</b>	<b>100.00%</b>	<b>\$ 1,112,390</b>

<sup>1</sup> Down payment made by Town on project. Other payments made from Escrow proceeds of loan. Project Initiation includes all engineering costs, initial construction management costs, material deposits and subcontractor mobilization costs.

Installation Payment Schedule is based on completion of the work as described in Schedule F, Construction and Installation Schedule. Actual Progress Payments will be made according to Installation completed. Company will provide documentation to Town demonstrating percent complete along with invoice for payment.

### Ongoing Service and Maintenance Costs

Year	Guarantee Services <sup>1</sup>	HVAC Maintenance <sup>2</sup>	Managed Well Pump Services <sup>2</sup>	Total
1	\$ 1,432	\$ 28,320	\$ 9,300	\$ 39,052
2	\$ 1,461	\$ 28,886	\$ 9,486	\$ 39,833
3	\$ 1,490	\$ 29,464	\$ 9,676	\$ 40,630
4	\$ 1,520	\$ 30,053	\$ 9,869	\$ 41,442
5	\$ 1,550	\$ 30,654	\$ 10,067	\$ 42,271
6	\$ 1,581	\$ 31,268	\$ 10,268	\$ 43,117
7	\$ 1,613	\$ 31,893	\$ 10,473	\$ 43,979
8	\$ 1,645	\$ 32,531	\$ 10,683	\$ 44,858
9	\$ 1,678	\$ 33,181	\$ 10,896	\$ 45,756
10	\$ 1,711	\$ 33,845	\$ 11,114	\$ 46,671
11	\$ 1,746	\$ 34,522	\$ 11,337	\$ 47,604
12	\$ 1,781	\$ 35,212	\$ 11,563	\$ 48,556
13	\$ 1,816	\$ 35,917	\$ 11,795	\$ 49,527
14	\$ 1,852	\$ 36,635	\$ 12,031	\$ 50,518
15	\$ 1,889	\$ 37,368	\$ 12,271	\$ 51,528
<b>Total</b>	<b>\$ 24,764</b>	<b>\$ 489,750</b>	<b>\$ 160,829</b>	<b>\$ 675,343</b>

<sup>1</sup> Guarantee Services include all fees for measurement & verification, ongoing training and warranty management services.

<sup>2</sup> Town's payment of HVAC Maintenance and Managed Well Pump Services shall be pursuant to the Guaranteed Professional Maintenance Agreement which is for 5 Years, renewable for another 5 Years and then annually thereafter.

### Service and Maintenance Payments

Type	Service Start Date	First Year Price	Payment Schedule	Payment Amount
Guarantee Services (M&V)	Installation Acceptance	\$1,432	Quarterly	\$358
HVAC Maintenance	Contract Signing	\$28,320	Quarterly	\$7,080
Managed Well Pump Services		\$9,300	Quarterly	\$2,325

### Rate Schedule

Pricing for this proposal and any changes to contract scope requested by the Town will be priced based upon rates indicated below

Personnel Category	Regular Rate	Overtime	Holiday Rate
<b>PROFESSIONAL SERVICES</b>			
Administrative / Clerical	\$50.00	\$75.00	\$100.00
Project Developer	\$110.00		
Energy Engineer - CEM	\$120.00		
Professional Engineer - PE	\$170.00		
Associate Project Engineer	\$100.00		
Project Manager	\$120.00	\$180.00	\$240.00
<b>HVAC SERVICES</b>			
Mechanical Technician	\$85.00	\$125.00	\$170.00
Chiller Mechanic - over 200 tons	\$100.00	\$150.00	\$200.00
Controls & Retro Commissioning	\$95.00	\$140.00	\$180.00
Helper	\$70.00	\$105.00	\$130.00
<b>MARKUPS</b>	<b>Multiplier</b>		
Parts & Material	1.25		
Subcontract	1.25		

Schedule E  
Savings Calculation Formula

Cost Savings under this Contract shall be determined according to the following formula:

$$\text{Cost Savings} = (\text{Baseline Costs} - \text{Post Installation Costs}) \pm \text{Adjustments}$$

The following definitions and methodologies shall apply:

A. **Baseline Costs.** The estimated costs of fuel, energy or water consumption or wastewater production that would have been incurred if the ECMs had not been installed or implemented. Baseline Costs shall be the product of (i) the Baseline amounts set forth in Exhibit G; and (ii) the Utility Rates as defined below.

B. **Post-Installation Costs.** Post-Installation Costs shall be the cost of fuel, energy or water consumption or wastewater production resulting from the installation and implementation of the ECMs. Post-Installation Costs shall be the product of (i) the actual amount of fuel, energy or water consumption or wastewater production during the applicable time period, and (ii) the Utility Rates as defined below; together with

- The stipulated operation and maintenance cost savings resulting from the implementation and installation of the ECMs. These cost savings have been negotiated and agreed upon by the parties and there is no need to verify the agreed savings.
  - Stipulated operation and maintenance savings (\$\_\_\_\_\_ in year 1) resulting from the implementation and installation of the Project. These Cost Savings have been negotiated and agreed upon by the parties and there is no need to verify the agreed savings.
  - Identified capital savings (\$\_\_\_\_\_ in year 1) resulting from the implementation and installation of the Project. These Cost Savings have been negotiated and agreed upon by the parties and there is no need to verify the agreed savings.
- Post-Installation Costs shall be measured and verified according to Schedule P, Town Measurement & Verification Plan (“M&V Plan”) to Monitor Cost Savings

C. **Utility Rates.** The Utility Rates shall be the greater of (i) the base period utility unit costs set forth in Baseline, Exhibit G and escalated at 2% per year after the year in which this Contract is entered; or (ii) the actual utility unit costs for the year in which the Cost Savings are measured. In no event shall the Utility Rate be lower than base year utility rate with appropriate escalation.

D. **Adjustments.** § 489.145 (4)c Florida Statutes, requires that any Baseline adjustments must be specified in the contract. The parties agree that Baseline adjustments are authorized only to the extent authorized in section 9 and/or Schedule G (Baseline) of the Contract.

## Schedule F Construction and Installation Schedule

Town of Belleair Project Plan																		
WEEK	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Commission Approval / Contract Award & Signed																		
<b>Town Hall</b>																		
Electrical: Detail Design and Take-Offs																		
Electrical: Material Procurement																		
Electrical: Preliminary Field Assembly New MDP's																		
Electrical: South Room 400AMP Demo/Install																		
Electrical: East Room 400AMP Demo/Install																		
Electrical: Utility Room 200AMP Demo/Install																		
Electrical: Safety Labeling - Floor and Clearance																		
Electrical: Safety Compliance Sign Off																		
HVAC: Material Procurement																		
HVAC: Equipment Replacement																		
HVAC: Recommissioning Existing Units																		
HVAC: Controls Modifications																		
Lighting: Material Procurement																		
Lighting: Install																		
Lighting: Solar Tube Material Procurement																		
Lighting: Solar Tube Install																		
Building Envelope: Install																		
Roofing: Material Procurement																		
Roofing: Skylight Replacement (Weather Dependent)																		
Roofing: Remove / Replace (Weather Dependent)																		
Customer Walk Through																		
Customer Sign Off																		
<b>Rec Center</b>																		
HVAC: Material Procurement																		
HVAC: Equipment Replacement																		
HVAC: Recommissioning Existing Units																		
HVAC: Controls Modifications																		
Lighting: Material Procurement																		
Lighting: Install																		
Sports Lighting: Material Procurement																		
Sports Lighting: Replacement																		
Building Envelope: Install																		
Customer Walk Through																		
Customer Sign Off																		
<b>Water Treatment Plant</b>																		
HVAC: Recommissioning Existing Units																		
HVAC: Controls Modifications																		
Building Envelope: Install																		
Well Pump VFD's: Material Procurement																		
Well Pump VFD's: Installation																		
Customer Walk Through																		
Customer Sign Off																		
<b>Public Works</b>																		
HVAC: Recommissioning Existing Units																		
HVAC: Controls Modifications																		
Customer Walk Through																		
Customer Sign Off																		
Project Acceptance and close out																		

Schedule G  
Baseline

**Baseline Energy Use**

<b>Facility</b>	<b>Electric Usage (kWh/yr)</b>	<b>Electric Cost (\$/yr)</b>	<b>Natural Gas (CCF)</b>	<b>Natural Gas (\$)</b>	<b>Total Utility</b>
Town Hall	179,477	\$18,130			
Public Works					
Water Treatment Plant	519,863	\$46,441			
Dimmitt Community Center	319,553	\$32,358			
Other	98,599	\$10,452			

**Initial Base Energy Rates**

<b>Facility</b>	<b>Electric (\$/kWh)</b>	<b>\$/kW</b>
Town Hall	\$0.101	
Public Works	---	
Water Treatment Plant	\$0.089	
Dimmitt Community Center	\$0.101	
Other	\$0.106	

\* \$/kWh is calculated by subtracting the demand cost from the total utility bill and dividing it by the total kWh. \$/kW is calculated by dividing the demand charge by the actual kW. All values in table are for period from August, 2015 through July, 2017.

**Baseline Development.** The Baseline model has been developed as part of the Audit and will be used by the parties to mutually agree on the final Baseline. The Baseline model will represent pre-existing energy consumption for all end uses within the Facilities, not just those end uses affected by the ECMs.

The Company shall use the same energy simulation software used to develop the Baseline to develop the estimated cost savings. Projected energy consumption must be modeled using the same weather data and operating conditions as the established Baseline model.

The Baseline model shall reflect all energy-related effects of the current design features of the Facilities, including but not limited to quantity and type of glass, building orientation with respect to the physical site, overall wall and roof thermal resistance values, ventilation air requirements, humidity level, occupancy, and actual operating schedules. The Baseline model shall incorporate the energy-related effects of all renovations and/or modifications to the building envelope, internal spaces, and energy-consuming systems subsequent to the date of original construction.

The Baseline model shall be developed in accordance with recommendations and methods promulgated by professional societies and government organizations, such as:

- The Federal Energy Management Program’s (FEMP) *M&V Guidelines: Measurement and Verification for Federal Energy Management Projects version 3.0.*
- The American Society of Heating, Refrigerating, and Air Conditioner Engineers (ASHRAE).

**Baseline Calibration.** The Baseline model will be developed and calibrated with the assistance of utility bill data for no less than a 12-month period in order to be suitable for Town consideration. A detailed description of all existing Baseline conditions, development methods, calibration procedures, adjustments, and assumptions for each of the Facilities must be provided.

**Baseline Adjustments.** Adjustments to the Baseline model and the Baseline itself shall only reflect changes in energy or water consumption, or wastewater production, resulting from changes in weather, occupancy, and other substantiated factors (such as the modification or replacement of energy-consuming equipment performed by the Town outside the scope of the Contract). Adjustments shall not reflect any changes that result from the ECMs. A complete description of all Adjustments must be included in the Annual Reconciliation Report.

**Other.** The parties acknowledge that:

1. The Baseline may contain operational cost-saving measures and may include allowable cost avoidance if determined appropriate by the Town.

Schedule H  
Standards of Comfort

The Equipment will be maintained and operated in a manner that will provide the Standards of Comfort for heating, cooling, and lighting as described below:

The design space temperatures for heating are 68 to 70 degrees or less; the design space temperatures for cooling are 72 to 76 degrees or more. Where applicable, the control system will be set to achieve the nominal design space temperature for heating or cooling.

**Operating Schedule**

<b>Facility</b>	<b>Sunday</b>	<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>	<b>Saturday</b>
Town Hall	None	7am–6pm	7am–6pm	7am–6pm	7am–6pm	7am–6pm	None
Town Hall – Police Station	24/7	24/7	24/7	24/7	24/7	24/7	24/7
Public Works	None	7am–6pm	7am–6pm	7am–6pm	7am–6pm	7am–6pm	None
Water Treatment Plant	None	7am–4pm	7am–4pm	7am–4pm	7am–4pm	7am–4pm	None
Dimmitt Community Center	8am–6pm	5am–9pm	5am–9pm	5am–9pm	5am–9pm	5am–9pm	8am–6pm
Other							

## Schedule I

### Town's Maintenance Responsibilities

Except to the extent of any annual maintenance program with the Company, the Town shall be solely responsible to maintain the Facilities in a manner consistent with the manufacturers or Company's recommended maintenance schedules and procedures, maintain all records associated with such maintenance, and upon request of the Company, provide copies of such records thereof. Company may, if it deems necessary, inspect the Facilities from time to time to implement the Measurement & Verification Plan. The Company will provide Town with all Operation and Maintenance Manuals that will specify ongoing preventative maintenance requirements of the equipment installed. Company will also provide initial training and at reasonable request of Town, ongoing training when necessary to provide follow up training.

In the event Town does not use the Company as its service provider the Town is not released from its responsibility for maintaining the ECMs as described herein. Cancellation of Company's obligation does not terminate the Savings Guarantee unless Town fails to meet maintenance requires as described herein. If Company determines Town is not maintaining Facilities as required under the terms of this Contract, Company will immediately notify the Town of the deficiencies and potential impact to Energy Savings. The Company will outline the necessary corrective actions and allow a reasonable timeframe for the Town to make the necessary corrections.

Schedule J  
Company's Maintenance Responsibilities and Training

Company shall be responsible for HVAC Maintenance, Service and Repairs as outlined in Appendix 2, Guaranteed Professional Maintenance Agreement (“Maintenance Agreement”), pursuant to the terms of the Maintenance Agreement. Payments for Company’s Maintenance Responsibilities will be made according to Schedule D, Compensation to Company and Deliverables. Upon termination or expiration of the Maintenance Agreement, the Town and Company may negotiate a mutually acceptable maintenance agreement for future years.

In the event Town terminates the Guaranteed Professional Maintenance Agreement or otherwise does not use the Company as its service provider the Town is not released from its responsibility for maintaining the ECMs as described herein. Cancellation of Company’s obligation does not terminate the Savings Guarantee unless Town fails to meet maintenance requires as described herein.

The Company shall conduct the training program related to operation of the equipment described in Schedule A. The training related to the scope specified in Schedule A must be completed prior to acceptance of the installation; such acceptance shall not be unreasonably delayed by the Town. The Company shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software for 24 months after installation is completed. Such training shall be provided at no additional charge to the Town. The training provided will include:

Facility Retrofit and Energy Management Orientation

ABM will conduct an orientation at each Facility included in this Contract. The content of the training will include a presentation of the state of the Facility prior to the implementation of this program and a summary of the post installation results. The discussion will include:

- Affected Equipment and Infrastructure
- Expected effects on occupancy comfort
- Equipment Efficiency comparisons
- Implemented Energy Conversation Strategies
- Energy Cost Impact
- System Operation within the facility
- Control System Operation – options at the local level

This course is open to employees of the Town of Belleair as designated by the Town Manager or Project Administrator. The Town is responsible to provide a location for conducting the training. It is expected that the training will be conducted over a one to four hour period depending on the level of questions and discussion.

Building Management System Training

Following the completion of the installation of this program, a training course will be provided by ABM associated with the programming and operation of the controls system(s). The course is intended for Town of Belleair employees who will be granted permission by the Town to access the Building Management System with an expected class size of no more than 10 participants.

The Town will provide the classroom space for this training.

The course will include:

- System Architecture
- Energy Management Applications
- Occupancy Schedules
- Over-ride requirements
- Programming
- Troubleshooting
- Remote Access
- Hands On Training

The duration of this course is expected to be between 16 and 32 hours of training. It is designed for those individuals who are responsible for maintain comfort in the facility as well as achieving the projected energy savings through the implementation of the specified Energy Conversation Measures outlined within this Contract.

Additional training for new employees or refresher training for the original class participants is available upon request and is included under the scope of the M&V Services as part of this contract.

Schedule K  
Performance Bond

 **AIA** Document A312™ – 2010

**Performance Bond**

Bond No. 106815288

**CONTRACTOR:**  
*(Name, legal status and address)*  
ABM BUILDING SERVICES, LLC  
9326 Florida Palm Drive  
Tampa, FL 33619

**SURETY:**  
*(Name, legal status and principal place of business)*  
TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA  
One Tower Square  
Hartford, CT 06183

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

**OWNER:**  
*(Name, legal status and address)*  
TOWN OF BELLEAIR, FLORIDA  
901 Ponce de Leon Blvd.  
Belleair, FL 33756

**CONSTRUCTION CONTRACT**

**Date:** One Million One Hundred Twelve Thousand Three Hundred Ninety and No/100s Dollars  
**Amount:** (\$1,112,390.00)

**Description:**  
*(Name and location)*  
Guaranteed Energy, Water, and Wastewater Performance Savings Contract

**BOND**

**Date:** 2/8/18  
*(Not earlier than Construction Contract Date)*

One Million One Hundred Twelve Thousand Three Hundred Ninety and 00/100 Dollars  
**Amount:** (\$1,112,390.00)

Modifications to this Bond:  None  See Section 16

**CONTRACTOR AS PRINCIPAL**

**Company:** *(Corporate Seal)*  
ABM BUILDING SERVICES, LLC

**Signature:**   
**Name and Title:** La Am Drinkley, Director Insurance Services

*(Any additional signatures appear on the last page of this Performance Bond.)*

**SURETY**

**Company:** *(Corporate Seal)*  
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

**Signature:**   
**Name and Title:** Simone Gerhard, Attorney-in-Fact

*(FOR INFORMATION ONLY — Name, address and telephone)*

**AGENT or BROKER:**  
Aon Risk Insurance Services West, Inc.  
425 Market Street, Suite 2900  
San Francisco, CA 94105

**OWNER'S REPRESENTATIVE:**  
*(Architect, Engineer or other party.)*

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**§ 14 Definitions**

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: \_\_\_\_\_  
*(Corporate Seal)*

Company: \_\_\_\_\_  
*(Corporate Seal)*

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_, Attorney-in-Fact  
Address: \_\_\_\_\_

Schedule L

Certificate of Acceptance Investment Grade Energy Audit

I, the undersigned, hereby certify that I am a duly qualified representative of ABM and represent and warrant that:

1. ABM has met its obligations outlined in the Letter of Intent dated August 1, 2017
2. The Audit findings presentation will be made to Town Commission on January 16, 2018.
3. The written narrative has been delivered in accordance with Town's Specifications, and has been delivered to the Town on the 4th day of January, 2018.

Signature: \_\_\_\_\_

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

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

Town Acceptance:

I, the undersigned, hereby certify that I am the duly qualified representative of the Town of Belleair and in receipt of the Investment Grade Audit.

Signature: \_\_\_\_\_

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

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

Schedule M  
Projected Cash Flow

**Financed**

Year	Guaranteed Savings <sup>1</sup>	Performance Services <sup>2</sup>	Financed Payments <sup>3</sup>	Net Savings	Cumulative Savings
0	\$ 350,000		\$ 350,000	\$ -	\$ -
1	\$ 117,673	\$ 39,052	\$ 78,400	\$ 221	\$ 221
2	\$ 118,966	\$ 39,834	\$ 78,716	\$ 417	\$ 638
3	\$ 120,286	\$ 40,630	\$ 78,716	\$ 940	\$ 1,579
4	\$ 121,632	\$ 41,443	\$ 78,716	\$ 1,473	\$ 3,052
5	\$ 123,004	\$ 42,272	\$ 78,716	\$ 2,017	\$ 5,069
6	\$ 124,404	\$ 43,117	\$ 78,716	\$ 2,572	\$ 7,640
7	\$ 125,832	\$ 43,979	\$ 78,716	\$ 3,137	\$ 10,778
8	\$ 127,289	\$ 44,859	\$ 78,716	\$ 3,714	\$ 14,492
9	\$ 128,775	\$ 45,756	\$ 78,716	\$ 4,303	\$ 18,795
10	\$ 130,290	\$ 46,671	\$ 78,716	\$ 4,903	\$ 23,699
11	\$ 131,836	\$ 47,605	\$ 78,716	\$ 5,516	\$ 29,215
12	\$ 133,413	\$ 48,557	\$ 78,716	\$ 6,140	\$ 35,355
13	\$ 82,021	\$ 49,528	\$ -	\$ 32,494	\$ 67,849
14	\$ 83,661	\$ 50,519	\$ -	\$ 33,143	\$ 100,992
15	\$ 85,335	\$ 51,529	\$ -	\$ 33,806	\$ 134,799
<b>Total</b>	<b>\$ 2,109,417</b>	<b>\$ 675,351</b>	<b>\$ 1,294,276</b>	<b>\$ 134,799</b>	<b>\$ 454,172</b>

<sup>1</sup> Guaranteed Savings included in are defined in Schedule C

<sup>2</sup> Performance Services are the Ongoing Service and Maintenance Costs outlined in Schedule D

<sup>3</sup> Finance Payments are based on 3.53%, actual payments per financing documents

Schedule N  
Town Certificate of Acceptance of Installation

I, the undersigned, hereby certify that I am the duly qualified and acting Project Administrator of the Town of Belleair and, with respect to the above-referenced Installation Schedule dated \_\_\_\_\_, \_\_\_\_\_ to the Contract dated as of March 6, 2018, by and between the Town of Belleair and ABM Building Services ("Company"), represent and warrant that:

1. The equipment described in Schedule A and the Investment Grade Audit (Appendix 1) purchased from ABM Building Services, and properly invoiced, has been delivered and installed in accordance with Town's Specifications, is in good working order and is fully operational and properly functioning and has been fully accepted by Town on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

2. ABM has delivered equipment lists and Operation and Maintenance Manuals, inclusive of all warranties being provided to the Town of Belleair

3. Town certifies that it has inspected the installation and operation of the Conservation Measure's listed on Schedule A and Appendix 1, pursuant to Contract Section 3.2 and that it finds the equipment listed on Schedule A and Appendix 1 is fully and properly functioning.

TOWN OF BELLEAIR

Signature: \_\_\_\_\_

Title: Project Administrator

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

Guarantor shall not be required to make any inquiry, inspection or investigation in connection therewith.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of Delaware and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty, when executed and delivered, will constitute a valid and legally binding agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity. Town shall have the right to require Company to appoint a successor or alternative instrument supporting Company's Guarantee, acceptable to Town, in the event of any one or more of the following circumstances, uncorrected for more than thirty (30) days: entry of an order for relief under Title 11 of the United States Code; the making by Guarantor of a general assignment for the benefit of creditors; the appointment of a general receiver or trustee in bankruptcy of Guarantor's business or property; or action by Guarantor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation; unless within the specified thirty (30) day period, Guarantor (including its receiver or trustee in bankruptcy) provides to Town adequate assurances, reasonably acceptable to Town, of its continuing ability and willingness to fulfill its obligations under this Guaranty.

4. SETOFFS AND COUNTERCLAIMS. Without limiting Guarantor's own defenses and rights hereunder, Guarantor represents and warrants that its obligations to make payments pursuant to a Payment Demand shall not be subject to or limited by any rights, setoffs, counterclaims and other defenses to which Company or any other affiliate of Guarantor is or may be entitled to arising from or out of the Contract, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Company, provided however, that Town agrees that Guarantor shall be entitled to recover any payments made by Guarantor to Town pursuant to a Payment Demand if, as a result of a resolution of any bona fide dispute under the Contract concerning such payment or the Obligations, it is finally determined that Town was not entitled to receive such payment or make such Payment Demand, and Town agrees that it shall make promptly repay such amounts to Guarantor, pursuant to § 215.422 Florida Statutes, after the date of Guarantor's notice to Town that such repayment is due. Town shall not be liable for such payment to both the Guarantor and Company arising from the same dispute.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Town.

6. WAIVERS AND TERMINATION. Guarantor hereby waives (a) notice of acceptance of this Guaranty; (b) presentment and demand concerning the liabilities of Guarantor, except as expressly hereinabove set forth; and (c) any right to require that any action or proceeding be brought against Company or any other person, or except as expressly hereinabove set forth, to require that Town seek enforcement of any performance against Company or any other person, prior to any action against Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of Town in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Contract.

This Guaranty shall terminate on October 1, 2023 12:00 midnight Eastern Standard Time. Guarantor may terminate this Guaranty by providing written notice of such termination to Town and upon the effectiveness of such termination, Guarantor shall have no further liability hereunder except as provided by the last sentence of this paragraph. No such termination shall be effective until the appointment of a successor or alternative instrument supporting Company's Guarantee, or until all Obligations of Company have been fulfilled. No such termination shall affect Guarantor's liability with respect to any Transaction (as defined in the Contract) entered into prior to the time the termination is effective, which Transaction shall remain guaranteed pursuant to the terms of this Guaranty.

7. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by telegram or telecopier, as follows:

To Guarantor:  
ABM Industries Incorporated  
Suite 300  
New York, New York 10176

To Town:  
Town of Belleair  
901 Ponce de Leon Blvd.  
Belleair, Fl 33756

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telegram or telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by telegram or telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

8. ASSIGNMENT. Neither Guarantor nor Town shall assign this Guaranty without the express written consent of the other party.

9. MISCELLANEOUS. **THIS GUARANTY SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF FLORIDA.** This Guaranty shall be binding upon Guarantor, its successors and assigns and inure to the benefit of and be enforceable by Town, its successors and assigns. The Guaranty embodies the entire agreement and understanding between Guarantor and Town and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on February 8, 2018.

**ABM INDUSTRIES INCORPORATED**

By: 

Name: **Tom Gallo**

Title: Treasurer

Schedule P  
Town Measurement & Verification Plan (“M&V Plan”) to Monitor Cost Savings

During the term of the Agreement, Contractor will provide an Audit Report containing the Annual Reconciliation of Cost Savings using the M&V methodologies described in this section.

Contractor and Customer agree that the savings by ECM will be determined using the Measurement & Verification (M&V) Plan. The M&V methodologies proposed for the ECMs are based on the version 3.0 of the Federal Energy Management Program (FEMP) M&V Guidelines. The objective of the plan is to quantify the actual energy usage and compare those to the specific Baseline for each Facility, the difference of which is the Energy Unit Savings.

Company will conduct quarterly performance reviews to outline interim energy savings results with the Town. At a minimum, this review will include actual energy savings compared to projections for the time period and a discussion of appropriate corrective measures if energy savings fall short of projections.

The minimum expectations will include, but are not limited to, reconciliation reports (M&V Reports) and support documentation verifying that the amount of any actual annual savings meet or exceed total annual contract payments made by the Town [*§489.145 (3) d2*], confirming that the cost savings will meet or exceed the costs of the system, and estimated cost savings provided in the Contract [*§489.145 (4)c*]. The M&V Reports are required to use the Annual Report Outline from FEMP, *M&V Guidelines: Measurement and Verification for Federal Energy Management Projects version 3.0*. At a minimum, the M&V Reports requires the following:

- Copies of the data supporting the calculation of actual costs and actual computed costs:
  1. All utility bills,
  2. All samplings of usage
  3. All stipulated usage based on spot actual measurements as described in the formula
  4. Explanations of how the data was input into the formula to derive the reconciliation results in each M&V Report

Contractor will use the listed M&V protocols per ECM as shown in the table below.

ECM	M&V Option
Lighting Upgrades	A
VFD on Pumps	A
HVAC Equipment Upgrades	A
Building Envelope Upgrades	A

During the term of the Agreement, Contractor will make adjustments to Baseline due to changes in the Baseline as described in Exhibit G, building occupancy, weather data, and utility rate schedules, etc. The unit costs of energy will be applied to the energy savings calculated by this M&V plan. Current utility cost will be used as a basis for determining the unit cost.

The following descriptions are contained in FEMP M&V Guidelines Version 3.0 that describe the methods for Measurement and Verification of energy savings.

## **OPTION A – RETROFIT ISOLATION WITH KEY PARAMETER MEASUREMENT**

M&V Option A involves a retrofit or system level M&V assessment. The approach is intended for retrofits where key performance factors (e.g., end-use capacity, demand, power) or operational factors (e.g., lighting operational hours, cooling ton-hours) can be spot- or short-term-measured during the baseline and post-installation periods. Any factor not measured is estimated based on assumptions, analysis of historical data, or manufacturer's data.

All end-use technologies can be verified using Option A. However, the accuracy of this option is generally inversely proportional to the complexity of the measure. Thus, the savings from a simple lighting retrofit will typically be more accurately estimated with Option A than the savings from a more complicated chiller retrofit.

Properly applied, an Option A approach:

- Ensures that baseline conditions have been properly defined
- Confirms that the proper equipment/systems were installed and that they have the potential to generate predicted savings
- Verifies that the installed equipment/systems continue to have the capacity to yield the predicted savings during the term of the Agreement

Option A can be applied when identifying that the potential to generate savings is the most critical M&V issue, including situations where:

- The magnitude of savings is low for the entire project or a portion of the project to which Option A is applied.
- The risk of not achieving savings is low.
- The independent variables that drive energy use are not difficult or expensive to measure, and are not expected to change.
- Interactive effects can be reasonably estimated or ignored
- Long-term measurements are not warranted
- The agency is willing to accept some uncertainty

## **OPTION B – RETROFIT ISOLATION WITH ALL PARAMETER MEASUREMENT**

M&V Option B is a retrofit isolation or system-level approach. The approach is intended for retrofits with performance factors (e.g., end-use capacity, demand, power) and operational factors (lighting operational hours, cooling ton-hours) that can be measured at the component or system level and where long-term performance needs to be verified. It is similar to Option A, but uses periodic or continuous metering of all energy quantities, or all parameters needed to calculate energy, during the performance period. This approach provides the greatest accuracy in the calculation of savings, but increases the performance-period M&V cost.

The Option B approach ensures the same items as Option A, but also:

- Determines energy savings using periodic or continuous measurement of energy use or all parameters needed to calculate energy use during the term of the Agreement.

Option B is typically used when any or all of these conditions apply:

- When energy savings values per individual measure are desired
- When interactive effects can be estimated using methods that do not involve long-term measurements
- When the independent variables that affect energy use are not complex and excessively difficult or expensive to monitor
- When operational data on the equipment is available through control systems

- When sub-meters already exist that record the energy use of subsystems under consideration (e.g., a separate sub-meter for heating ventilation and air-conditioning (HVAC) systems)

**Reconciliation/Shared savings guidelines:**

1. Actual savings are measured against baseline costs (§ 489.145 (3)d2. Model § 4.9) (Verification of billings with the Company)
2. From Town energy bills, Company is to calculate and report the actual Cost Savings achieved for each Annual Reconciliation (M&V Report). Then Town is to confirm & document accuracy of reconciliation each year. (The annual actual savings calculation must be reported to Town, with supporting data, in individual units as broken down for the payment schedule, but may be combined for the entire Facility for purposes of the reconciliation)
3. Town is to document accuracy of claimed shared savings each calendar year. Identify the Town personnel responsible for the annual reconciliation.
4. Reconciliation must be per auditable Energy Conservation Measure.
5. Savings shall exceed payments to Company or shortfall is due.
6. A subsequent year's savings can be used to make up for earlier shortfalls, but not subsequent shortfalls.
7. Determination of shared savings/shortfall must comply with Florida accounting practices.
8. M&V Plans should provide that the Town is to confirm receipt of, and accuracy of, the following documentation from the Company in a Town evaluation report each year of M&V Activities and Verified Savings for Each Year, to include but not limited to the following :
  - a. *an overview of what was done and how savings are generated;*
  - b. *any changes in project scope between the final proposal (including any relevant delivery order modifications) and as-built conditions;*
  - c. *data by cost savings, energy units, energy cost/unit, and other savings values as applicable;*
    - i. *include all fuels/commodities for project, such as: electric energy, electric demand, natural gas, fuel oil, coal, water, etc.;*
  - d. *the performance period rate adjustment factors for energy and water and an analysis of whether they were applied correctly, and if so, how they were used properly;*
  - e. *Does the yearly Reconciliation Report provide actual energy and water rates at site for same period; Does it detail verified savings for energy conservation measure for each performance year.*
  - f. *a description of the impact in changes between the final proposal (including any relevant delivery order modifications) and as-built conditions based on post-installation M&V results reported in the initial Reconciliation Report;*
  - g. *confirmation that M&V activities match declared FEMP M&V option;*
  - h. *sufficiency of Company's explanation of why changes occurred in savings values, if expected cost savings vary by 10% or more from proposed savings;*
  - i. *sufficiency of Company's description of any data manipulation or analysis that was conducted prior to applying savings calculations; Did the reviewer verify the math in the savings calculations?*
  - j. *were the Company's detail measurements, monitoring, and inspections*

- conducted in accordance with M&V plan:*
- i. include measurement equipment used, equipment calibration documentation, dates/times of data collection or inspections, names of personnel, and documentation of Town witnessing, details to confirm adherence to sampling plan;*
  - ii. Include all post-installation measured values, periods of monitoring and durations and frequency of measurements, description of data format (headings, units, etc.);*
  - k. Detailed performance deficiencies that need to be addressed by the Company to the Town and the impact on generation of savings;*
  - l. documentation requirements to demonstrate completion of the deliverable; and*
  - m. remedies for failure to provide deliverables and other services and deliverables such as installation, maintenance, provision of records and data, training, timely obtaining required permits, and providing warranties.*
9. Payment must comply with Florida accounting practices.

Appendix 1  
Investment Grade Energy Audit

Appendix 2  
Guaranteed Professional Maintenance Agreement