

**CITY SCHOOL DISTRICT OF THE CITY OF NORTH TONAWANDA
NIAGARA COUNTY, NEW YORK**

**REQUEST FOR PROPOSALS
TO FINANCE EQUIPMENT UNDER AN ENERGY PERFORMANCE CONTRACT
IN THE AMOUNT OF \$5,350,000**

Overview

The City School District of the City of North Tonawanda, Niagara County, New York (the "District" or the "Lessee"), is seeking proposals (each, a "Proposal") from qualified respondents to be a third party lessor under a Lease-Purchase Agreement with the District (the "Lease"), the proceeds of which will be used to finance equipment for the implementation of certain energy conservation measures (collectively, the "Project") pursuant to an energy performance contract between the District and Danforth. (the "Performance Contract"). The Performance Contract with Danforth was executed on February 5, 2020. NYSED approval for the proposed work under the Performance Contract was granted on May 1, 2020. The District's 2019-2020 State building aid ratio is 84.2%.

The District seeks competitive proposals for a \$5,350,000 lease-purchase financing arrangement on the basis of a 15 year term with a final maturity on July 1, 2035.

Project Description

The Project contemplates the implementation of certain specified energy saving measures at various District buildings. The energy conservation measures to be financed are set forth in the attached Performance Contract.

Lease

Any proposed Lease shall define the purpose and objective of the financing and the rights and obligations of each party to the financing. Further, the Lease will clearly specify the applicable interest rate, as well as standard contractual terms and conditions. The form of the Lease-Purchase Agreement, and any related documents, including the escrow agreement, **must** be submitted with the proposal. Proposers must satisfy themselves that credit approval will be granted prior to submitting a proposal. All documents are subject to negotiation and modification by the District's bond counsel. All agreements and contractual conditions are required to conform with the laws of the State of New York (the "State") including but not limited to, the General Municipal Law, the Local Finance Law, the Education Law, the Energy Law and the regulations of the State Education Department, the Commissioner of Education and the Office of the State Comptroller. The District's bond counsel will review all draft documents before the submission of proposed final documents for consideration and/or approval by the Board of Education.

Lease Assignment

Assignment of the Lease and related documents by the successful proposer shall be subject to the prior written consent of the District. The Lease must state that any assignment or transfer of the Lessor's interest shall not be effective until the District has received prior written notice, signed by the Lessor, of the name, contact person, address, telephone number and tax identification number of the proposed assignee and the District has thereafter given its consent in writing. No assignment will be valid unless the Lessor has received the District's prior written consent thereto.

Amount

The amount to be financed under the Lease is \$5,350,000. The Lessor shall be responsible for all fees of the Lessor including legal, issuance, origination, escrow, commitment and closing costs. The District shall not incur or absorb any fees of the Lessor related to the Lessor's proposal, negotiations, closing or other activities related to this RFP or the proposed transaction. In the event that a transaction does not close because of the successful proposer's failure to meet the terms of this RFP, the successful proposer shall be responsible for any and all costs incurred by the District in connection with the failed transaction and its negotiation.

Specifications

Interest Rate The Lease Proposal must provide interest rate terms for a lease-purchase option with a final maturity on July 1, 2035, and shall clearly state the interest rate(s) under any varying options under which the

proposing firm will provide the District with financing under the Lease. The Proposal must also cite the index and margin used in establishing the interest rates cited.

Prepayment The Proposal must state that the District will have the right, at its option, to prepay the principal portion outstanding on the Lease, in whole or in part, at any time following 30 days written notice to the Lessor. The Proposal must disclose additional fees and terms, if any, that are required upon the exercise of this prepayment right, in addition to interest payable. The Proposal must also disclose how such amounts are to be calculated in the event that the District exercises its right of partial or whole prepayment.

Lease Payments The District will make periodic payments to the Lessor under the Lease. The Lease shall separately state the principal and interest components of the periodic payments to be made thereunder, and shall clearly state the applicable interest rate. The total of these payments, which include both principal and interest components made by the District, shall result in substantially level or declining annual debt service for the fiscal years ending June 30, 2022 to 2036. Debt service payments shall be detailed in an amortization schedule prepared by the proposer and provided to the District with its Proposal. For illustrative purposes, please assume the following:

Closing Date: July 1, 2020

Interest Payments: July 1, 2021, and semi-annually thereafter on January 1 and July 1 of each year through July 1, 2035. Principal Payments: July 1, 2021, and semi-annually thereafter on January 1 and July 1 with the final principal payment to be made on July 1, 2035.

The Proposal must state that the interest rate and other terms cited in the proposal will be good through the closing date. The Lease shall not become effective until the delivery of funds.

Term The Lease-Purchase Agreement is scheduled to close on July 1, 2020, with a final maturity on July 1, 2035.

Escrow Upon closing, it is anticipated that lease proceeds will be deposited in an escrow account to be utilized over the course of the implementation of the Project (the "Project Fund"). All monies held in the Project Fund are monies of the Lessee and shall not be subject to levy, attachment or lien of the Escrow Agent. The Project Fund shall be free of any security interest of the Escrow Agent. **The escrow provider must be a bank or trust company located and authorized to do business in New York State. Investment and collateralization of the moneys in such fund will be at the direction of the District and must be in compliance with the New York State General Municipal Law Sections 10 and 11.**

1. At the option of the District, the moneys in the Project Fund may be held uninvested in the Project Fund. If invested, the Escrow Agent shall invest amounts on deposit in the Project Fund solely at the written direction of an Authorized Officer of the District. Such investments shall be limited to the following:
 - (a) Cash in interest-bearing FDIC-insured special time deposit accounts in, or certificates of deposit issued by, the Escrow Agent, and not in or by any other bank or trust company. Deposit amounts in excess of FDIC insurance limits will be collateralized pursuant to New York State General Municipal Law Sections 10 and 11.
 - (b) Obligations of the United States of America or obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America, or in obligations of the State of New York.
 - (c) Cash in an interest-bearing FDIC-insured NOW, checking, money market or other demand deposit account of the Escrow Agent and not in or by any other bank or trust company. Deposit amounts in excess of FDIC insurance limits will be collateralized pursuant to New York State General Municipal Law Sections 10 and 11.

(d) In the absence of written investment direction, the monies shall be held in an interest-bearing, FDIC-insured, money market demand deposit account of the Escrow Agent and not in or by any other bank or trust company. Deposit amounts in excess of FDIC insurance limits will be collateralized pursuant to New York State General Municipal Law Sections 10 and 11.

All investments made shall be subject to the following conditions:

- (a) Such obligations shall be payable or redeemable at the option of the owner within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable in any event, at the option of the owner, within two years of the date of purchase. Any obligation that provides for the adjustment of its interest rate on set dates shall be deemed to be payable or redeemable for purposes of this paragraph on the date on which the principal amount can be recovered through demand by the holder thereof.
 - (b) Such obligations, unless registered or inscribed in the name of the District shall be purchased through, delivered to and held in the custody of the Escrow Agent. Such obligations shall be purchased, sold or presented for redemption or payment by such Escrow Agent in obligations only in accordance with prior written authorization from an Authorized Officer. All such transactions shall be confirmed in writing to the District by the Escrow Agent.
2. All investments described above shall be made and ownership recorded in accordance with all applicable requirements of Section 10 and Section 11 of the General Municipal Law.
 3. The Escrow Agent expressly acknowledges that the Lessee is not authorized to invest in mutual funds registered with the Securities Act of 1933, as amended and operated in accordance with Rule 2a-7 of the Investment Company Act of 1940, as amended, including no-load money market mutual funds limited to investments in obligations of or guaranteed by the United States of America or in obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America, or any similar mutual fund or other money market or liquid deposit investment vehicles.
 4. Monies and investments in the Escrow Fund shall not be subject to levy, attachment or lien by or for the benefit of the Escrow Agent or any creditor thereof.

Excess Proceeds In the event that there are excess proceeds available in the Project Fund at the end of the construction period, proceeds shall be transferred by the Escrow Agent to the Lessor and applied to the next succeeding lease payment and each lease payment thereafter until fully utilized. Such use of funds will not constitute lease prepayment and will not be subject to any administrative fees or charges.

UCC Filing The District will not provide a legal description for each District property in connection with this financing. In the event the winning bidder requires this information for the purposes of making a fixture filing pursuant to the applicable provisions of the Uniform Commercial Code, the winning bidder may obtain such information at its own effort and expense.

Warranties All manufacturers' warranties, expressed or implied, with respect to the Equipment acquired shall be assigned by the Lessor to the District.

Annual Appropriation The annual lease payments are subject to appropriation each year by the Board of Education of the District.

Non-Funding/Executory Clause Pursuant to the General Municipal Law §109-b, and the Energy Law §9-103 each Lease-Purchase Agreement shall contain an executory clause which shall state in substance, and as required by the cited statutes, that should payments not be appropriated by the District in any fiscal year the District will not be

obligated to pay the amounts due beyond the end of the last funded fiscal year and no liability on account thereof shall be incurred by the District beyond the amount of such monies. The Lease is not a general obligation of the District. Neither the faith and credit nor the taxing powers of the District are pledged to the payment of any amount due or to become due under the Lease. In the case of a failure to appropriate, the sole security for amounts due under the Lease shall be the Equipment. In the event that no funds or insufficient funds are appropriated by the District to pay the Lease, the Equipment may be acquired and sold by or on behalf of the Lessor, provided that any excess proceeds from such a sale, after deduction for and payment of fees, expenses and any taxes levied on the sale, shall be paid to the District. Prior to the sale or seizure of such equipment, the District shall be provided adequate written notice, and shall have a period of not less than 90 days from such notice to cure any default. Should such a sale or seizure take place there shall be no disruption to the District's operations to the extent possible.

Financing Documents Following notification of the award, the prospective Lessor must provide the District with a draft of its proposed financing documents, together with notification of its credit approval for the transaction no later than May 27, 2020. All financing documents are subject to review, negotiation and modification by the District's bond counsel. Closing is subject to the successful negotiation and approval of all documents by the District's bond counsel. The District reserves the right to rescind any award due to failure of successful negotiation of the parties to agree to the terms and conditions thereof, and to recover its costs in connection therewith. Closing is subject to final approval by the District's Board of Education by resolution.

Lease Termination Upon termination of a Lease through exercise of the District's option to prepay or through payment by the District of all Rental Payments and other amounts due with respect to the particular Equipment involved, the Lessor's security interest in such Equipment shall terminate, and the Lessor shall execute and deliver to the District such documents as the District may reasonably request to evidence the termination of the Lessor's security interest in such Equipment.

Tax Status The Lease shall qualify as a tax-exempt lease financing, that is, the interest component of the Lease will be exempt from Federal, New York State and, where applicable, New York City taxation. The Lease-Purchase Agreement will be designated as "bank qualified" pursuant to Section 265(b)(3) of the Internal Revenue Code. The District will not defend or hold the Lessor harmless from any adverse changes in the tax status of the transaction, after tax yield or cash flows resulting from changes in the Federal or State tax codes or regulations. At closing, the Lessor will receive the approving opinion of Hodgson Russ LLP, bond counsel to the School District, in substantially the form set forth in Exhibit A attached hereto. Hodgson Russ LLP, will be responsible for preparing the IRS Form 8038-G for the financing, for arranging for its execution, and for making a timely submission thereof to the Internal Revenue Service. Such submission will occur on or prior to the filing deadline of November 15, 2020 (assuming closing on July 1, 2020). The Lessor will be provided with the general form of the Form 8038-G for the transaction at closing.

Credit Rating The District's outstanding uninsured bonds are currently rated "Aa3" by Moody's Investors Service.

Binding Authority Each Proposal must be signed by an individual who is legally authorized to contractually bind the proposing firm. The Proposal shall remain in effect until the expected closing date of July 1, 2020.

Financial Information Links to select credit and project information may be found as follows:

- District Audited Financial Statements FYE 6/30/2018: <https://emma.msrb.org/ER1178787-ER921335-ER1321978.pdf>
- District Audited Financial Statements FYE 6/30/2019: <https://emma.msrb.org/ER1288057-ER1004393-ER1408300.pdf>
- 2019-20 Budget Information:
<https://www.ntschoools.org/site/handlers/filedownload.ashx?moduleinstanceid=4952&dataid=14319&FileName=Budget%20Statement%202019-20.pdf>
- Official Statement related to the District's \$16,240,000 School District Bond Anticipation Notes issued in August 2019: <https://emma.msrb.org/IssueView/Details/ER392470>

- Energy Performance Contract between the District and Danforth dated February 5, 2020 is attached.

Evaluation Process

During the evaluation process, the District reserves the right, where it may serve the District’s best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions.

Amendments to RFP

Any verbal information obtained from or statements made by the representative of the District or its designee at the time of examination of the documents shall not be construed as, in any way, amending this RFP document or being binding upon the District. Only such corrections or addenda that are issued in writing to all proposers shall become a part of the RFP. Any addendum issued during the RFP process shall be included in the RFP response and become a part of any subsequent contractual agreement.

Legal Requirements

The Lease is required to conform to the laws of the State of New York, including, but not limited to, the General Municipal Law, the Local Finance Law, the Education Law, the Energy Law and regulations promulgated by the Commissioner of Education and the Office of the State Comptroller.

Submission Requirements

In addition to submitting a completed **Proposal Response Form** as attached hereto, each proposing firm must include:

1. Examples of its prior experience with three (3) similar size lease-purchase financings for school districts in New York State;
2. Three references from jurisdictions that your firm has provided lease-purchase financing to in the past year; and
3. Any other information that would favor the use of your firm by the District.

Proposals are due by **11:00 a.m. on Thursday, May 21, 2020** by e-mail to:

Anthony Montoro
Assistant Superintendent of Administrative Services
City School District of the City of North Tonawanda
amontoro@ntschoools.org

Rick Ganci
Executive Vice President and Principal
Capital Markets Advisors
Tel: 716-662-3910
rganci@capmark.org

Questions regarding this RFP may be directed to Rick Ganci.

The District reserves the right, in its sole discretion, to reject any and all proposals, or any part thereof, received in response to this Request for Proposals, to waive formalities, to request additional information from any proposer, and to award and negotiate the terms of the contract with any proposer. The District intends to select the firm whose proposal is most advantageous to the District and best meets the District’s overall needs for this lease-purchase financing, and not necessarily the firm with the lowest cost proposal. In determining which proposal is most advantageous and in the District’s best interests, the District will evaluate, among other things, the overall financing cost (inclusive of any interest and fees) to the District, optional redemption provisions, responsiveness of each proposal to the terms of this RFP and applicable law, the terms and conditions of the proposed agreement, and the experience and reputation of the bidder in the State of New York. The District will not have any liability to any proposer for any costs or expenses incurred in connection with a response to this RFP.

All proposals shall be signed by an individual legally authorized to bind the proposing firm and the signer’s name shall also be typed or printed to or under the signature together with his/her title or designation.

Following receipt of the completed proposals, tentative notification will be made to the prospective Lessor whose response best meets the District’s needs and otherwise appears to provide the best basis for the award. It is expected that a formal award will be made by the Board of Education at its June 2nd meeting. Note that the

prospective Lessor must provide the District with a draft of its proposed financing documents, together with notification of credit approval in order for District officials to accept and grant final approval.

Summary of Estimated Dates

RFP sent to providers:	May 5, 2020
Proposal and Response Form Due:	May 21, 2020 (by 11:00 a.m.)
Selected Lessor Tentatively Approved:	May 22, 2020 *
Credit Approval Completed:	May 27, 2020
Draft Documents Delivered:	May 27, 2020
District Board Meeting Date**:	June 2, 2020 Lease approved
Closing of Lease:	July 1, 2020

*Subject to Board approval.

** The June 2nd Board of Education Meeting date is subject to change.

The District reserves the right to modify these dates.

Thank you for your anticipated response.

END OF RFP

PROPOSAL RESPONSE FORM

May 21, 2020

Ladies and Gentlemen:

In response to the City School District of the City of North Tonawanda, Niagara County (the "District") Request for Proposals ("RFP"), the undersigned, an authorized representative of _____ commits such firm to enter into a Lease-Purchase Agreement to provide the required refinancing of the project cost including equipment provided to the District by Danforth. under the Performance Contract that was referenced in the RFP. We understand that this Lease-Purchase Agreement is subject to the approval of the District's Board of Education. The submission of this Response Form indicates that we have read the District's RFP and are fully informed as to the extent and character of this request and we can satisfactorily comply with all specifications of the RFP.

We understand that the District will make payments under the Lease-Purchase Agreement in periodic installments, including interest and all financing costs. We understand the Lease-Purchase agreement will be funded (subject to the terms of the final documents and all applicable statues and regulations) following the approval of the District's Board of Education.

Our proposal, the terms of which are good through and including the anticipated closing date of July 1, 2020, is as follows:

The principal amount of the lease will be: \$5,350,000

Final Maturity will be: July 1, 2035

The interest rate on this loan will be: _____%

The index used to establish this interest rate is: _____

The margin added to the index to establish this interest rate is: _____

Prepayment Terms: _____

Lease payments will be payable on: _____

Other required fees, if any (please explain): \$ _____

Proposing Firm: _____

Contact: _____

Address: _____

Tel.: _____

E-mail: _____

Attachments: Sample Lease and Escrow Documents

EXHIBIT A
FORM OF BOND COUNSEL OPINION

July 1, 2020

City School District of the City of North Tonawanda
176 Walck Road
North Tonawanda, New York 14120

[LESSOR/AGENT]
[Address]
[Address]

Ladies and Gentlemen:

Re: City School District of the City of North Tonawanda, Niagara County, New York;
 \$5,350,000 Lease/Purchase Financing (Energy Performance Contract)

We have acted as counsel to the City School District of the City of North Tonawanda, Niagara County, New York (the "School District") in connection with the execution and delivery of an Agreement dated as of July 1, 2020 between the School District and [LESSOR/AGENT] ("LESSOR/AGENT"), and certain related and listed agreements, certificates, riders, addenda and schedules (collectively, the "Lease/Purchase Documents"). This letter is being delivered at the request of LESSOR/AGENT.

The opinions set forth in this letter, whether or not qualified by the phrase "to our knowledge," are subject to the following qualifications:

1. The opinions set forth in this letter are based solely upon (a) our review of, as submitted to us, (i) the Lease/Purchase Documents, (ii) a copy of a resolution of the Board of Education of the School District, adopted on June 2, 2020, pertaining to the Lease/Purchase Documents (the "Board Resolution" and, collectively with the Lease/Purchase Documents the "Reviewed Documents"), (b) our review of our open client files relating to the School District (the "File Review") and (c) such review of published sources of law as we have deemed necessary. Other than our review of the Reviewed Documents and the File Review, we have made no inquiry or other investigation as to any factual matter, including, but not limited to, (a) any review of any of the files and other records of the School District or any court or other governmental authority or (b) any review of any of our files other than our client files reviewed in the File Review.

2. We have assumed without any inquiry or other investigation (a) the legal capacity of each natural person, (b) the full power and authority of each person other than the School District with respect to the Lease/Purchase Documents to execute, deliver and perform each document heretofore executed and delivered or hereafter to be executed and delivered and to do each other act heretofore done or hereafter to be done by such person, (c) the due authorization, execution and delivery by each person other than the School District with respect to the Lease/Purchase Documents of each document heretofore executed and delivered or hereafter to be executed and delivered by such person and the due authorization and doing by such person of each other act heretofore done or hereafter to be done by such person, (d) the legality, validity, binding effect and enforceability as to each person other than the School District with respect to the Lease/Purchase Documents of each document heretofore executed and delivered or hereafter to be executed and delivered and of each act heretofore done or hereafter to be done by such person, (e) the payment of all required filing or recording fees and taxes, (f) no modification of any provision of any document and no waiver of any right or remedy, (g) the genuineness of each signature, the completeness of each document submitted to us, the authenticity of each document submitted to us as an original, the conformity to the original of each document submitted to us as a copy and the authenticity of the original of each document submitted to us as a copy, and (h) the truthfulness of each statement as to any factual matter contained in any of the Reviewed Documents.

3. We do not express any opinion concerning any law other than the law of New York and the federal law of the United States.

4. Any opinion concerning the validity, binding effect or enforceability of any of the Lease/Purchase Documents means that (i) such Lease/Purchase Document constitutes an effective contract under applicable law, (ii) no material provision of such Lease/Purchase Document is invalid under applicable law because of a specific statutory prohibition or public policy and is not subject in its entirety to a contractual defense under applicable law and (iii) while, as to the School District, no particular remedy will necessarily be available under applicable law and no particular provision of such Lease/Purchase Document will necessarily be upheld or enforced in any or each circumstance by a court applying applicable law, such availability of a particular remedy and such failure of a particular provision to be upheld or enforced will not preclude (A) the judicial enforcement under applicable law of the obligation of the School District to make any [Rent Payment] (as such term is defined in the Lease/Purchase Documents), subject to the provisions of the Lease/Purchase Documents concerning non-appropriation, (B) upon the occurrence and continuation of any material [Event of Default] (as such term is defined in the Lease/Purchase Documents), the acceleration of the maturity of all [Rent Payments] (as such term is defined in the Lease/Purchase Documents) becoming due during the fiscal year of the School District in which such [Event of Default] occurs and the judicial enforcement under applicable law of the obligation of the School District to pay such [Rent Payments] as such maturity is so accelerated and (C) upon such occurrence and continuation of such [Event of Default], the use of judicial process under applicable law to take possession of and dispose of the [Equipment] (as described in the Lease/Purchase Documents). Furthermore, the validity, binding effect or enforceability may be limited to or otherwise affected by (a) any bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar statute, rule, regulation or other law affecting the enforcement of creditors' rights and remedies generally or (b) the unavailability of, or any limitation on the availability of, any

particular right or remedy (whether in a proceeding or equity or at law) because of the discretion of a court or because of any equitable principal or requirement as to commercial reasonableness, conscionability or good faith.

5. We do not express any opinion concerning (a) any title to any property, whether real or personal or otherwise, (b) any perfection or priority of any mortgage, security interest or other lien or encumbrance on, in or affecting any property, whether real or personal or otherwise, (c) any recording or filing of any agreement or instrument creating any mortgage, security interest or other lien or encumbrance on, in or affecting any property, whether real or personal or otherwise, (d) any statute, ordinance, code, regulation, rule or other law, or any judgment, decree, order, permit or license, with respect to any environmental, zoning, site plan or subdivision matter with respect to any property, whether real or personal or otherwise, or (e) any requirement for the physical commencement or continuance of the construction, installation, occupancy or operation of any property, whether real or personal or otherwise.

Subject to the qualifications set forth in this letter, it is our opinion that:

1. The School District (a) is a school district including territory within the boundary of a city with a population of less than 125,000 duly established under the law of New York State and (b) has the requisite power (i) to carry out its purposes as set forth under the law of New York State and to acquire, hold and dispose of real and personal property for such purposes and (ii) to execute, deliver and perform the Lease/Purchase Documents.

2. The execution, delivery and performance by the School District of the Lease/Purchase Documents have been duly authorized by all necessary requisite action of the School District.

3. Each of the Lease/Purchase Documents (a) has been duly executed and delivered by the School District and (b) constitutes a valid and binding obligation of the School District enforceable against the School District in accordance with its terms.

4. To our knowledge, there is no pending or overtly threatened suit or other legal proceeding by or before any court or other governmental authority against the School District that challenges (a) the validity of the Lease/Purchase Documents, (b) the establishment or existence of the School District or (c) the power or authority of the School District to execute, deliver or perform the Lease/Purchase Documents.

5. The interest component of the [Rent Payments] to be made under the Lease/Purchase Documents is generally excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals. Such interest may, however, have different federal income tax consequences for certain taxpayers, such as financial institutions, property and casualty insurance companies, S corporations, certain foreign corporations, individual recipients of Social Security or Railroad Retirement benefits, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry the Lease/Purchase Documents (or interests therein).

6. Except as set forth below, the Lease/Purchase Documents do not constitute, individually or collectively, an “arbitrage bond” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”).

7. The interest component of the [Rent Payments] to be made under the Lease/Purchase Documents is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York).

The opinions set forth in paragraphs 5 and 6 above are subject to the condition that the School District comply with all requirements of the Lease/Purchase Documents and of the Code which must be satisfied subsequent to the execution and delivery of the Lease/Purchase Documents in order that the interest component of the [Rent Payments] to be made under the Lease Purchase Documents be, or continue to be, excluded from gross income for federal income tax purposes, including covenants and requirements regarding use, expenditure of proceeds and timely payment of certain investment earnings to the United States Treasury. The School District has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of the interest component of the [Rent Payments] to be made under the Lease/Purchase Documents in gross income for federal income tax purposes to be retroactive to the date of execution of the Lease/Purchase Documents. We express no opinion regarding other federal tax consequences arising with respect to the Lease/Purchase Documents.

This letter is intended solely for your benefit, and this opinion may be relied upon by the assignees of interests in the Lease/Purchase Documents, but only with regard to matters specifically set forth herein, and may not be referred to or otherwise used by any other person or other than in connection with the Lease/Purchase Documents, provided that copies of this opinion may be provided to any governmental, regulatory or self-regulating authority having jurisdiction over you without our consent.

Very truly yours,

HODGSON RUSS LLP

By:

John W. Danforth Company

Energy Performance Contract

Client Solutions Group

Date February 5, 2020

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1. Scope of Work
2. Assured Performance Guarantee
3. Contractual Obligations of Client
4. Price and Payment Terms

Table of Attachments

1. Certificate of Substantial Completion
2. Certificate of Final Completion
3. Lighting Survey/Performance Measure Parameters

Article 1 AGREEMENT

1.01 ENERGY PERFORMANCE CONTRACT

This Performance Contract (this "Agreement") is made this 5th day of February 2020 between:

PARTIES

John W. Danforth Company ("Danforth")
300 Colvin Woods Parkway
Tonawanda, NY 14150

And

North Tonawanda CSD ("Customer")
176 Walck Rd.
North Tonawanda NY 14120

RECITALS

WHEREAS, Customer desires to retain Danforth (Danforth) to perform the work specified in Schedule 1 (Scope of Work) hereto (the "Work") relating to the installation of the improvement measures (the "Improvement Measures") described therein; and

WHEREAS, Customer is authorized and empowered under applicable Laws (as defined below) to enter into this Agreement, and has taken all necessary action under applicable Laws to enter into this Agreement; and

WHEREAS, Customer has selected Danforth to perform the Work after it determined Danforth's proposal was the most advantageous to Customer in accordance with all applicable procurement and other Laws.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

- 1.02 **SCOPE OF THE AGREEMENT.** Danforth shall perform the Work set forth in Schedule 1. After the Work is Substantially Complete (as defined below) and the Certificate of Substantial Completion is executed by Customer and Danforth, Danforth shall provide the assured performance guarantee (the "Assured Performance Guarantee") and the measurement and verification services (the "M&V Services") set forth in Schedule 2. Customer shall make payments to Danforth for the Work and the M&V Services in accordance with Schedule 4 (Price and Payment Terms).
- 1.03 **AGREEMENT DOCUMENTS:** In addition to the terms and conditions of this Agreement, the Schedules and Attachments listed below are incorporated into and shall be deemed an integral part of this Agreement. In the event of any conflict between the Schedules or Attachments and this Performance Contract, the terms of this Performance Contract shall govern.

Table of Schedules

1. Scope of Work
2. Assured Performance Guarantee
3. Contractual Obligations of Client
4. Price and Payment Terms

Table of Attachments

1. Certificate of Substantial Completion
2. Certificate of Final Completion
3. Lighting Survey

Article 2 NEW YORK EXECUTORY STATEMENT

- 2.01 Pursuant to New York Energy Law 9-103(2), this contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefore shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract. Pursuant to 8 NYCRR § 155.20, this Agreement is subject to the approval of the Commissioner of Education of the State of New York.

Article 3 SUBSTANTIAL COMPLETION, FINAL COMPLETION

- 3.01 This Agreement shall become effective (the "Effective Date") on the date of the last signature contained on the signature page of this document). Danforth shall commence performance of the Work within ten (10) business days after financing is in place. For purposes of this Agreement, the term "Substantial Completion Date" means the date on which Customer executes a Certificate(s) of Substantial Completion substantially in the form attached hereto as Attachment 1.
- 3.02 For purposes of this Agreement, "Substantial Completion" means that Danforth has provided sufficient materials and services to permit Customer to operate the Improvement Measures. Danforth may issue multiple Certificates of Substantial Completion throughout the course of the Work as major portions of the Work are completed and Customer obtains beneficial use of installed equipment. The M&V Services shall commence on the first day of the month following the month in which Customer executes a Certificate of Substantial Completion.
- 3.03 Final Completion. Upon Customer's determination that all Work contemplated by this Agreement is completed to Customer's satisfaction, Customer will execute the Certificate of Final Completion, attached hereto as Attachment 2.

Article 4 DELAYS AND IMPACTS

- 4.01 If Danforth is delayed in the commencement, performance, or completion of the Work and/or M&V Services by causes beyond its control and without its fault, including but not limited to (i) inability to access property; (ii) concealed or unknown conditions encountered at the project, which differ from the conditions represented by Customer in the bid documents or otherwise disclosed by Customer to Danforth prior to the commencement of the Work; (iii) a Force Majeure (as defined below) condition; (iv) failure by Customer to perform its obligations under this Agreement;
- or (v) failure by Customer to cooperate with Danforth in the timely completion of the Work, Danforth shall provide written notice to Customer of the existence, extent of, and reason for such delays and impacts. Under such circumstances, an equitable adjustment in the time for performance, price and

payment terms, and the Assured Performance Guarantee shall be mutually agreed to by Danforth and Customer.

Article 5 ACCESS

- 5.01 Customer shall provide Danforth, its subcontractors, and its agents reasonable and safe access to all facilities and properties in Customer's control that are subject to the Work and M&V Services.

Article 6 PERMITS, TAXES, AND FEES

- 6.01 Unless otherwise specified in Schedule 3 (Contractual Obligations of Client), Danforth shall be responsible for obtaining all building permits required for it to perform the Work. Unless otherwise specified in Schedule 1 (Scope of Work), Customer shall be responsible for obtaining all other permits, licenses, approvals, permissions and certifications, including but not limited to, all zoning and land use changes or exceptions required for the provision of the Work or the ownership and use of the Improvement Measures.
- 6.02 Danforth shall not be obligated to provide any changes to or improvement of the facilities or any portion thereof required under any applicable building, fire, safety, sprinkler or other applicable code, standard, law, regulation, ordinance or other requirement unless the same expressly regulates the installation of the Improvement Measures. Without limiting the foregoing, Danforth's obligations with respect to the Work is not intended to encompass any changes or improvements that relate to any compliance matters (whether known or unknown) that are not directly related to the installation of the Improvement Measures or which have been imposed or enforced because of the occasion or opportunity of review by any governmental authority.
- 6.03 Customer shall be responsible for and shall pay when due all assessments, charges and sales, use, property, excise, or other taxes now or hereafter imposed by any governmental body or agency upon the provision of the Work or the M&V Services, implementation or presence of the Improvement Measures, the use of the Improvement Measures or payments due to Danforth under this Agreement, other than taxes upon the net income of Danforth.
- 6.04 Customer shall also be responsible for real or personal property taxes relating to equipment or material included in the Improvement Measures. Any fees, taxes, or other lawful charges paid by Danforth on account of Customer shall become immediately due from Customer to Danforth.

Article 7 WARRANTY

- 7.01 Danforth will perform the Work in a professional, workman-like manner.
- 7.02 Danforth will promptly re-perform any non-conforming Work for no charge, as long as Customer provides written notice to Danforth within two (2) years following the Substantial Completion Date(s) or such other period identified in Schedule 1.
- 7.03 If Danforth installs or furnishes goods or equipment under this Agreement, and such goods or equipment are covered by an end-user warranty from their manufacturer, Danforth will, to the extent permissible, transfer the benefits of such warranty to Customer, and will assist Customer in making any warranty claims.
- 7.04 The foregoing remedy with respect to the Work, together with any remedy provided by goods or equipment manufacturers, shall be Customer's sole and exclusive remedies for warranty claims.
- 7.05 Customer agrees that the two (2) year period following the Substantial Completion Date(s), or such other period identified in Schedule 1, shall be a reasonable time for purposes of submitting valid warranty claims with respect to the Work. NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE PROVIDED BY Danforth.
- 7.06 This warranty does not extend to any Work that has been abused, altered, or misused, or repaired by Customer or third parties without the supervision or prior written approval of Danforth. Except with respect to goods or equipment manufactured by Danforth and furnished to Customer hereunder, for

which Danforth shall provide its express written manufacturer's warranty, Danforth shall not be considered a merchant or vendor of goods or equipment.

Article 8 ASBESTOS-CONTAINING MATERIALS/ OTHER HAZARDOUS MATERIALS

- 8.01 Asbestos-Containing Materials: Neither party desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of asbestos-containing materials ("ACM"). Consistent with applicable Laws, Customer shall supply Danforth with any information in its possession relating to the presence of ACM in areas where Danforth undertakes any Work or M&V Services that may result in the disturbance of ACM.
- 8.02 It is Danforth's policy to seek certification for facilities constructed prior to 1982 that no ACM is present, and Customer shall provide such certification for buildings it owns, or aid Danforth in obtaining such certification from facility owners in the case of buildings that Customer does not own, if Danforth will undertake Work or M&V Services in the facility that could disturb ACM.
- 8.03 If either Customer or Danforth becomes aware of or suspects the presence of ACM that may be disturbed by Danforth's Work or M&V Services, it shall promptly stop the Work or M&V Services in the affected area and notify the other. As between Customer and Danforth, Customer shall be responsible at its sole expense for addressing the potential for or the presence of ACM in conformance with all applicable Laws and addressing the impact of its disturbance before Danforth continues with its Work or M&V Services, unless Danforth had actual knowledge that ACM was present and acted with intentional disregard of that knowledge, in which case (i) Danforth shall be responsible at its own expense for remediating areas impacted by the disturbance of ACM, and (ii) Customer shall resume its responsibilities for the ACM after Danforth's remediation has been completed.
- 8.04 Other Hazardous Materials: Danforth shall be responsible for removing or disposing of any Hazardous Materials (as defined below) that it uses in providing Work or M&V Services ("Danforth Hazardous Materials") and for the remediation of any areas impacted by the release of Danforth Hazardous Materials.
- 8.05 For other Hazardous Materials that may be otherwise present at Customer's facilities ("Non-Danforth Hazardous Materials"), Customer shall supply Danforth with any information in its possession relating to the presence of such materials if their presence may affect Danforth's performance of the Work or M&V Services.
- 8.06 If either Customer or Danforth becomes aware of or suspects the presence of Non-Danforth Hazardous Materials that may interfere with Danforth's Work or M&V Services, it shall promptly stop the Work or M&V Services in the affected area and notify the other. As between Customer and Danforth, Customer shall be responsible at its sole expense for removing and disposing of Non-Danforth Hazardous Materials from its facilities and the remediation of any areas impacted by the release of Non-Danforth Hazardous Materials, unless Danforth had actual knowledge that Non-Danforth Hazardous Materials were present and acted with intentional disregard of that knowledge, in which case (i) Danforth shall be responsible at its own expense for remediating any areas impacted by the release of such Non-Danforth Hazardous Materials, and (ii) Customer shall remain responsible at its sole expense for the removal of Non-Danforth Hazardous Materials that have not been released and for releases not resulting from Danforth's performance of the Work or M&V Services.
- 8.07 For purposes of this Agreement, "Hazardous Materials" means any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under applicable Law relating to or addressing public or employee health and safety and protection of the environment, or which is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel, fuel, another petroleum hydrocarbon product, or polychlorinated biphenyls.
- 8.08 "Hazardous Materials" specifically includes mold and lead-based paint and specifically excludes ACM. Notwithstanding anything herein to the contrary, Danforth shall have no obligations relating to the

identification, abatement, cleanup, control, removal, or disposal of mold, regardless of the cause of the mold.

- 8.09 **Customer Environmental Indemnity:** To the fullest extent permitted by Law, Customer shall indemnify and hold harmless Danforth and Danforth's subcontractors, and their respective directors, officers, employees, agents, representatives, shareholders, affiliates, and assigns and successors, from and against any and all losses, costs, damages, expenses (including reasonable legal fees and defense costs), claims, causes of action or liability, directly or indirectly, relating to or arising from the Customer's use, or the storage, release, discharge, handling or presence of ACM, mold or Non-Danforth Hazardous Materials on, under or about the facilities, or Customer's failure to comply with its obligations under this Section 8.
- 8.10 **Danforth Environmental Indemnity:** To the fullest extent permitted by Law, Danforth shall indemnify and hold harmless Customer and its respective directors, officers, employees, agents, representatives, shareholders, affiliates, and assigns and successors, from and against any and all losses, costs, damages, expenses (including reasonable legal fees and defense costs), claims, causes of action or liability, directly or indirectly, relating to or arising from Danforth's failure to comply with its obligations under this Section 8.

Article 9 CHANGE ORDERS

- 9.01 The parties, without invalidating this Agreement, may request changes in the Work to be performed under this Agreement, consisting of additions, deletions, or other revisions to the Work ("Change Orders"). The price and payment terms, time for performance and, if necessary, the Assured Performance Guarantee, shall be equitably adjusted in accordance with the Change Order. Such adjustments shall be determined by mutual agreement of the parties.
- 9.02 Danforth may delay performance until adjustments arising out of the Change Order are clarified and agreed upon. Any Change Order must be signed by an authorized representative of each party. If concealed or unknown conditions are encountered at the project, differing from the conditions represented by Customer in the bid documents or otherwise disclosed by Customer to Danforth prior to the commencement of the Work, price and payment terms, time for performance and, if necessary, the Assured Performance Guarantee, shall be equitably adjusted by mutual agreement of the parties.
- 9.03 Claims for equitable adjustment may be asserted in writing within a reasonable time from the date a party becomes aware of a change to the Work by written notification. Failure to promptly assert a request for equitable adjustment, however, shall not constitute a waiver of any rights to seek any equitable adjustment with respect to such change.

Article 10 CUSTOMER FINANCING; TREATMENT; TAXES

- 10.01 The parties acknowledge and agree that Danforth is not making any representation or warranty to Customer with respect to matters not expressly addressed in this Agreement, including, but not limited to:
- (a) Customer's ability to obtain or make payments on any financing associated with paying for the Improvement Measures, related services, or otherwise;
 - (b) Customer's proper legal, tax, accounting, or credit rating agency treatment relating to this Agreement; and
 - (c) the necessity of Customer to seek additional funding for any purpose.
- 10.02 Customer is solely responsible for its obligations and determinations with respect to the foregoing matters. In addition, the parties acknowledge and agree that Customer shall be responsible to comply, at its cost and expense, with all Laws that may be applicable to it relating to performance contracting, including, without limitation, any requirements relating to the procurement of goods and/or services and any legal, accounting, or engineering opinions or reviews required or obtained in connection with this Agreement.

Article 11 INSURANCE, INDEMNIFICATION, AND LIMITATION OF LIABILITY

11.01 Danforth agrees that it will carry all required insurances as it relates to the Work to be performed under this Agreement, including workers' compensation and disability insurance, automobile liability and comprehensive general and property damage liability and such other insurance as is customary and reasonable for a contractor performing such services. Without limitation, Danforth agrees that it shall procure, carry, pay (at its own expense) and shall maintain said insurance in amounts no less than those set forth below in full force and effect at all times until the Work has been completed, and that Customer shall be listed as an additional insured, and shall provide a certificate evidencing such coverage to Customer before requesting Work. Danforth's insurers shall be authorized to do business in the State of New York. Danforth shall require its subcontractors and agents performing Work under this Agreement to procure and maintain similar insurance and to provide Customer with certificates evidencing the existence of such coverage.

COVERAGE'S	LIMITS OF LIABILITY
(a) Worker's Compensation Insurance or self-insurance, including Employer's Liability	Statutory
(b) Commercial General Liability Insurance	\$2,000,000 Per Occurrence \$5,000,000 Aggregate
(c) Comprehensive Automobile Liability Insurance	\$5,000,000 Combined Single Limit
(d) NYS Disability and Family Protection Leave Coverage	Statutory
(e) The above limits may be obtained through primary and excess policies, and may be subject to self-insured retentions.	

11.02 Customer shall also maintain insurance coverage, of the types and in the amounts customary for the conduct of its business, throughout the term of this Agreement.

11.03 INDEMNIFICATION. To the fullest extent permitted by applicable Law, each party shall indemnify the other with respect to any third party claim alleging bodily injury, including death, or property damage to the extent such injury or damage is caused by the negligence or willful misconduct of the indemnifying party. A condition precedent to any obligation of a party to indemnify the other pursuant to this Section 11.03 shall be for the indemnified party to promptly advise the indemnifying party of the claim pursuant to the notice provision of this Agreement.

11.04 LIMITATION OF LIABILITY. Neither DANFORTH nor Customer will be responsible to the other for any special, indirect, consequential, remote, punitive, exemplary, loss of profits or revenue, loss of use, or similar damages, regardless of how characterized and regardless of a party having been advised of the possibility of such potential losses or relief, arising in any manner from this Agreement, the Work, the Improvement Measures, the premises, the M&V Services, or otherwise.

Article 12 FORCE MAJEURE.

12.01 Neither party will be responsible to the other for damages, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence of that party, except for those liquidated damages contemplated and agreed to by and between the parties above. Such conditions (each, a "Force Majeure") include, but are not limited to: acts of God; acts of government agencies; strikes; labor disputes; fires; explosions or other casualties; thefts; vandalism; riots or war; acts of terrorism; electrical power outages; interruptions or degradations in telecommunications, computer, or electronic communications systems; changes in Laws; or unavailability of parts, materials or supplies.

Article 13 DISPUTE RESOLUTION.

13.01 Danforth and Customer will attempt to settle any controversy, dispute, difference, or claim between them concerning the performance, enforcement, or interpretation of this Agreement (collectively,

"Dispute") through direct discussion in good faith, but if unsuccessful, will submit any Dispute to non-binding mediation in the nearest major metropolitan area of the state where the project is performed.

- 13.02 If the parties are unable to agree on a mediator or a date for mediation, either party may request JAMS, Inc. to appoint a mediator and designate the time and procedure for mediation. Such mediator shall be knowledgeable, to each party's reasonable satisfaction, with respect to matters concerning construction law.
- 13.03 Neither Danforth nor Customer will file a lawsuit against the other until not less than sixty (60) days after the mediation referred to herein has occurred, unless one or both parties is genuinely and reasonably concerned that any applicable statute of limitations is on the verge of expiring.
- 13.04 DANFORTH AND CUSTOMER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL AS TO ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR DIRECTLY OR INDIRECTLY RELATED TO THIS AGREEMENT, INCLUDING CONTRACT, TORT AND STATUTORY CLAIMS, AND EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS UNDER THIS AGREEMENT.

Article 14 MISCELLANEOUS PROVISIONS

- 14.01 Design Professional Services. Danforth is required to retain the architectural and engineering services of LaBella Associates, DPC, 300 Pearl Street, Suite 130, Buffalo, NY 14202, for the Improvement Measures, as applicable, throughout the term of this Agreement.
- 14.02 DANFORTH'S PROPERTY. All materials furnished or used by Danforth personnel and/or Danforth subcontractors or agents at the installation site, including documentation, schematics, test equipment, software and associated media remain the exclusive property of Danforth or such other third party. Customer agrees not to use such materials for any purpose at any time without the express authorization of Danforth. Customer agrees to allow Danforth personnel and/or Danforth subcontractors or agents to retrieve and to remove all such materials remaining after installation or maintenance operations have been completed. Customer acknowledges that any software furnished in connection with the Work and/or M&V Services is proprietary and subject to the provisions of any software license agreement associated with such software.
- 14.03 GOVERNING LAW. This Agreement and the construction and enforceability thereof shall be interpreted in accordance with the laws of the State of New York without regard to principles of conflicts of laws.
- 14.04 CONSENTS; APPROVALS; COOPERATION. Whenever Customer's consent, approval, satisfaction or determination shall be required or permitted under this Agreement, and this Agreement does not expressly state that Customer may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement.
- 14.05 Whenever Customer's cooperation is required by Danforth in order to carry out Danforth's obligations hereunder, Customer agrees that it shall act in good faith and reasonably in so cooperating with Danforth and/or Danforth's designated representatives or assignees or subcontractors. Customer shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the performance of the Work or M&V Services.
- 14.06 FURTHER ASSURANCES. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.
- 14.07 INDEPENDENT CONTRACTOR. The relationship of the parties hereunder shall be that of independent contractors. Nothing in this Agreement shall be deemed to create a partnership, joint venture, fiduciary, or similar relationship between the parties.
- 14.08 POWER AND AUTHORITY. Each party represents and warrants to the other that (i) it has all requisite power and authority to execute and deliver this Agreement and perform its obligations hereunder, (ii) all corporate, board, body politic, or other approvals necessary for its execution, delivery, and

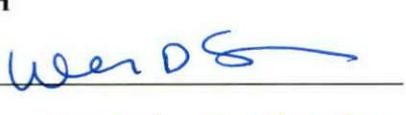
performance of this Agreement have been or will be obtained, and (iii) this Agreement constitutes its legal, valid, and binding obligation.

- 14.09 SEVERABILITY. In the event that any clause, provision, or portion of this Agreement 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 Agreement unless the result would be manifestly inequitable or materially impair the benefits intended to inure to either party under this Agreement.
- 14.10 COMPLETE AGREEMENT. It is understood and agreed that this Agreement, together with the Schedules and Attachments, contains the entire agreement between the parties relating to all issues involving the subject matter of this Agreement. No binding understandings, statements, promises or inducements contrary to this Agreement exist.
- 14.11 This Agreement supersedes and cancels all previous agreements, negotiations, communications, commitments and understandings with respect to the subject matter hereof, whether made orally or in writing. Each of the parties to this Agreement expressly warrants and represents to the other that no promise or agreement which is not herein expressed has been made to the other, and that neither party is relying upon any statement or representation of the other that is not expressly set forth in this Agreement. Each party hereto is relying exclusively on the terms of this Agreement, its own judgment, and the advice of its own legal counsel and/or other advisors in entering into this Agreement.
- 14.12 Customer acknowledges and agrees that any purchase order issued by Customer associated with this Agreement is intended only to establish payment authority for Customer's internal accounting purposes. No purchase order shall be considered a counteroffer, amendment, modification, or other revision to the terms of this Agreement.
- 14.13 HEADINGS. The captions and titles in this Agreement are for convenience only and shall not affect the interpretation or meaning of this Agreement.
- 14.14 COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one single agreement between the parties.
- 14.15 NOTICES. All notices or communications related to this Agreement shall be in writing and shall be deemed served if and when sent by facsimile or mailed by certified or registered mail: to Danforth at the address listed on the first page of this Agreement, ATTN: VP of Sales, with a copy to Danforth, ATTN: General Counsel - Client Solutions, 300 Colvin Woods Parkway, Tonawanda, New York, 14150: and to Customer at the address listed on the first page of this Agreement.
- 14.16 CLEANUP. Danforth shall keep the premises and the surrounding area free from accumulation of waste materials or rubbish caused by the Work and, upon completion of the Work, Danforth shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials.
- 14.17 SAFETY; COMPLIANCE WITH LAWS. Danforth shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work and M&V Services. Each of Danforth and Customer shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities (collectively, "Laws") in connection with its performance hereunder.

CUSTOMER

Signature: 
Printed Name: Matthew Kennedy
Title: Board President
Date: 02/05/2020

DANFORTH

Signature: 
Printed Name: Wendy D. Glauber
Title: General Counsel
Date: 2/7/2020

Schedule 1 SCOPE OF WORK

FIM 1. LED Lighting

The LED retrofit scope includes removing the existing lamps and ballasts, rewiring the fixtures & replacing the tombstones, installing new socket bars and installing the new LED lamps with integrated drivers. A line-by-line survey of all fixtures by building is in Attachment 3

- High School
- Spruce Elementary School
- Drake Elementary School
- Gilmore Elementary / Administration

Interior Lighting Upgrade Middle School W/Wall Controllers

Remove and replace existing fluorescent classroom lighting fixtures equipped with motion sensors for occupancy/vacancy & dimming. Furnish and install Wall station controllers. A line-by-line survey of the fixtures included is in Attachment 3

Interior Lighting Upgrade Intermediate School (Special Ed. Fixtures & Controllers)

Special Education: Remove existing fluorescent classroom lighting fixtures. Furnish and install new fixtures equipped with motion sensors for occupancy/vacancy & dimming. Furnish and install wall station controllers. A line-by-line survey of the fixtures included is in Attachment 3

The balance of the intermediate school will receive a LED retrofit scope, which includes removing the existing lamps and ballasts, rewiring the fixtures & replacing the tombstones, installing new socket bars and installing the new LED lamps with integrated drivers. A line-by-line survey of the fixtures included is in Attachment 3

LED Interior Upgrade Ohio Elem New Fixtures

Furnish and install new dome wrap fixtures on pendants that will be mounted level to floor. New fixtures will be equipped with motion sensors for occupancy/vacancy & dimming. Furnish and install Wall station controllers. A line-by-line survey of the fixtures included is in Attachment 3

The balance of the school will receive a LED retrofit scope, which includes removing the existing lamps and ballasts, rewiring the fixtures & replacing the tombstones, installing new socket bars and installing the new LED lamps with integrated drivers. A line-by-line survey of the fixtures included is in Attachment 3

FIM 2. DDC Replacement

High School / Middle School

- Replace existing DDC with new DDC
- Extend DDC to uncontrolled equipment e.g. fin radiation, cab heaters, convectors etc.
- Install exhaust fan controls on fans that are not on current DDC
- High School Library RTU economizer cooling controls
- Improved scheduling and temperature control to accurately reflect occupancy
- Middle School transformer room OA damper control
- Install boiler isolation valves and control so flow goes through only the firing boiler (Science Wing)
- Install gravity relief dampers/controls on gravity vents that are not on DDC, controls will close the dampers during unoccupied hours
- Replace VFDs that have failed and are currently running in bypass [(2) 3 HP lead/lag HW pumps 6A/B; (2) 7.5 HP lead/lag HW pumps 9A/B, (1) 30 HP supply fan AHU 3]
- Occupancy based ventilation control in the gyms, auditorium, HS library, and MS tech rooms
- Optimal start sequencing of HVAC equipment for timely building warm-up
- Holiday unoccupied scheduling
- Extend DDC to DHW recirculation pumps to operate only during occupied hours
- Install variable frequency drives to control the constant volume hot water pumps for the science wing: (2) 5HP lead/lag pumps
- Install a flue damper that opens when firing and closes when not firing. (Science Wing)
- Open triple duty valves on the lead/lag hot water pumps: (2) 5 HP pumps 11A/B, (2) 5 HP pumps 10A/B, (2) 3 HP pumps 7A/B, (2) 3 HP pumps 6A/B & perform water balancing for proper flow and efficiency

Intermediate School

- Replace existing DDC with new DDC
- Extend DDC to uncontrolled equipment e.g. fin radiation, cab heaters, convectors etc.
- Install exhaust fan controls on fans that are not on current DDC
- Library and computer room RTU economizer cooling controls
- Improved scheduling and temperature control to accurately reflect occupancy
- Install gravity relief dampers/controls on gravity vents that are not on DDC, controls will close the dampers during unoccupied hours
- Replace VFDs that have failed and are currently running in bypass [(2) 15 HP lead/lag HW pumps]
- Occupancy based ventilation control in the cafeteria and gym
- Optimal start sequencing of HVAC equipment for timely building warm-up
- Holiday unoccupied scheduling
- Extend DDC to DHW recirculation pumps to operate only during occupied hours

Ohio Elementary

- Replace existing DDC with new DDC
- Extend DDC to uncontrolled equipment e.g. fin radiation, cab heaters, convectors etc.
- Install exhaust fan controls on fans that are not on current DDC
- Improved scheduling and temperature control to accurately reflect occupancy
- Install gravity relief dampers/controls on gravity vents that are not on DDC, controls will close the dampers during unoccupied hours
- Occupancy based ventilation control in the gym

- Optimal start sequencing of HVAC equipment for timely building warm-up
- Holiday unoccupied scheduling
- Extend DDC to DHW recirculation pumps to operate only during occupied hours
- Install variable frequency drives to control the constant volume hot water pumps for the: (2) 10HP lead/lag pumps & (2) 5HP

Spruce Elementary

- Replace existing DDC with new DDC
- Extend DDC to uncontrolled equipment e.g. fin radiation, cab heaters, convectors etc.
- Install exhaust fan controls on fans that are not on current DDC
- Improved scheduling and temperature control to accurately reflect occupancy
- Install gravity relief dampers/controls on gravity vents that are not on DDC, controls will close the dampers during unoccupied hours
- Replace VFDs that have failed and are currently running in bypass [(2) 7.5 HP lead/lag HW pumps]
- Occupancy based ventilation control in the gym
- Optimal start sequencing of HVAC equipment for timely building warm-up
- Holiday unoccupied scheduling
- Extend DDC to DHW recirculation pumps to operate only during occupied hours
- Open triple duty valves on the (2) 7.5 HP lead/lag hot water pumps & perform water balancing for proper flow and efficiency
- Repipe the boilers so the return water for all boilers comes from the header, upstream from the first boiler.

Drake Elementary

- Replace existing DDC with new DDC
- Extend DDC to uncontrolled equipment e.g. fin radiation, cab heaters, convectors etc.
- Install exhaust fan controls on fans that are not on current DDC
- Improved scheduling and temperature control to accurately reflect occupancy
- Occupancy based ventilation control in the gym and auditorium
- Optimal start sequencing of HVAC equipment for timely building warm-up
- Holiday unoccupied scheduling
- Extend DDC to DHW recirculation pumps to operate only during occupied hours
- Repipe the boilers so the return water for all boilers comes from the header, upstream from the first boiler

Gilmore Elementary / Administration

- Convert existing pneumatic control system to new DDC and take air compressor out of service
- Extend DDC to uncontrolled equipment e.g. fin radiation, cab heaters, convectors etc.
- Install exhaust fan controls on fans that are not on current DDC
- Improved scheduling and temperature control to accurately reflect occupancy
- Optimal start sequencing of HVAC equipment for timely building warm-up
- Holiday unoccupied scheduling
- Extend DDC to DHW recirculation pumps to operate only during occupied hours
- Install a combustion air damper and control so the outside air can flow just before and during the boiler and DHW heater firing times. When the boilers and DHW heaters are not firing the combustion, air damper should be closed
- Insulate 3ft of 4" steam pipe and install removable insulation blankets on (1) 8" gate valve & bonnet, (1) 8" bonnet, (2) 4" bonnet
- Install an isolation valve and controller to close the valve when only one boiler is firing and remain open when they are both firing
- Repair or replace the failed steam traps. Refer to the Appendix for a trap survey

FIM 3. Replace HW Boilers with Condensing HW Boilers

Ohio Elementary

- Remove and dispose of the existing boilers including; boiler, burners, gas train, breeching, insulation, piping, wiring, controls, etc.
- Modify / Reuse of the existing boiler concrete housekeeping pads
- Furnish and install two (2) new condensing type, 4,000,000 BTU Input / 3,724,000 BTU Output natural gas fired hot water boilers (model LAARS MagnaTherm Hydronic Boiler).
- Provide and install all necessary gas piping, boiler vent and combustion air intake piping, pipe, valves, fittings, wiring, housekeeping pad, drains, etc.
- Install boiler exhaust vents and combustion air intake piping through the roof.
- Each boiler shall have separate intake and exhaust piping.
- Provide the services of a certified roofer to make the necessary flashing.
- A sample of the existing water/glycol solution will be taken and tested for percentage of glycol, and inhibitors and corrected as needed.
- Provide and install all necessary electrical wiring to complete the boiler replacement.
- Include all power wiring to the new boilers and pumps
- Provide and install new DDC controls as required
- Provide a graphical representation of the hot water system at the operator work station
- Provide and install pipe insulation on all new piping.
- Replace any existing pipe insulation disturbed during construction.
- Insulate all heating lines with fiberglass insulation per the NYS Energy Code

FIM 4. Replace HW Boilers with Condensing HW Boilers Install Heat Exchanger for Pool Water Heating

Intermediate School

- Remove and dispose of the existing boilers including; boiler, burners, gas train, breeching, insulation, piping, wiring, controls, etc.
- Modify the existing boiler concrete housekeeping pads
- Furnish and install three (3) new condensing type, 4,000,000 BTU Input / 3,724,000 BTU Output natural gas fired hot water boilers (model LAARS MagnaTherm Hydronic Boiler).
- Furnish and install B&G plate & frame titanium heat exchanger
- Provide and install all necessary gas piping, boiler vent and combustion air intake piping, pipe, valves, fittings, wiring, housekeeping pad, drains, etc.
- Install boiler exhaust vents and combustion air intake piping through the roof.
- Each boiler shall have separate intake and exhaust piping.
- Provide the services of a certified roofer to make the necessary flashing.
- A sample of the existing water/glycol solution will be taken and tested for percentage of glycol, and inhibitors and corrected as needed.
- Provide and install all necessary electrical wiring to complete the boiler replacement.
- Include all power wiring to the new boilers and pumps
- Provide and install new DDC controls as required
- Provide a graphical representation of the hot water system at the operator work station
- Provide and install pipe insulation on all new piping.
- Replace any existing pipe insulation disturbed during construction.
- Insulate all heating lines with fiberglass insulation per the NYS Energy Code

FIM 5. Install On Demand Heaters for DHW

High School

- Remove and dispose of the two of the three existing hot water heaters located in the boiler room that are no longer operational.
- Provide and install two new Intellihot iQ Series, Gen II commercial gas water heaters.
- The new heaters shall be model iQ1001, natural gas, with an input of 1,000,000 BTUH. The heaters shall each have recovery rate of 18.7 GPM at a 100°F rise
- Reuse concrete housekeeping pad
- Reconnect the existing circulator to the new hot water heaters
- Provide and install a dial thermometer with a ½" well on each of the hot water tank hot water outlets
- Insulate all hot water, cold water, and re-circulating lines with fiberglass insulation per the NYS Energy Code.
- Provide and install new gas connection, union, and dirt leg to each heater
- Provide and install direct vent sealed combustion to the new heaters per the manufacturer's instructions
- Intake and exhaust vents to penetrate through the boiler room roof.
- Provide the services of a certified roofer to make the necessary flashing.
- Follow all local and state codes for proper venting.
- Install heaters per manufacturer's recommendations
- The DDC system will monitor each heater and will be viewable at the operator's workstation.
- The remaining existing Aerco unit will be used as a backup unit, should one of the new Intellihot units fail or down for maintenance.

FIM 6. Add Heat Recovery to AHU 2/3

High School

- Furnish and install two (2) new hydronic coils in the outside air intake duct and relief duct.
- Provide and install piping (of proper size) to accommodate the required flow between the two coils.
- On the new heat recovery, piping a new circulation pump will be installed to flow glycol between the two heat recovery coils.
- A water/glycol mix inhibitors will be added to fill this system. Glycol will be added at the proper ratio to prevent coil freeze up.
- Provide and install all necessary electrical wiring to new circulation pump.
- Provide disconnects and motor starts are required.
- Provide and install new DDC controls as required.
- Program the DDC controller with a sequence of operation to operate the new heat recovery system whenever AHU-2&3 are in occupied heating mode and outdoor air temperatures permit.
- Provide a graphical representation of the heat recovery system at the operator workstation. Even with glycol being added to this system, the DDC controls will implement safety measures to further protect the outdoor air intake coil.
- Provide and install pipe insulation on all new piping.
- Replace any existing pipe insulation disturbed during construction.
- Insulate all new heating glycol lines with fiberglass insulation per the NYS Energy code

FIM 7. Condensing Boiler for Science Wing

High School

- Remove and dispose of the existing boiler including; boiler, burners, gas train, breeching, insulation, piping, wiring, controls, etc.

- Furnish and install one (1) new condensing type, 1,200,000 BTU Input / 1,136,000 BTU Output natural gas fired hot water boilers (model LAARS MagnaTherm Hydronic Boiler).
- Provide and install all necessary gas piping, boiler vent and combustion air intake piping, pipe, valves, fittings, wiring, drains, etc.
- Install boiler exhaust vents and combustion air intake piping through the roof.
- Each boiler shall have separate intake and exhaust piping.
- Provide the services of a certified roofer to make the necessary flashing.
- A sample of the existing water/glycol solution will be taken and tested for percentage of glycol, and inhibitors and corrected as needed.
- Provide and install all necessary electrical wiring to complete the boiler replacement.
- Include all power wiring to the new boilers and pumps
- Provide and install new DDC controls as required

FIM 8. Replace Office PTAC's

High School

- Replace eight (8) of the existing PTAC's with new one of same capacity
- Removal and disposal of existing PTAC's
- Furnish and install new PTAC's
- Disconnect & Reconnect electrical
- Provide DDC integration

FIM 9. Replace Pool Dehumidifier

High School

- Danforth will remove and dispose of the existing ahu.
- Reclaim all refrigerant and dispose per E.P.A requirements.
- Furnish and install an Innovent Pool Dehumidification Unit, which has a SMACNA leakage class rating of 5.0, Plate Heat Exchanger, Hot Water Coil, and Future Cooling Coil Section
- Provide crane for removal & installation
- Labor & Material for sheet metal adaptors
- Provide DDC integration
- Disconnect & Reconnect all electrical

FIM 10. Pipe & Boiler Insulation Rear Breeching Science Wing Boilers

- High School / Middle School – 3" - 20 ft. HW; 4" - 20 ft. HW located in crawl space AHU room; 3" - 2 ft. HW; 1" - 2 ft. DHW; 1.25" - 2 ft. DHW; in masonry supply duct--> 4" - 29 ft., 6" - 20 ft.; 3" - 30 ft.
- Intermediate – 2" - 4 ft. pool water, 3" - 1 ft. pool water
- Spruce Elementary – crawl space glycol radiant panel heat piping 1.5" - 80 ft.
- Drake Elementary – 2" - 5 ft. DHW
- High School Science Wing Boilers: Insulate the 16" square cast iron rear breechings

FIM 11. Replace DHW Heater Condensing / Instantaneous

Gilmore / Administration

- Remove and dispose of the existing hot water heater located in the boiler room
- Provide and install new instantaneous gas water heaters.
- Reuse concrete housekeeping pad

- Reconnect the existing circulator to the new hot water heaters
- Provide and install a dial thermometer with a ½" well on each of the hot water tank hot water outlets
- Insulate all hot water, cold water, and re-circulating lines with fiberglass insulation per the NYS Energy Code.
- Provide and install new gas connection, union, and dirt leg to each heater
- Provide and install direct vent sealed combustion to the new heaters per the manufacturer's instructions
- Follow all local and state codes for proper venting.
- Install heaters per manufacturer's recommendations

FIM 12. Exhaust Hood Controls

High School

Perform installation of demand ventilation controls for one kitchen.

- Includes installation of the Intelli-Hood components.
- Install temperature sensors
- Variable frequency drives Allen Bradley Standard VFDs for Exhaust Fan and MUA Unit (Powerflex4 series)
- Install optic sensors and air purge units
- Install hood controllers
- Install low voltage cables between the hood controllers, air purge units, temperature sensors and optics sensors.

FIM 13. Science Wing Balancing

High School

*Work in the science wing to be determined by mutual agreement of the parties, as appropriate.

Schedule 2

ASSURED PERFORMANCE GUARANTEE

2.01 PROJECT BENEFITS

1. **Certain Definitions.** For purposes of this Agreement, the following terms have the meanings set forth below:
 - a. **Annual Project Benefits** are the portion of the projected Total Project Benefits to be achieved in any one year of the Guarantee Term.
 - b. **Annual Project Benefits Realized** are the Project Benefits actually realized for any one year of the Guarantee Term.
 - c. **Annual Project Benefits Shortfall** is the amount by which the Annual Project Benefits exceed the Annual Project Benefits Realized in any one year of the Guarantee Term.
 - d. **Annual Project Benefits Surplus** is the amount by which the Annual Project Benefits Realized exceed the Annual Project Benefits in any one year of the Guarantee Term.
 - e. **Baseline** is the mutually agreed upon data and/or usage amounts that reflect conditions prior to the installation of the Improvement Measures as set forth in Section IV below.
 - f. **Guarantee Term** will commence on the first day of the next month following the Substantial Completion date and will continue through the duration of the Agreement.
 - g. **Installation Period** is the period beginning as set forth in Section 2 of the Energy Performance Contract and ending on the commencement of the Guarantee Term.
 - h. **Measured Project Benefits** are the utility savings and cost avoidance calculated in accordance with the methodologies set forth in Section III below.
 - i. **Total Project Benefits** are the projected Project Benefits to be achieved during the entire term of this Agreement.

2.02 PROJECT BENEFITS SUMMARY

Subject to the terms and conditions of this Agreement Danforth guarantees Customer will achieve a year one total of \$202,124 in operation & maintenance Benefits and a year one total of \$176,190 in utility cost avoidance. Danforth further guarantees \$170,000 in utility rebates for a total year one project benefits of \$456,483 as set forth in the Total Project Benefits table below. Danforth guarantees the first year savings for the full 18 years of the contract term. Project Benefit dollar values are based on Utility Rate Structures and Escalation Rates as defined in baseline calculations and utility rates.

Note (1): Utility incentives and rebates are an estimated amount based on the information available at the time of the Detailed Energy Audit (DEA) and are at the sole discretion of each independent utility. These funds are based on availability and are not guaranteed, however Danforth will guarantee \$170,000 of the estimated rebates.

Incentives are performance based on actual kWh reduction. The Customer agrees that any change in operation may impact actual kWh reduction resulting in lower incentives.

Total Annual Guaranteed Savings

Table 2.1

Electric Energy Saved (kWh)	Electric Demand Saved (kW)	Natural Gas Saved (Therms)
1,098,892.9	302.6	18,771.8

Total Calculated Project Benefits

Table 2.2

Year	Calculated Utility Cost Avoidance	Operations & Maintenance Cost Avoidance	Incentives/ Rebates (1)	Service Contract	Calculated Annual Project Benefits
1	\$176,190	\$202,124	\$235,911	(\$91,831)	\$522,394
2	\$181,476	\$208,188	\$157,274	(\$94,586)	\$452,352
3	\$186,920	\$214,433	\$0	(\$97,424)	\$303,930
4	\$192,528	\$220,866	\$0	(\$100,346)	\$313,048
5	\$198,304	\$227,492	\$0	(\$103,357)	\$322,440
6	\$204,253	\$234,317	\$0	(\$106,457)	\$332,113
7	\$210,381	\$241,346	\$0	(\$109,651)	\$342,076
8	\$216,692	\$248,587	\$0	(\$112,941)	\$352,338
9	\$223,193	\$256,044	\$0	(\$116,329)	\$362,909
10	\$229,889	\$263,726	\$0	(\$119,819)	\$373,796
11	\$236,785	\$271,638	\$0	(\$123,413)	\$385,010
12	\$243,889	\$279,787	\$0	(\$127,116)	\$396,560
13	\$251,205	\$288,180	\$0	(\$130,929)	\$408,457
14	\$258,742	\$296,826	\$0	(\$134,857)	\$420,710
15	\$266,504	\$305,730	\$0	(\$138,903)	\$433,332
16	\$274,499	\$314,902	\$0	(\$143,070)	\$446,332
17	\$282,734	\$324,349	\$0	(\$147,362)	\$459,722
18	\$291,216	\$334,080	\$0	(\$151,783)	\$473,513
Total	\$4,125,401	\$4,732,616	\$393,185	(\$2,150,171)	\$7,101,030

- i. **Utility Cost Avoidance is a Measured Project Benefit. Anticipated dollar savings based on guaranteed units of energy saved. Utility Cost Avoidance figures in the table above are based on anticipated increases in unit energy costs as set forth in the table in Section IV.
- ii. *** Operations & Maintenance Cost Avoidance figures in the table above are based on a mutually agreed fixed annual escalation rate of Three (3%).
- iii. Within sixty (60) days of the commencement of the Guarantee Term, Danforth will calculate the Measured Project Benefits achieved during the Installation Period. Any Project Benefits achieved during the Installation Period may, at Danforth's discretion, be allocated to the Annual Project Benefits for the first year of the Guarantee Term. Within sixty (60) days of each anniversary of the commencement of

the Guarantee Term, Danforth will calculate the Measured Project Benefits achieved for the applicable year.

2.03 PROJECT BENEFITS SHORTFALLS OR SURPLUSES.

1. ***Project Benefits Shortfalls.*** If an Annual Project Benefits Shortfall occurs for any one year of the Guarantee Term, Danforth shall, in any combination pursuant to Customer's prior authorization, (a) set off the amount of such shortfall against any unpaid balance Customer then owes to Danforth, (b) pay to Customer the amount of such shortfall, or (c) subject to Customer's agreement, provide to Customer additional products or services, in the value of such shortfall, at no additional cost to Customer.*
2. ***Project Benefits Surpluses.*** If an Annual Project Benefits Surplus occurs for any one year of the Guarantee Term, the amount of such surplus is the sole benefit of the Customer.
3. ***Additional Improvements.*** Where an Annual Project Benefits Shortfall has occurred, Danforth may, subject to Customer's approval, implement additional Improvement Measures, at no cost to Customer, which may generate additional Project Benefits in future years of the Guarantee Term.
 - i. *In the event Danforth is providing an Assured Performance Guarantee under **Schedule 2**, Annual Project Benefits Shortfalls and Annual Project Benefits Surpluses under each such Schedule shall be reconciled against one another.

2.04 PROJECT BENEFITS

OPERATIONAL COST AVOIDANCE

Table 2.3

Facility	Description	Source of O&M Savings	First Year Annual Saving Achieved
All	Preventative Maintenance Contract	Contract	\$161,831
All	HVAC Repairs	Invoices	\$28,705
All	Lighting repair materials	Invoices	\$11,588

Customer has furnished the foregoing information to Danforth, which information forms the basis of the operations & maintenance cost avoidance. Customer agrees that these are reasonable and that the installation of the Improvement Measures will enable Customer to take actions that will result in the achievement of such cost avoidance.

MEASUREMENT AND VERIFICATION METHODOLOGIES

The following is a brief overview of the measurement and verification methodologies applicable to the Improvement Measures set forth below. Danforth shall apply these methodologies, as more fully detailed in the guidelines and standards of the NEMVP and/or the Federal Energy Management Program (FEMP), in connection with the provision of M&V Services hereunder.

I. OPTION A – PARTIALLY MEASURED RETROFIT ISOLATION

Measured Project Benefits are determined by partial field measurement of the energy use of the system(s) to which an Improvement Measure was applied separate from the energy use of the rest of the facility. Measurements will be short-term with only one-time measurements before and after the Installation Period.

Partial measurement means that some but not all parameters will be measured. Careful review of the design and installation of Improvement Measures is intended to demonstrate that the stipulated values fairly represent the probable actual values. Agreed-upon values will be shown in the measurement and verification plan, along with analysis of the significance of the error they may introduce. Engineering calculations using short-term pre and post-retrofit measurements and stipulations are used to calculate Measured Project Benefits for the duration of the Guarantee Term.

Measured Project Benefits from the following Improvement Measures will be calculated using Option A: NONE

II. OPTION B – RETROFIT ISOLATION

Measured Project Benefits are determined by field measurement of the energy use of the systems to which an Improvement Measure was applied separate from the energy use of the rest of the facility. Short-term, long-term or continuous measurements are taken throughout the pre and post-retrofit periods. Engineering calculations using short term, long-term or continuous pre and post-retrofit measurements are used to calculate the Measured Project Benefits for the duration of the Guarantee Term.

Measured Project Benefits from the following Improvement Measures will be calculated using Option B: NONE

III. OPTION C – WHOLE FACILITY

Option C involves use of utility meters or whole building sub-meters to assess the energy performance of a total building. Option C assesses the impact of any type of Improvement Measure, but not individually if more than one is applied to an energy meter. This option determines the collective Measured Project Benefits of all Improvement Measures applied to the part of the facility monitored by the energy meter. In addition, since whole building meters are used, Measured Project Benefits reported under Option C include the impact of any other change made in facility energy use (positive or negative).

Measured Project Benefits from the following buildings will be calculated using Option C:

High / Middle School
North Tonawanda Intermediate
Gilmore / Admin
Spruce Elementary
Ohio Elementary
Drake Elementary

IV. OPTION D – STIPULATED

Option D is intended for Facility Improvement Measures where the end use capacity or operational efficiency; demand, energy consumption or power level; or manufacturer's measurements, industry standard efficiencies or operating hours are known in advance and used in a calculation or analysis method that will stipulate the outcome. Both the Client and Danforth agree to the stipulated inputs and outcome(s) of the analysis methodology. Based on the established analytical methodology, the savings stipulated will be achieved upon the completion of the Facility Improvement Measures Work and no further measurements or calculations will need to be performed. The methodology and calculations to establish savings value will be defined below.

Measured Project Benefits from the following Improvement Measures will be calculated using Option D:

FIM 13 High / Middle School Science Wing Balancing

2.05 CHANGES IN USE OR CONDITION; ADJUSTMENT TO BASELINE AND/OR ANNUAL PROJECT BENEFITS

1. Customer agrees to notify Danforth, within thirty (30) days, of (i) any material change, actual or intended, whether before or during the Guarantee Term, in the use of any facility, equipment, or Improvement Measure to which this Schedule applies; (ii) any proposed or actual expansions or additions to the premises or any building or facility at the premises; (iii) a change to utility services to all or any portion of the premises; or (iv) any other change or condition arising before or during the Guarantee Term that reasonably could be expected to change the amount of Project Benefits realized under this Agreement.
2. Such a change, expansion, addition, or condition would include, but is not limited to: (a) changes in the primary use of any facility, Improvement Measure, or portion of the premises; (b) changes to the hours of operation of any facility, Improvement Measure, or portion of the premises; (c) changes or modifications to the Improvement Measures or any related equipment; (d) changes to the M&V Services provided under this Agreement; (e) failure of any portion of the premises to meet building codes; (f) changes in utility suppliers, utility rates, method of utility billing, or method of utility purchasing; (g) insufficient or improper maintenance or unsound usage of the Improvement Measures or any related equipment at any facility or portion of the premises (other than by Danforth); (h) changes to the Improvement Measures or any related equipment or to any facility or portion of the premises required by building codes or any governmental or quasi-governmental entity; or (i) additions or deletions of Improvement Measures or any related equipment at any facility or portion of the premises.
3. Such a change or condition need not be identified in the Baseline in order to permit Danforth to make an adjustment to the Baseline and/or the Annual Project Benefits. If Danforth does not receive the notice within the time period specified above or travels to either Customer's location or the project site to determine the nature and scope of such changes, Customer agrees to pay Danforth, in addition to any other amounts due under this Agreement, the applicable hourly consulting rate for the time it took to determine the changes and to make any adjustments and/or corrections to the project as a result of the changes, plus all reasonable and documented out of pocket expenses, including travel costs. Upon receipt of such notice, or if Danforth independently learns of any such change or condition, Danforth shall calculate and send to Customer a notice of adjustment to the Baseline and/or Annual Project Benefits to reflect the impact of such change or condition, and the adjustment shall become effective as of the date the change or condition first arose. Should Customer fail to promptly provide Danforth with notice of any such change or condition, Danforth may make reasonable estimates as to the impact of such change or condition and as to the date on which such change or condition first arose in calculating the impact of such change or condition, and such estimates shall be conclusive.

2.06 BASELINE CALCULATIONS AND UTILITY RATES

The unit utility costs for the Baseline period are set forth below as “**Base Utility Cost**” and shall be used for all calculations made under this Schedule. The Base Utility Cost shall be escalated annually by the actual utility cost escalation but such escalation shall be no less than the mutually agreed “floor” escalation rate of three percent (3%). The Base Utility Cost for each type of utility represents the 12-month average utility costs from October 2018 - September 2019

Table 2. 4

Building	Electric		Natural Gas
	Demand Rate (\$/kW)	Incremental Rate (\$/kWh)	Incremental Rate (\$/Mcf)
High / Middle School	\$ 9.76	\$ 0.046	\$ 4.87
North Tonawanda Intermediate	\$ 11.16	\$ 0.046	\$ 5.26
Gilmore / Admin	\$ 12.04	\$ 0.044	\$ 5.77
Spruce Elementary	\$ 12.04	\$ 0.045	\$ 5.26
Ohio Elementary	\$ 12.04	\$ 0.044	\$ 5.26
Drake Elementary	\$ 12.04	\$ 0.044	\$ 5.81

Option C

The annual baseline consumption for each utility is the average annual consumption for one baseline utility years: October 2018- September 2019. The M&V reporting shall be consistent with the fiscal years for the baseline utility data and shall be from starting from the substantial completion date to a year from that date for Year#1 M&V and each successive M&V year would be successive year from the previous date M&V yearly date.

Savings Calculations and Methodologies

Option C savings are calculated separately for each site and utility using established baseline consumption values and current utility consumption and cost from utility bills. The following formulae apply for all sites/utilities:

Consumption Option C Electricity/Natural Gas Savings =
 (Baseline Usage)_{Electric/Gas} - ((Actual Post installation)_{Electric/gas} ± (Routine Adjustments) ± (Non-Routine Adjustments))

Cost Savings = Consumption Savings x Unit Rate

Where:

- Baseline Period Energy for each site/utility are specific in the contract
- Current Consumption is derived from utility bills
- Rate is the greater of the current actual rate or the Floor Rate specified in the contract
- Current Actual Rate = Total Utility Cost / Total Utility Consumption

Adjustment to Savings

Corrections and adjustment may be necessary to bring utility consumption in the baseline and current time frames to the same conditions. Common variables that may require adjustments include but are not limited to:

- Weather conditions, as reflected by heating degree days (HDD)
- Weather conditions, as reflected by cooling degree days (CDD)
- Occupancy rates and population density fluctuations
- Number of days in billing period
- Change in operating conditions or individual unit usage
- Building demolition, physical alteration or reconstruction

Post Installation M&V Activities

After the new equipment has been installed and commissioned, JWD and NT CSD representatives will conduct a post-installation inspection to verify that the equipment installed is consistent with what was proposed and has the potential to generate the cost savings predicted. JWD will provide equipment as-built documents detailing actual equipment installed, and include manufacturer’s specifications and operating procedures.

M&V Reporting and Client Responsibilities

Measurement and Verification reports will be issued annually within 60 days of receipt of all data necessary to produce that report from the North Tonawanda CSD.

Data provided by the North Tonawanda CSD to JWD shall include:

- Monthly utility cost and consumption by each building.
- A report of current occupancy levels
- Notification of any physical changes or changes in use of properties

Baseline Energy Consumption and Costs

Building	Building Area (SF)	Annual Usage (kWh)	Max Demand (kW)	Annual Costs (\$)	Demand Rate (\$/kW)	Blended Rate (\$/kWh)	Incremental Rate(\$/kWh)	Annual gas Usage (MCF)	Annual Costs (\$)	Blended Rate (\$/MCF)	Blended Rate (\$/MCF)	Incremental rate (\$/MCF)
High / Middle School	272,413	3,253,550	682.3	\$ 228,401	\$ 9.76	\$ 0.070	\$ 0.046	22,662	\$ 110,575	\$ 4.88	\$ 4.87	\$ 4.87
North Tonawanda Intermediate	164,643	1,138,937	280.8	\$ 92,083	\$ 11.16	\$ 0.081	\$ 0.046	8,332	\$ 44,047	\$ 5.29	\$ 5.26	\$ 5.26
Gilmore / Adman	69,201	161,840	65.6	\$ 16,280	\$ 12.04	\$ 0.101	\$ 0.044	3,733	\$ 21,756	\$ 5.83	\$ 5.77	\$ 5.77
Spruce Elementary	68,541	329,280	103.2	\$ 28,226	\$ 12.04	\$ 0.086	\$ 0.045	3,747	\$ 19,909	\$ 5.31	\$ 5.26	\$ 5.26
Ohio Elementary	62,492	314,400	112.8	\$ 28,270	\$ 12.04	\$ 0.090	\$ 0.044	2,816	\$ 15,011	\$ 5.33	\$ 5.26	\$ 5.26
Drake Elementary	43,911	261,200	83.2	\$ 22,552	\$ 12.04	\$ 0.086	\$ 0.044	2,544	\$ 14,975	\$ 5.89	\$ 5.81	\$ 5.81
		5,459,207						43,834				

JWD performed utility data billing alignment and analysis, regression modelling, baseline adjustment and subsequent savings adjustment/refinement - key steps performed as part of Option C verification activities/methodology.

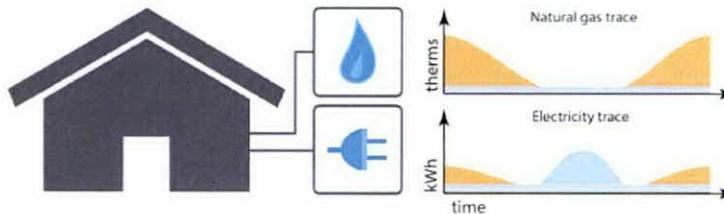
Utility Data Analysis and Regression Modelling Overview:

For FIMs utilizing IPMVP/FEMP Option C M&V, determination of actual energy savings require using whole-building utility meter data for both baseline and post installation periods.

For North Tonawanda CSD EPC project, Option C is verified using avoided savings models. Avoided energy use approach uses the set of post conditions as the fixed set of conditions. Avoided energy use is the reduction in energy use that occurs in the reporting period relative to what would have occurred if the facility had been equipped and operated as it was in the baseline period, but under reporting-period operating conditions.

In essence, Danforth processes FIMs utilizing Option C M&V activities on PHA EPC projects in four or five steps:

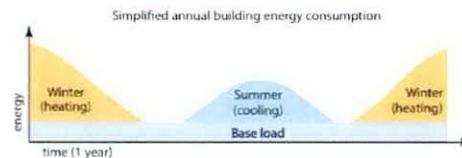
1. Collects **Whole-building baseline Utility data** (Energy (Electric, Natural Gas), Water/Sewer). This is done before EPC and after installation



Example single project can have multiple utilities (water not shown above).

2. Model Energy Consumption

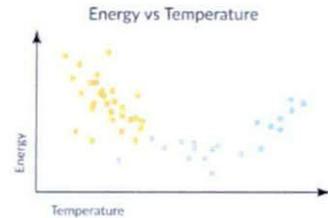
Develops a Baseline Model for the baseline period. Important factors influencing whole-building energy use are ambient temperature, occupancy and building schedules was already performed before EPC contract was executed).



(this

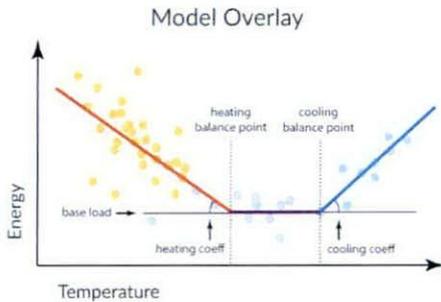
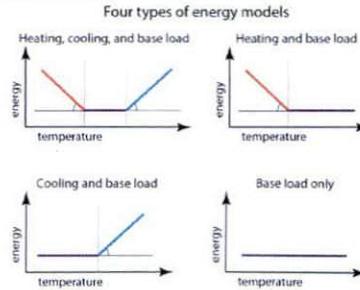
Building energy usage signature often can often be organized into three categories: heating load, cooling load and base load (and hence needs deeper analysis). During cold weather conditions, a building needs to be heated to achieve a comfortable temperature; similarly, hot conditions require cooling. Other elements, such as refrigeration and lighting, remain more consistent over the course of the year and can be represented in the base load.

Relationship between energy use and temperature is reflected in the building consumption profile shown below. Heavier use occurs during periods of high and low temperatures (summer and winter) while usage during more temperate periods (spring/fall) is more moderate. M&V Specialist fits a linear/polynomial model to this data and can use this model to estimate the building's energy consumption, given outdoor weather conditions



Building energy consumption plotted against external temperature

Depending on the fuel a building uses for heating or cooling, models with a single temperature coefficient (i.e., heating or cooling) may be more appropriate. M&V Specialist fits an ASHARE M&V models (four of twelve models shown on right) to the data, scores the model fits, and chooses the best candidate model.



Building Energy Model Overlay and Change Point M&V models often used (4 Change Point M&V models often used (all models are not shown).

3. Adjusts the baseline model to the post-installation period conditions.
4. Calculates savings by subtracting the **measured post-installation period energy use** from the **adjusted baseline energy use**.
5. **Iterate** back to step 3 if necessary

Initial step is to establish the baseline dependence of building usage or utility consumption on weather conditions by modeling it to the period prior to the retrofit that is illustrative of pre-retrofit usage – the baseline period. Then, post-retrofit weather is applied to the baseline model in order to estimate the energy use of the building had the energy efficiency improvements not been made (the counterfactual situation).

In M&V, this projection of the baseline energy use on to the post period is typically called the adjusted baseline. Finally, the adjusted baseline (predicted counterfactual energy use) is compared to the actual post-retrofit energy use and the difference provides an estimate of energy savings. As a part of baseline model development, a proper functional relationship is determined through analysis of monthly utility data (kWh, therms, ccf/gpm) and independent variables (Cooling Degree Days (CCD), Heating Degree Days (HDD); often used as proxy for outside air temperatures) and Occupancy (Pupil population) affecting that utility data. This functional relationship is a regression model - essentially a relationship (could be a linear relationship or a polynomial relationship) between the utility data variable and any of the independent variables.

Contracted baseline regression energy models used for and water for North Tonawanda have been modified to refine and regression confidential levels greatly help predict the savings with greater confidential.

Avoided Option C Energy/Water (Baseline Usage) $E_{Elec/Gas} - ((Actual\ installation)_{Elec/Gas} \pm Adjustments) \pm (Non-Routine\ Adjustments)$

JWD performs robust diagnostic tests for finding out best models which are resilient of baseline energy or water and

be reliably used for determining savings. Diagnostic checks are conducted for model adequacy and address any outliers/straying of assumptions used in regression analysis.



avoided electricity CSD also enhance which can anticipated

Savings = Post (Routine



statistical regression predictors hence can

Specifying a regression model is an iterative process. JWD evaluates several regression models for robustness and resiliency of savings prediction. Following is a brief summary of statistical M&V parameters/criterion tests for Option C models: R^2 , Standard Error (SE), Coefficient of Variation of Root Mean Square (CV-RMSE), t-static and uncertainty in savings – all performed to ensure that the developed baseline models is a reliable indicator of the predicted energy and savings.

Diagnostic Statistical Tests for the Utility Regression Models:

- o R-Squared (Coefficient of Determination)

The *coefficient of determination* (R^2) is the measure of how well future outcomes are likely to be predicted by a model. It illustrates how well the independent variables (weather) explains variation in the dependent (energy or water usage) variable. R^2 values range from 0 (indicating none of the variation in the dependent variable is associated with variation in any of the independent variable) to 1 (indicating all of the variation in the dependent variable is associated with variation in the independent variables, this would be a “perfect fit”). The rule-of-thumb for an acceptable energy/water model using monthly billing data is an $R^2 > 0.75$ according to ASHARE Guideline 14.

Other challenges in modelling Option C regression modelling is that regression models with high R^2 could end up in not providing reliable savings. The R^2 value is thought of as a goodness-of-fit test; but a high R^2 value is not enough to say the selected model fits the data well, nor that a low R^2 indicates a poor model. High R^2 Models having high scatter result in lower reliable model which can often misinterpret adjusted baseline data and resulting savings. Hence, a high R^2 value alone is not a sufficient criteria to conclude that the correct regression model has been specified and a functional relationship being tested is true. Therefore, we had other additional fit criteria in addition to R^2 was assessed.

In addition, residuals (residuals = predicted – actual) are plotted to determine if there were any trends in the residuals, if there were any unusually large residuals, also determine if the residuals were normally distributed. For all the models we develop, no significant trends in the residuals or unusually large residuals were found and all of the residuals were normally distributed. Plots of residuals against time, against the fitted values, and against each of the predictor variables can be helpful in diagnosing departures from the assumed model, just as for linear regression models

- o Root Mean Squared Error (Standard Error of the Estimate)

Root mean squared error (RMSE) is an indicator of the scatter of actual data and therefore illustrates how much an actual y-value (dependent value) differs from the predicted y-value. It is the standard deviation of errors of prediction about the regression line. Standard error of the estimate (SE) is always adjusted by the number of parameters in the model. For M&V, SE and RMSE are synonymous, and include the adjustment for the number of parameters in the model. Standard error of the estimate is sometimes called standard error of prediction.

The regression line predicts the average y value or predicted values (energy usage) associated with a given x or input value (degree days). Note that is also necessary to get a measure of the spread of the y values around that average.

$$RMSE_{Errors} = \sqrt{\frac{\sum_{i=1}^n (\hat{y}_i - y_i)^2}{n}}$$

Squaring the residuals, taking the average then the root to compute the RMS error is a lot of work. Fortunately, algebra provides us with a shortcut (whose mechanics we will omit).

○ *Coefficient of Variation of the Root Mean Squared Error CV (RMSE)*

Coefficient of variation of the root mean squared error – CV (RMSE) – is the RMSE (above parameter) normalized by the average y-value (or averaged annual energy usage). Normalizing the RMSE makes this a non-dimensional that describes how well the model fits the data. It is not affected by the degree of dependence between the independent and dependent variables, making it more informative than R-squared for situations where the dependence is relatively low. Per ASHARE Guideline 14, a low CV-RSME of 10% or 15% (lower than 20%) is desirable for utility data analysis M&V purposes.

T-statistic and fractional uncertainty are not explained for brevity but all Option C FIMs were evaluated each regression model for R², Standard Error (SE), CV-RMSE, t-static and uncertainty in savings.

The central question Danforth tries to answer is that - how did electrical energy or Gas consumption change from the baseline period to the reporting period? How well we modelled adjusted baseline? - All of the above explained parameters quantify and help answer that question.

Following Option C savings verification discussion includes:

- *Discussion of possible FIMs*
- *Overall discussion of Utility Billing data with either FIMs and/or buildings associated with those FIMs.*
- *Within each Utility Billing Analysis Option C discussion, following is analyzed:*
 - *Baseline Utility Usage Model development (with any changes to it),*
 - *Actual Post Installation Usage,*
 - *Adjusting Baseline to post conditions (both routine and non-routine adjustments) and finally*
 - *Savings estimation*

Option C Analysis for Applicable North Tonawanda CSD Schools:

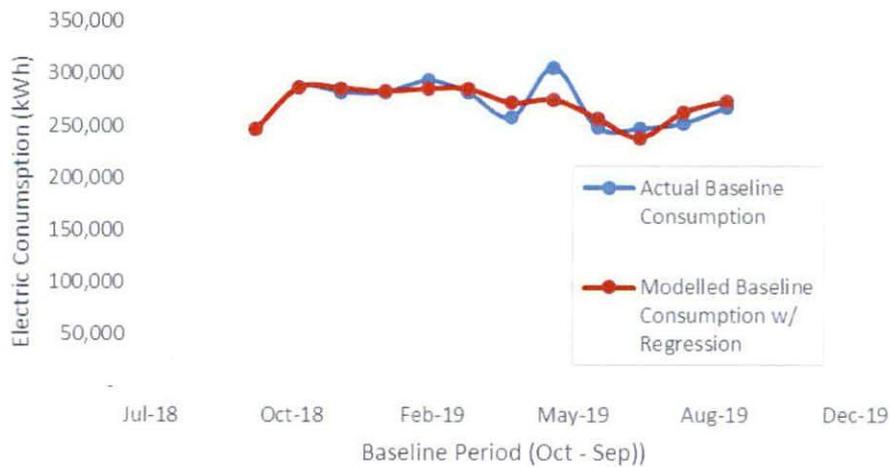
High / Middle School:

- 1) Savings shall be determined separately for each meter at the facility. For High /Middle School, there is one electric meter and one natural gas meter for a total of two utility grade meters.
 - a. Electric – National Grid Account # 2443824175
 - b. Natural Gas – National Fuel Account # 375878210
- 2) To the extent that utility billing data is not estimated, the utility invoices shall be used as the source of energy data. Electric and natural gas is billed on a monthly basis. These bills need to be available on a monthly basis to Danforth.
- 3) Independent variables shall be used to adjust the reconciliation for utility bill comparison. The following independent variables were studied for correlation to existing usage and the following determinations were made:
 - a. Weather data: Cooling degree days (CDD) correlated to building electricity usage weakly while heating degree days (HDD) correlated strongly to electricity. The CDDs and HDDs for the baseline period is shown below. The weather degree days for each of the following months have been taken from NYSEERDA’s website for baseline. The post-retrofit weather will also be taken from the same source for consistency:

Baseline Weather:	CDD	HDD
Oct-18	23	472
Nov-18	-	879
Dec-18	-	983
Jan-19	-	1,301
Feb-19	-	1,044
Mar-19	-	1,037
Apr-19	-	597
May-19	8	301
Jun-19	74	66
Jul-19	282	-
Aug-19	171	3
Sep-19	49	45
Total	607	6,728

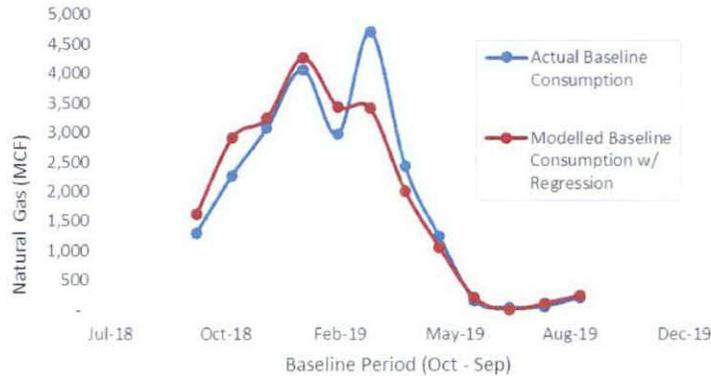
- b. Figure below shows the visual “goodness of fit” between the actual billing energy data points (blue curve) and the re-computed energy plot using the Baseline Model (red curve) for the base reference period. The closeness of the fit between the actual billing data and the recomputed data shows that the Baseline Model is highly representative of the energy behavior of the site for the base reference period. The very close positioning of actual billing data points with modelled utility data (red line) shows that CDD and HDD are an excellent explanatory variable of the monthly variation in consumption. This simply means that monthly consumption increases and decreases in a consistent and predictable way in response to monthly increases and decreases in the number of Cooling Degree Days and Heating Degree Days.

High /Middle School Actual and Modelled
Baseline Electric Consumption (kWh)



- c. Peak Demand Usage: Baseline normalization models will be built and the predicted peak demand will be determined.
- d. Natural Gas Usage:

High /Middle School Actual and Modelled
Baseline Natural Gas Consumption (MCF)



- e. High School pupil population during October-September has been taken from NYSED website. It is assumed that pupil population drops to 5% of the normal population in summer recess (June, July).

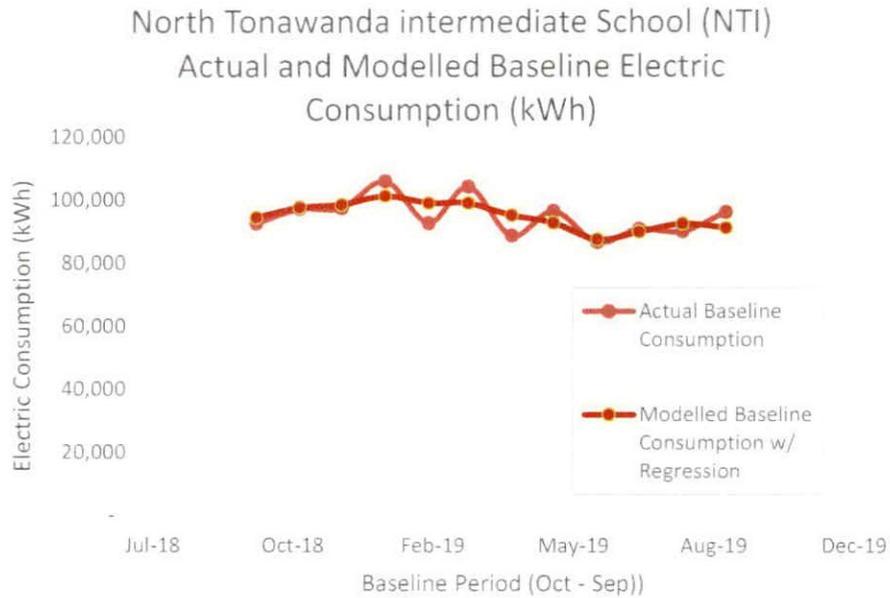
North Tonawanda intermediate School (NTI):

- 1) Savings shall be determined separately for each meter at the facility. For North Tonawanda intermediate School (NTI), there is one electric meter and one natural gas meter for a total of two utility grade meters.
 - a. Electric – National Grid Account # 1022507107
 - b. Natural Gas – National Fuel Account # 375873508
- 2) To the extent that utility billing data is not estimated, the utility invoices shall be used as the source of energy data. Electric and natural gas is billed on a monthly basis. These bills need to be available on a monthly basis to Danforth.
- 3) Independent variables shall be used to adjust the reconciliation for utility bill comparison. The following independent variables were studied for correlation to existing usage and the following determinations were made:
 - a. Weather data: Cooling degree days (CDD) correlated to building electricity usage weakly while heating degree days (HDD) correlated strongly to electricity. The CDDs and HDDs for the baseline period is shown below. The weather degree days for each of the following months have been taken from NYSERDA’s website for baseline. The post-retrofit weather will also be taken from the same source for consistency:

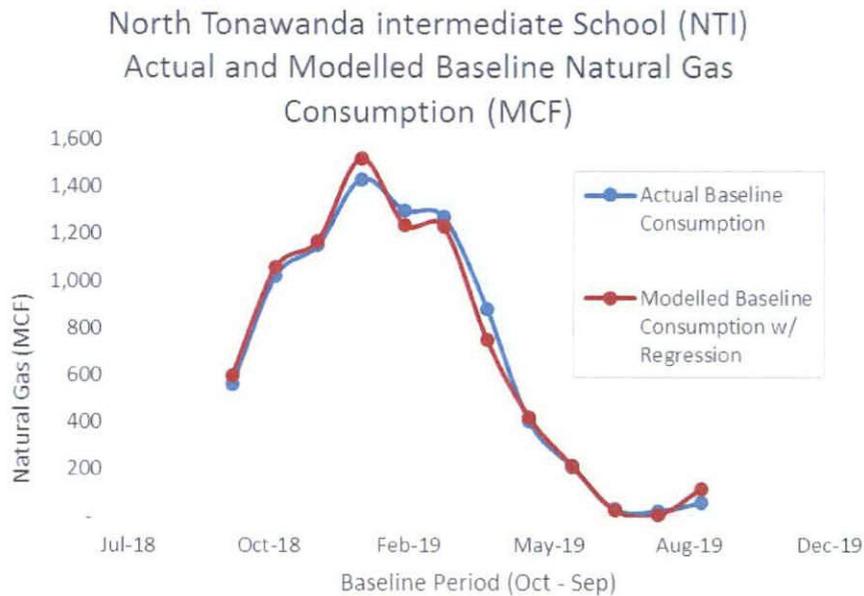
Baseline Weather:	CDD	HDD
Oct-18	23	472
Nov-18	-	879
Dec-18	-	983
Jan-19	-	1,301
Feb-19	-	1,044
Mar-19	-	1,037
Apr-19	-	597
May-19	8	301
Jun-19	74	66
Jul-19	282	-
Aug-19	171	3
Sep-19	49	45
Total	607	6,728

- b. The closeness of the fit between the actual billing data and the recomputed data shows that the Baseline Model is highly representative of the energy behavior of the site for the base reference period. The very close positioning of actual billing data points with modelled utility data (red line)

shows that CDD and HDD are an excellent explanatory variable of the monthly variation in consumption. This simply means that monthly consumption increases and decreases in a consistent and predictable way in response to monthly increases and decreases in the number of Cooling Degree Days and Heating Degree Days.



- c. Peak Demand Usage: Baseline normalization models will be built and the predicted peak demand will be determined.
- d. Natural Gas Usage:



- e. NTI pupil population during October-September has been taken from NYSED website. It is assumed that pupil population drops to 5% of the normal population in summer recess (June, July).

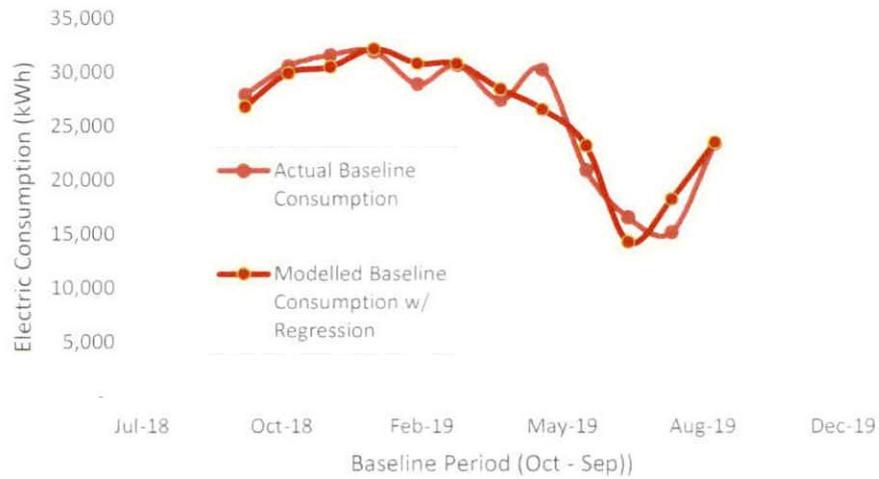
Ohio Elementary School:

- 1) Savings shall be determined separately for each meter at the facility. For Ohio Elementary School, there is one electric meter and one natural gas meter for a total of two utility grade meters.
 - a. Electric – National Grid Account # 5062502108
 - b. Natural Gas – National Fuel Account # 375878406
- 2) To the extent that utility billing data is not estimated, the utility invoices shall be used as the source of energy data. Electric and natural gas is billed on a monthly basis. These bills need to be available on a monthly basis to Danforth.
- 3) Independent variables shall be used to adjust the reconciliation for utility bill comparison. The following independent variables were studied for correlation to existing usage and the following determinations were made:
 - a. Weather data: Cooling degree days (CDD) correlated to building electricity usage weakly while heating degree days (HDD) correlated strongly to electricity. The CDDs and HDDs for the baseline period is shown below. The weather degree days for each of the following months have been taken from NYSEERDA’s website for baseline. The post-retrofit weather will also be taken from the same source for consistency:

Baseline Weather:	CDD	HDD
Oct-18	23	472
Nov-18	-	879
Dec-18	-	983
Jan-19	-	1,301
Feb-19	-	1,044
Mar-19	-	1,037
Apr-19	-	597
May-19	8	301
Jun-19	74	66
Jul-19	282	-
Aug-19	171	3
Sep-19	49	45
Total	607	6,728

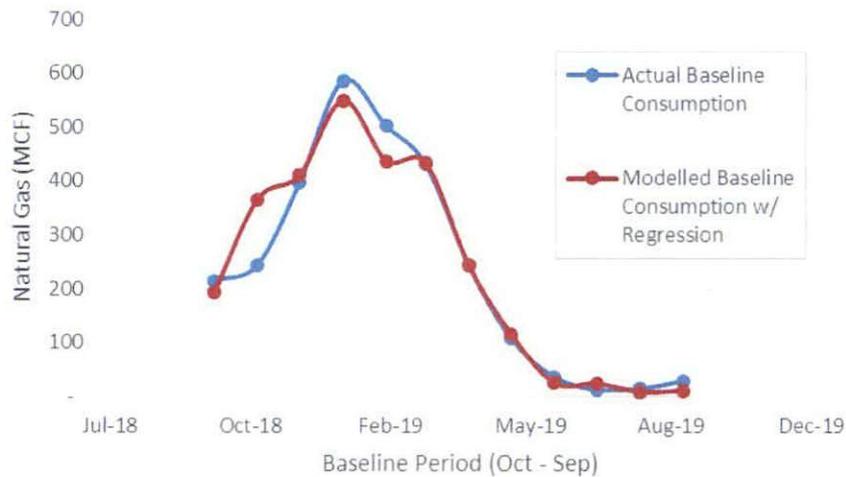
- a. The closeness of the fit between the actual billing data and the recomputed data shows that the Baseline Model is highly representative of the energy behavior of the site for the base reference period. The very close positioning of actual billing data points with modelled utility data (red line) shows that CDD and HDD are an excellent explanatory variable of the monthly variation in consumption. This simply means that monthly consumption increases and decreases in a consistent and predictable way in response to monthly increases and decreases in the number of Cooling Degree Days and Heating Degree Days.

Ohio Elementary School Actual and Modelled Baseline Electric Consumption (kWh)



- b. Peak Demand Usage: Baseline normalization models will be built and the predicted peak demand will be determined.
- c. Natural Gas Usage:

Ohio Elementary School Actual and Modelled Baseline Natural Gas Consumption (MCF)



- d. Ohio Elementary School pupil population during October-September has been taken from NYSED website. It is assumed that pupil population drops to 5% of the normal population in summer recess (June, July).

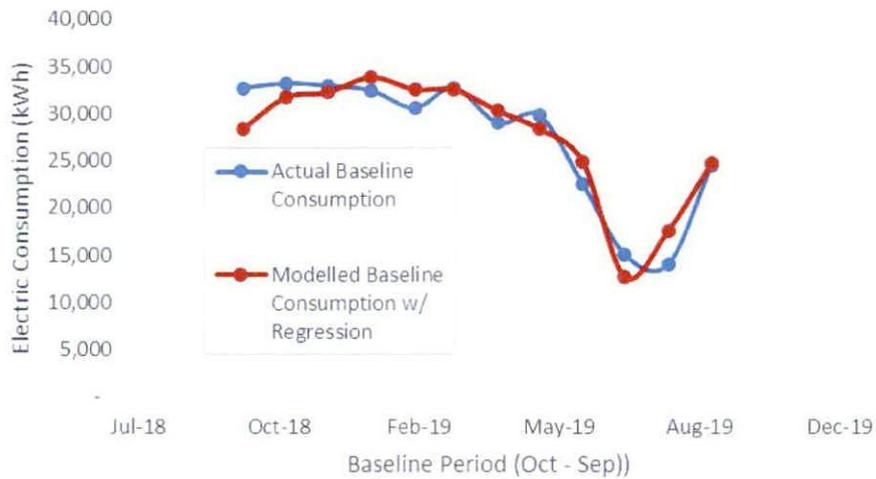
Spruce Elementary School:

- 4) Savings shall be determined separately for each meter at the facility. For Spruce Elementary School, there is one electric meter and one natural gas meter for a total of two utility grade meters.
 - a. Electric – National Grid Account # 762507102
 - b. Natural Gas – National Fuel Account # 375878504
- 5) To the extent that utility billing data is not estimated, the utility invoices shall be used as the source of energy data. Electric and natural gas is billed on a monthly basis. These bills need to be available on a monthly basis to Danforth.
- 6) Independent variables shall be used to adjust the reconciliation for utility bill comparison. The following independent variables were studied for correlation to existing usage and the following determinations were made:
 - c. Weather data: Cooling degree days (CDD) correlated to building electricity usage weakly while heating degree days (HDD) correlated strongly to electricity. The CDDs and HDDs for the baseline period is shown below. The weather degree days for each of the following months have been taken from NYSERDA’s website for baseline. The post-retrofit weather will also be taken from the same source for consistency:

Baseline Weather:	CDD	HDD
Oct-18	23	472
Nov-18	-	879
Dec-18	-	983
Jan-19	-	1,301
Feb-19	-	1,044
Mar-19	-	1,037
Apr-19	-	597
May-19	8	301
Jun-19	74	66
Jul-19	282	-
Aug-19	171	3
Sep-19	49	45
Total	607	6,728

- d. The closeness of the fit between the actual billing data and the recomputed data shows that the Baseline Model is highly representative of the energy behavior of the site for the base reference period. The very close positioning of actual billing data points with modelled utility data (red line) shows that CDD and HDD are an excellent explanatory variable of the monthly variation in consumption. This simply means that monthly consumption increases and decreases in a consistent and predictable way in response to monthly increases and decreases in the number of Cooling Degree Days and Heating Degree Days.

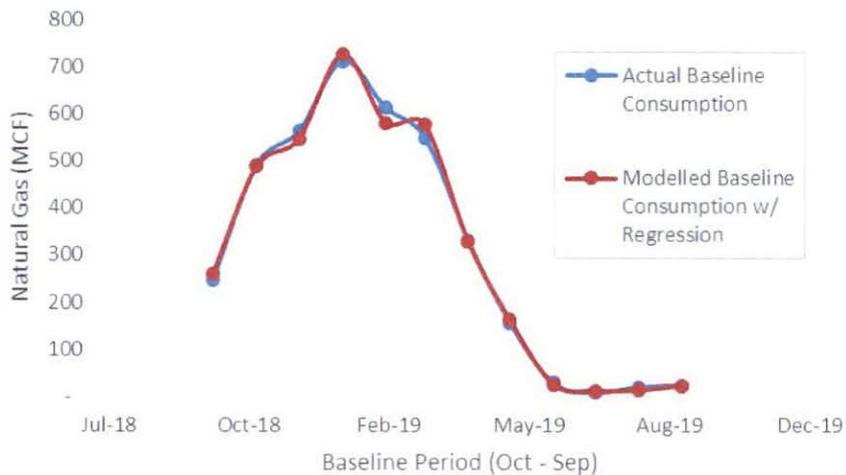
Spruce Elementary School Actual and Modelled Baseline Electric Consumption (kWh)



The overall relationship between monthly consumption and the number of Cooling Degree Days is represented by the following Baseline Model equation: The regression equations for the electrical use for Spruce Elementary School

- e. Peak Demand Usage: Baseline normalization models will be built and the predicted peak demand will be determined.
- f. Natural Gas Usage:

Spruce Elementary School Actual and Modelled Baseline Natural Gas Consumption (MCF)



- g. Spruce Elementary School pupil population during October-September has been taken from NYSED website. It is assumed that pupil population drops to 5% of the normal population in summer recess (June, July).

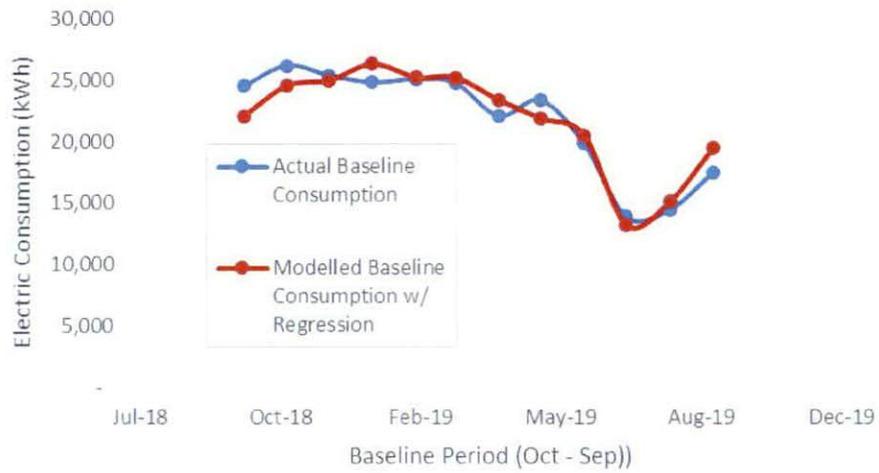
Drake Elementary School:

- 7) Savings shall be determined separately for each meter at the facility. For Drake Elementary School, there is one electric meter and one natural gas meter for a total of two utility grade meters.
 - h. Electric – National Grid Account # 5999026108
 - i. Natural Gas – National Fuel Account # 332298702
- 8) To the extent that utility billing data is not estimated, the utility invoices shall be used as the source of energy data. Electric and natural gas is billed on a monthly basis. These bills need to be available on a monthly basis to Danforth.
- 9) Independent variables shall be used to adjust the reconciliation for utility bill comparison. The following independent variables were studied for correlation to existing usage and the following determinations were made:
 - a. Weather data: Cooling degree days (CDD) correlated to building electricity usage weakly while heating degree days (HDD) correlated strongly to electricity. The CDDs and HDDs for the baseline period is shown below. The weather degree days for each of the following months have been taken from NYSERDA's website for baseline. The post-retrofit weather will also be taken from the same source for consistency:

Baseline Weather:	CDD	HDD
Oct-18	23	472
Nov-18	-	879
Dec-18	-	983
Jan-19	-	1,301
Feb-19	-	1,044
Mar-19	-	1,037
Apr-19	-	597
May-19	8	301
Jun-19	74	66
Jul-19	282	-
Aug-19	171	3
Sep-19	49	45
Total	607	6,728

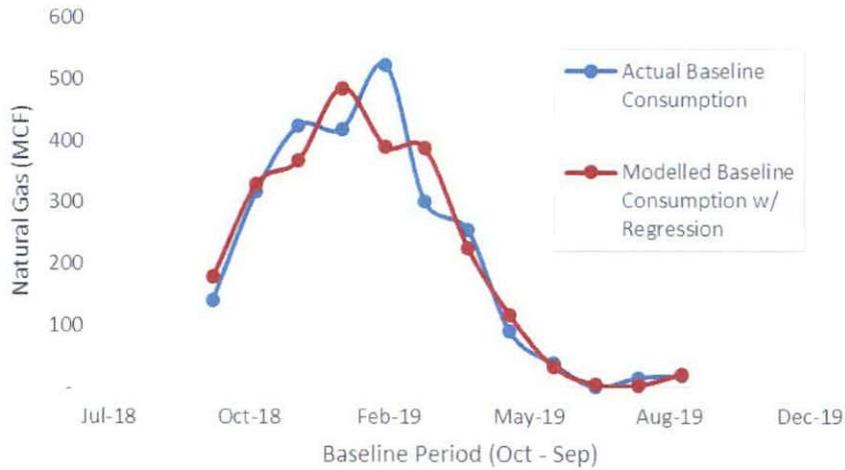
- b. The closeness of the fit between the actual billing data and the recomputed data shows that the Baseline Model is highly representative of the energy behavior of the site for the base reference period. The very close positioning of actual billing data points with modelled utility data (red line) shows that CDD and HDD are an excellent explanatory variable of the monthly variation in consumption. This simply means monthly consumption increases and decreases in a consistent and predictable way in response to monthly increases and decreases in the number of Cooling Degree Days and Heating Degree Days.

Drake Elementary School Actual and Modelled Baseline Electric Consumption (kWh)



c. Natural Gas Usage:

Drake Elementary School Actual and Modelled Baseline Natural Gas Consumption (MCF)



d. Drake Elementary School pupil population during October-September has been taken from NYSED website. It is assumed that pupil population drops to 5% of the normal population in summer recess (June, July).

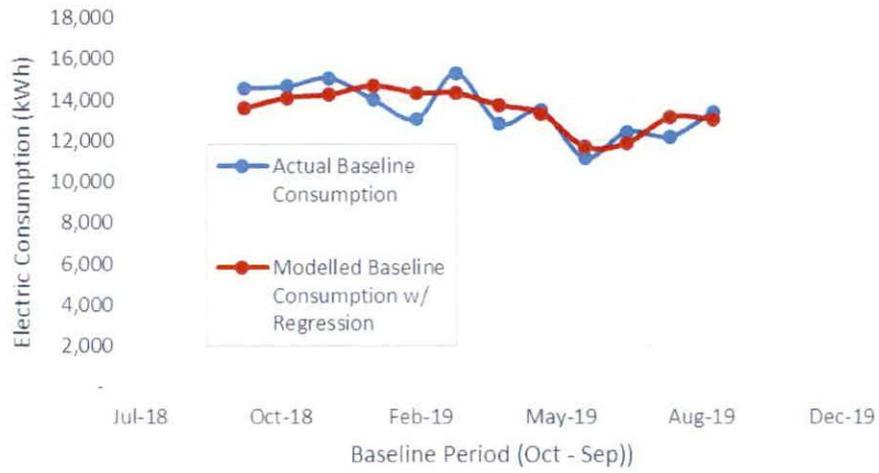
Gilmore / Admin:

- 10) Savings shall be determined separately for each meter at the facility. For Gilmore / Admin, there is one electric meter and one natural gas meter for a total of two utility grade meters.
 - e. Electric – National Grid Account # 2442505108
 - f. Natural Gas – National Fuel Account # 328586810
- 11) To the extent that utility billing data is not estimated, the utility invoices shall be used as the source of energy data. Electric and natural gas is billed on a monthly basis. These bills need to be available on a monthly basis to Danforth.
- 12) Independent variables shall be used to adjust the reconciliation for utility bill comparison. The following independent variables were studied for correlation to existing usage and the following determinations were made:
 - a. Weather data: Cooling degree days (CDD) correlated to building electricity usage weakly while heating degree days (HDD) correlated strongly to electricity. The CDDs and HDDs for the baseline period is shown below. The weather degree days for each of the following months have been taken from NYSERDA's website for baseline. The post-retrofit weather will also be taken from the same source for consistency:

Baseline Weather:	CDD	HDD
Oct-18	23	472
Nov-18	-	879
Dec-18	-	983
Jan-19	-	1,301
Feb-19	-	1,044
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May-19	8	301
Jun-19	74	66
Jul-19	282	-
Aug-19	171	3
Sep-19	49	45
Total	607	6,728

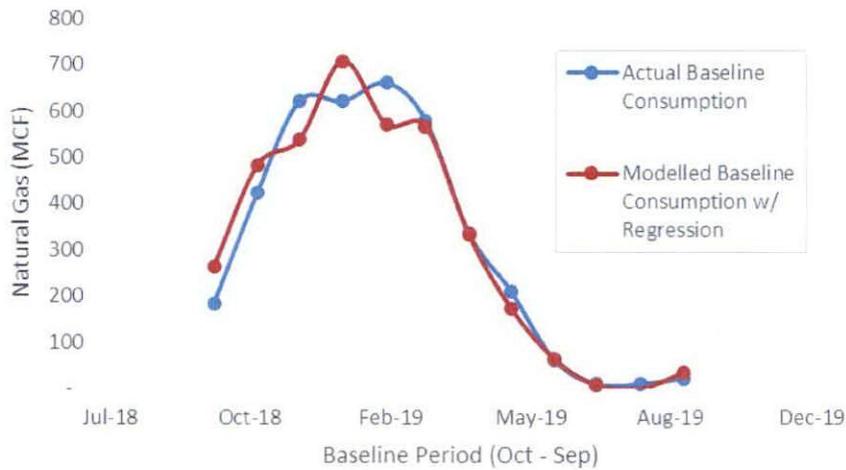
- b. The closeness of the fit between the actual billing data and the recomputed data shows that the Baseline Model is highly representative of the energy behavior of the site for the base reference period. The very close positioning of actual billing data points with modelled utility data (red line) shows that CDD and HDD are an excellent explanatory variable of the monthly variation in consumption. This simply means that monthly consumption increases and decreases in a consistent and predictable way in response to monthly increases and decreases in the number of Cooling Degree Days and Heating Degree Days.

Gilmore/ Admin Actual and Modelled Baseline Electric Consumption (kWh)



c. Natural Gas Usage:

Gilmore / Admin Actual and Modelled Baseline Natural Gas Consumption (MCF)



d. Gilmore / Admin pupil population during October-September has been taken from NYSED website before it closed (2011-2012). It is assumed that pupil population drops to 5% of the normal population in summer recess (June, July).

Operating parameters:**LED Lighting**

The energy savings will be generated by installing energy efficient lower wattage lamps & fixtures. The annual hours of operation and quantity of fixtures were determined during the Detailed Energy Audit and must be maintained throughout the term of this contract. These parameters are listed in attachment 3.

Exhaust Fan Controls

The energy savings will be generated by adding DDC controls to the exhaust fans and will be realized by the decreased hour of operation during unoccupied times. The annual hours of operation and quantity of fans were determined during the Detailed Energy Audit and must be maintained throughout the term of this contract. These parameters are listed in attachment 3.

Unoccupied Temperature Setback

The energy savings will be generated by setting back the space temperatures during the unoccupied times in the building schedules of the DDC system. The occupied/unoccupied hours of operations were determined during the detailed energy audit. The setback space temperatures and occupancy schedules are stated in the attachment 3.

Optimal Start

The energy savings will be generated by utilizing the optimum start algorithm in DDC system to anticipate the latest time to turn the system back on. The algorithms look at the lowest zone temperature, the outdoor air temperature, and the time lag to heat (or cool) to the set point in order to improve the estimate of the start time. They then retrieve and analyze historical temperature and thermal time lag information. These same algorithms will be used to turn off HVAC systems at the end of the day while the building is still occupied. The building operating schedules were determined during the DEA and will be maintained during the term of the agreement. These parameters are listed in attachment 3.

Holiday Schedules

The energy savings will be generated by utilizing the DDC systems building operations schedules and modifying the schedules so the building is operating in unoccupied mode during holidays. The annual day off and break schedule was determined during the detailed energy audit and will be maintained throughout the term of the agreement. These parameters are stated in attachment 3.

Domestic Hot Water Pump Schedule

Energy savings will be realized by installing controls on the domestic hot water recirculation pump to prevent it from operating during unoccupied hours. The building operating schedules were determined during the DEA and will be maintained during the term of the agreement. These parameters are listed in attachment 3.

Demand Control Ventilation

Energy savings will be realized by installing space carbon dioxide (CO₂) sensors. These systems will have a CO₂ sensor in each space or in the return air and adjust the ventilation based on CO₂ concentration. The CO₂ sensor DCV system will vary the ventilation rate based on the number of people in the space. The percentage of off occupancy and ventilation rate was determined during the detailed energy audit and must be maintained during the term of the agreement. These parameters are listed in attachment 3.

Gravity Vents

The energy savings generated by this FIM will be realized by modulating the actuators that are controlled by the DDC system. The gravity vents will be Enabled/Disabled to follow the building occupancy schedules. When the building is occupied, the damper actuators should modulate proportionally based on the HVAC equipment that is operating. The difference in (pre-retrofit vs. post-retrofit) Energy savings are calculated for fuel savings by reducing the volume of outdoor air that is currently being naturally vented from the building through the gravity vents during the unoccupied hours and will be used to compute the annual energy savings. The building operating schedule was determined during the detailed energy audit and must be maintained during the term of the agreement. These parameters are listed in attachment 3.

Variable Speed Drives

The energy savings generated by this FIM will be realized from modulating the hot water pumping systems to deliver only the hot water necessary to meet the heating load of the spaces. The building operating schedule was determined during the detailed energy audit and must be maintained during the term of the agreement. These parameters are listed in attachment 3.

Hot Water Reset

The energy savings generated by this FIM will be realized from varying the hot water supply temperature as the heating requirement for the building decreases. The building operating schedule was determined during the detailed energy audit and must be maintained during the term of the agreement. These parameters are listed in attachment 3.

Hybrid Boiler Plant

The Science Wing boiler plant will consist of a condensing and a standard efficiency boiler. The new condensing boiler will be operated as the primary heating boiler. The standard efficiency boiler (existing) boiler will only be used as emergency backup.

Pool Heating Heat Exchanger

The energy savings generated by this FIM will be realized by utilizing the newly installed condensing boiler to provide hot water heating for the pool. When building heating is not required these boilers should be run at the minimum return water temperature per manufacturer specifications.

Pool Dehumidification

The energy savings generated by this FIM will be realized by replacing the existing dehumidification unit with an air-to-air, sensible heat exchanger. The existing pool-operating schedule was determined during the detailed energy audit and must be maintained during the term of the agreement. These parameters are listed in attachment 3.

Gym Hot Water Pump

The energy savings generated by this FIM will be realized by reducing the total annual operating hours of the hot water loop pumps (6A, 6B) the Meadow drive complex. The building operating schedule was determined during the detailed energy audit and must be maintained during the term of the agreement. These parameters are listed in attachment 3.

Option D

Science Wing Balancing

There is natural gas energy savings generated by a combination of modifying the building loop pumps with laboratory hoods equipment.

Savings 1,600 Therms

Schedule 3

CONTRACTUAL OBLIGATIONS OF CLIENT

3.01 CONTRACTUAL OBLIGATIONS OF CLIENT

In order for Danforth to perform its obligations under this Agreement with respect to the Work, the Assured Performance Guarantee, and the M&V Services, Customer shall, if applicable, be responsible for:

- 3.01.01 Providing Danforth, its subcontractors, and its agents reasonable access to all facilities and properties that are subject to the Work and/or M&V Services;
- 3.01.02 Providing for shut down and scheduling of affected locations during installation, including timely shutdowns, where reasonable notice has been provided by Danforth, of chilled water and hot water systems as needed to accomplish the Work and/or M&V Services, provided that the shutdowns are subject to and shall not interfere with the Customer's school schedules and use of the affected locations;
- 3.01.03 Providing timely reviews and approvals of design submissions, proposed change orders, and other project documents;
- 3.01.04 Providing the following information with respect to the project and project site as soon as reasonably practicable, and only to the extent that Customer has such documentation and information, following Danforth's request:
 - 1. Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
 - 2. Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the project site;
 - 3. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the project and enable Danforth to perform the work;
 - 4. A legal description of the project site;
 - 5. As-built and record drawings of any existing structures at the project site; and
 - 6. Environmental studies, reports and impact statement describing the environmental conditions, including hazardous conditions or materials, in existence at the project site.
- 3.01.05 [RESERVED];
- 3.01.06 Providing reasonable assistance to Danforth in obtaining any permits, approvals, and licenses that are Danforth's responsibility to obtain as set forth in Schedule 1;
- 3.01.07 Obtaining any permits, approvals, and licenses that are necessary for the performance of the Work and are not Danforth's responsibility to obtain as set forth in Schedule 1;
- 3.01.08 Properly maintaining, and performing appropriate preventative maintenance on, all equipment and building systems affecting the Assured Performance Guarantee in accordance with manufacturers' standards and specifications and/or general industry standards;
- 3.01.09 Providing the utility bills, reports, and similar information reasonably necessary for administering Danforth's obligations under the Assured Performance Guarantee within five (5) days of Customer receipt and/or generation or Danforth's request therefor;

- 3.01.010 Providing all records relating to energy and/or water usage and related maintenance of the premises and relevant equipment requested by Danforth and only to the extent that Customer has such records;
- 3.01.011 Providing and installing utility sub-meters on all new construction and/or additions built during the Guarantee Term as recommended by Danforth and LaBella Associates or, alternatively, paying Danforth's applicable fees for calculating necessary adjustments to the Assured Performance Guarantee as a result of the new construction;
- 3.01.012 As needed, providing and maintaining a dedicated telephone line and/or TCP/IP remote connection to facilitate remote monitoring of relevant equipment;
- 3.01.013 Customer shall notify Danforth as soon as practicable of any change in use or condition described in Section III of Schedule 2 or any other matter that to Customer's knowledge may impact the Assured Performance Guarantee;

- 3.02 In addition to the foregoing, Customer is responsible for the items set forth below in connection with utility meter projects:
 - 3.02.01 **ADDITIONAL CUSTOMER OBLIGATIONS**
Isolating the utility system to allow for meter/valve change out, including identification of all shut-off valves;
 - 3.02.02 Scheduling shutdowns, downtimes, and relocation of new commercial vaults;
 - 3.02.03 Traffic safety during installation;
 - 3.02.04 Ongoing care and maintenance of the utility system, including all meters, AMR equipment and systems, meter boxes, and meter vaults at or above manufacturers' specifications and recommendations.

Schedule 4
PRICE AND PAYMENT TERMS

- 4.01 Customer shall make payments to Danforth pursuant to this **Schedule 4**. Danforth will provide M&V Services for the term of the guarantee as detailed in Schedule 2 of this Agreement. Costs for this service are being covered by Danforth.
- 4.02 **Compensation.** Unless otherwise agreed in writing, Danforth shall be compensated for any work requested by CUSTOMER at its prevailing rates and shall be reimbursed for costs and expenses (plus reasonable profit and overhead) reasonably incurred in its performance of the work or services. The contract sum provides for, and is in consideration of, only the services specifically included under the scope of work and services. All other work and services, including but not limited to the following, shall be separately billed or surcharged on a time and material basis:
 1. Emergency services performed at Customer’s request, if inspection does not reveal any deficiency covered by the scope of work and services;
 2. Work and/or services performed at Customer’s request at times other than during Danforth’s normal working hours; and
 3. Work and/or services performed on equipment not covered by the scope of work and/or services.

Unless otherwise agreed in writing, Danforth may invoice CUSTOMER on a monthly or other progress-billing basis. Invoices are due and payable upon receipt by CUSTOMER. If CUSTOMER disagrees with any portion of an invoice, it shall notify Danforth in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice, and shall pay the portion not in dispute. Danforth may suspend or terminate work or services at any time if payment is not received when due and shall be entitled to compensation for the work and services previously performed and for costs reasonably incurred in connection with the suspension or termination.

On amounts not paid within 30 days of invoice date, Customer shall pay interest from the invoice date until payment is received at the lesser of 12% per annum or the maximum rate allowed by law. Customer shall reimburse Danforth for Danforth’s costs and expenses (including reasonable attorneys’ and witnesses’ fees) incurred for collection under this agreement.

Except to the extent expressly agreed in writing, Danforth’s fees do not include any taxes, excises, fees, duties or other government charges related to the work or services, and Customer shall pay such amounts or reimburse Danforth for any amounts it pays. If Customer claims that work or services is subject to a tax exemption or direct payment permit, it shall provide Danforth with a valid exemption certificate or permit and indemnify, defend and hold Danforth harmless from any taxes, costs and penalties arising out of the use or acceptance of same.

- 4.03 **Work.** The price to be paid by Customer for the Work shall be \$5,323,867. Payments (including payment for materials delivered to Danforth and work performed on and off-site) shall be made to Danforth as follows:
- 4.04 **Timely Payments.** The Customer agrees to pay DANFORTH per Table 4.1 below. Customer agrees to pay DANFORTH a \$798,580 mobilization fee and monthly AIA (American Institute of Architects) invoices submitted by DANFORTH per Agreement, (**Schedule 4, 1. Compensation**). A payment schedule of values will be submitted to Customer for approval utilizing AIA format. Each of the payments specified in Table 4.1 – FIM Work Payment Schedule will be made by Customer pursuant to invoices submitted by Danforth.

Table 4.01 – FIM Work Payment Schedule

Project Phase	Payments (\$)	Payment Due
Mobilization	\$798,580	Net 30 Days from Contract Execution
	AIA Billing	Net 30 Days from Invoice
Project Total:	\$5,323,867	

- 4.05 **Escrow.** The Customer has agreed to deposit the contract sum in an escrow account at a financial institution satisfactory to both the Customer and DANFORTH. All interest income and expenses to establish the escrow account shall be the complete responsibility of the Customer and the Customer will

receive all interest earnings from the escrow account. DANFORTH will submit periodic invoices to the Customer. The Customer shall be responsible for submitting the necessary documentation to the escrow agent for timely withdraws from the escrow account. The funding of the escrow account in an amount equal to or greater than the Price stated in (1. Work) above shall be a condition precedent to DANFORTH obligation to perform or to continue the performance of the Work. If the escrow account is not funded within thirty (30) days from the execution of this Agreement, this Agreement shall be null and void. This (30) day funding period may be extended as mutually agreed upon in writing by both parties. In the event that the Agreement becomes null and void as described in this paragraph and Customer has authorized DANFORTH to proceed with Work, Customer shall be obligated to reimburse DANFORTH: (i) for the Work performed to date; or (ii) as specified in Customer's authorization to proceed with Work.

Attachment 1
CERTIFICATE OF SUBSTANTIAL COMPLETION

PARTIES: John W. Danforth Company ("Danforth")
300 Colvin Woods Parkway
Tonawanda, NY 14150

And

North Tonawanda CSD ("Customer")
176 Walck Rd.
North Tonawanda NY 14120

PROJECT: CUSTOMER Energy Performance Contract dated February 5, 2020 between Danforth and Customer

By executing this Certificate of Substantial Completion, Customer acknowledges the following:

- a. The work set forth in the Performance Contract is substantially complete.
- b. Customer has received the manuals, warranty information, and training required under the Performance Contract.
- c. The following punch list items must be completed by Danforth (check as applicable):

<input type="checkbox"/>	punch list attached
<input type="checkbox"/>	punch list complete
- d. Upon completion of the punch list items, or if such punch list items are complete, Danforth and Customer shall sign the Certificate of Final Completion attached hereto.

Dated:

CUSTOMER

DANFORTH

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Attachment 2
CERTIFICATE OF FINAL COMPLETION

PARTIES: John W. Danforth Company ("Danforth")
300 Colvin Woods Parkway
Tonawanda, NY 14150

And

North Tonawanda CSD ("Customer")
176 Walck Rd.
North Tonawanda NY 14120

PROJECT: CUSTOMER Energy Performance Contract dated February 5, 2020 between Danforth and Customer

By executing this Certificate of Final Completion, Customer acknowledges the following:

- a. The work set forth in the Performance Contract has been reviewed and determined by Customer to be fully complete.
- b. Customer accepts the work as complete and hereby releases Danforth's obligations under any performance and payment bonds posted for the project as of the date set forth below.

Dated:

CUSTOMER

DANFORTH

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____