

December 1, 2020

Harvey Katzen  
Bundled Energy Solutions  
ABM Building Solutions LLC  
14201 Franklin Avenue  
Tustin, CA 92780

**Re: Letter of Intent (LOI) for Investment Grade Audit**

Dear Mr. Katzen,

The City of Commerce (hereinafter "City") requests that ABM proceed with the Investment Grade Audit (IGA) for the final development of the City's energy efficiency projects which will reduce operating costs and upgrade aging infrastructure at critical City facilities. The IGA will include final project design and engineering including the design, engineering, scope of work and contract development. This Letter of Intent ("LOI") is made between The City of Commerce having an office at 2535 Commerce Way, Commerce, CA 90040 and ABM Building Solutions, LLC, having an office at 14201 Franklin Avenue, Tustin, CA 92780 (hereinafter "ABM"). City and/or ABM individually or collectively will be referred to as "Party" or "Parties".

This LOI shall be effective for a term of six (6) months from the date of its execution. It is understood and agreed that the Parties may extend the term in writing by mutual agreement.

The purpose of this IGA is to determine the feasibility of entering into a negotiated Energy Services Performance Contract (ESPC) per the California Government Code, Section 4217.10 et. seq. for energy conservation (Agreement) to be provided at facilities owned and/or operated by the City.

The City intends to enter into an Agreement with ABM if the following project parameters are met:

1. **Budget Impact:** Project must be budget neutral requiring no capital contribution from the City unless the City desires to contribute capital for additional non-budget neutral projects.
2. **Annual Savings:** Annual energy and operational savings must meet annual project costs at minimum for budget neutral projects.
3. **Energy Savings:** 100% of energy savings goes directly to the City. Savings is not shared with ABM.
4. **Project Funding:** The City shall qualify for 3<sup>rd</sup> party financing through a Tax Exempt Municipal Lease or another financing vehicle acceptable to the City.
5. **Rebate/Grant Application:** ABM shall include the management and application of all available grants and rebates all of which go to the City.
6. **Procurement Method:** Procurement shall meet provisions of California Government Code 4217.10 et. seq.

In the event ABM cannot meet these project parameters (items 1-6 listed above) in the IGA there will be no cost to the City for engineering, pre-construction activities, project development or estimating costs incurred by ABM for the development of this IGA.

In the event ABM meets the project parameters (items 1-6 listed above) in the IGA, and the parties execute the project Agreement, then the costs associated with engineering, pre-construction activities, project development and estimating costs shall be incorporated into the final lump sum fixed price of the Agreement.

In the event ABM meets the project parameters (items 1-6 listed above) in the IGA and the City does not enter into the project Agreement with ABM within sixty (60) days of submittal of the completed IGA, then the City shall pay ABM for its reasonable costs and expenses. These costs will be reimbursed at a price not to exceed \$0.00.

The Parties agree that they have formed the mutual intent to enter into a binding and enforceable agreement, that the terms set forth are essential, are sufficiently definite to be enforced, and that during the term hereof, ABM and the City will work together in good faith to finalize any incidental terms through mutual negotiations.

The Parties agree that they will treat and keep all proprietary information furnished to either of them by the other Party confidential to the same extent and with the same degree of care and confidence as each Party handles its own proprietary information. All proprietary information furnished to either Party hereunder shall not be communicated to third parties during or for two (2) years after expiration of, the period covered by this LOI. Each Party agrees and undertakes that its employees who will have access to such proprietary information will be required not to communicate such information to third parties and will strictly observe and comply with such obligations.

The Parties agree that they will meet together at 30%, 60% and 90% completion milestones during the development of the Investment Grade Audit to discuss scope, scope development, anticipated project size and funding, and any other issues deemed necessary for the completion of the Investment Grade Audit and the anticipated presentation of this Audit to the City Manager, City Council and City staff.

This Letter of Intent is subject to all United States federal and state laws and regulations relating to the activities contemplated herein, and to all governmental administrative acts or other restrictions pursuant to such laws and regulations.

ABM and City may disclose the existence or content of this LOI to third parties only with the prior consultation and written approval of the other Party.

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Edgar Cisneros, City Manager  
**City of Commerce**  
2535 Commerce Way  
Commerce, CA 90040

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Date

Accepted and Agreed:  
**ABM**

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Mike Kempa, Regional Director  
**ABM Building Solutions**  
14201 Franklin Avenue  
Tustin, CA 92780

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Date