

## ***AGENDA***

### **SCHOOL ADMINISTRATIVE UNIT NO. 12**

#### **Office of the Superintendent of Schools**

#### **Londonderry, New Hampshire 03053**

The meeting of the Londonderry School Board will be held on Tuesday, December 5, 2023, at 7:00 PM at Londonderry High School, 295 Mammoth Road, Londonderry, NH in the Cafe. The meeting will also be broadcast on local Cable Access Ch. 8 as well as the [District's YouTube Channel](#).

1. Call To Order

2. Pledge of Allegiance

3. Consent Agenda

3.1 Retirement(s)

Doug Stith	Teacher	Middle School
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3.2 Resignation(s)

Hannah Bradbury	Support Staff	South School
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3.3 Minutes

November 21, 2023

3.4 Meetings

December 12, 2023	Budget Workshop	LHS Cafe	7:00 PM
December 19, 2023	Budget Workshop & Regular Meeting	LHS Cafe	7:00 PM
January 4, 2024	Budget Workshop	LHS Cafe	7:00 PM
January 8, 2024	Adult Ed Graduation	LHS Gym	6:00 PM
January 9, 2024	Regular Meeting	LHS Cafe	7:00 PM

4. Public Comment

Public comment will be incorporated throughout the budget presentation

5. Budget Workshop

5.1 Personnel

5.2 Athletics

5.3 SPED

December 5, 2023

6. Committee Reports

6.1 School Board Liaisons

6.2 Student Representative - Dylan Anderson

7. Deliberations

7.1 Third Reading to Adopt Policy DNE - School Properties Disposable Procedure

7.2 EEI Contract Approval

7.3 Infrastructure Bond Approval for Issuance

7.4 January Meeting and Budget Calendar

8. Adjournment

(Please note: In addition to the items listed on the agenda the Board may consider other matters not on the posted agenda and they may enter a non-public session or convene in a non-meeting session in accordance with RSA 91-A if the need arises.)

**SCHOOL ADMINISTRATIVE UNIT NO. 12**  
**Office of the Superintendent of Schools**  
**Londonderry, New Hampshire 03053**

The meeting of the Londonderry School Board was held on Tuesday, November 21, 2023, at 7:00 PM at Londonderry High School, 295 Mammoth Road, Londonderry, NH in the Cafe. The meeting was also be broadcast on local Cable Access Ch. 8 as well as the [District's YouTube Channel](#). In attendance were School Board members Mrs. Butcher, Mr. Gray, Mrs. Loughlin, Mr. Porter, and Mr. Slater. Also in attendance were Superintendent, Mr. Black, Business Administrator, Mrs. McKenney, Town Budget Committee and School Board Secretary, Lisa Muse.

1. **Call To Order:** The meeting was called to order at 7:00PM by Mr. Slater.

2. **Pledge of Allegiance:** The Pledge of Allegiance was led by Mr. Slater.

3. **Consent Agenda:** *Mrs. Loughlin made a motion to accept the Consent Agenda. Mrs. Butcher seconded the motion. The motion passed by a vote of 5-0.*

3.1 **Meetings**

November 28, 2023	Non-Meeting	LHS Office	5:00 PM
November 28, 2023	Regular Meeting	LHS Cafe	7:00 PM
December 5, 2023	Budget Workshop & Regular Meeting	LHS Cafe	7:00 PM
December 12, 2023	Budget Workshop	LHS Cafe	7:00 PM
December 19, 2023	Budget Workshop & Regular Meeting	LHS Cafe	7:00 PM

4. **Superintendent's Report**

4.1 Budget Presentation - Dan Black & Lisa McKenney: Mr. Black mentioned a lot more details will be coming. He details what will be discussed at each meeting for the Budget Review process. He details the summary of the FY 25 budget which are made up of college and career ready initiatives and co-curricular activities which help shape the budget. The current superintendent's proposed budget is at \$88,259,411 without any warrant articles. The budget is up 2.69%, but it is also below default. In terms of the growth, there is a slide which details what the voters have approved such as CBAs, Infrastructure Bond, mandated student services and the transportation contract. About 80% of the increases are made up these voter approved items. The other 20% is from strategic investments and cost increases. The major parts of the budget book to review include the add/swap staff requests on page 13. There was a net reduction of \$-621,699. The financial impact documents, tax rate calculation, budget analysis by object code and budget analysis by department are also other major parts of the book to review. The FY25 tax rate figures are discussed in regard to the proposed budget and the default budget. This is broken down by the amount to be raised from taxes, local tax rate, variance by dollars and variance by percentage. Other major parts of the budget book to review include the default budget, summary by function, budget variance reports, debt payment schedule and all the schools and departments. The Moose Hill Building project will also be discussed. He goes over highlights from earlier presentations on full day kindergarten and how it would solve the overcrowding. The students would receive 103 more days of school. They would no longer have classrooms in portables, hallways, former

conference rooms and former closets. Our mandated special education programs have outgrown the Moose Hill original design. The potential support staff contract with competitive wages and health benefits is discussed. The FY25 budget addresses three large structural issues such as a new literacy program in grades 1 to 5, full day kindergarten and overcrowding at Moose Hill and health benefits to attract and retain great support staff. Other potential warrant articles include buildings and grounds capital reserve, technology infrastructure and equipment capital reserve. Mr. Black summarized the budget review process with the school board, budget committee and public again.

Mrs. McKenney adds that the PDF will be put up on the website tomorrow on the home page and business department tab. If there is a different report that the budget committee would like just reach out.

The budget committee asked about the health benefits and what that looks like contractual wise and how we remain competitive while being fiscally responsible. Mrs. McKenney mentioned our increase was about 5% compared to many other Districts that went up 20%. They feel the proactive programs we offer to our staff pay off.

5. **Public Comment:** Mr. Slater opens and closed public comment as there is none.

6. **Adjournment:**

*Mrs. Loughlin made a motion to adjourn. Mr. Porter seconded the motion. The motion passed by a vote of 5-0.*

The meeting was adjourned at 7:29PM.

Respectfully submitted,

Lisa Muse  
School Board Secretary

(Please note: In addition to the items listed on the agenda the Board may consider other matters not on the posted agenda and they may enter a non-public session or convene in a non-meeting session in accordance with RSA 91-A if the need arises.)

## SCHOOL PROPERTIES DISPOSAL PROCEDURE

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It is the policy of the School Board to obtain maximum utilization from all school property.

Property owned by the school district shall be determined to be obsolete or surplus when any one of the following criteria has been met:

- The property exists in quantities exceeding the possibility of the effective educational use by the school district
- The property is unsound, out-of-date, inaccurate or in an unusable or economically unrepairable condition.

Determination as to whether any of the above criteria applies to property currently possessed by the school district shall be made by the Superintendent, who may delegate this responsibility to qualified personnel, provided all requirements of the law are met.

Disposal of property which meets the above criteria shall be in a manner most advantageous to the school district and shall be according to the following priority outcomes:

1. Sale
2. Trade in or exchange
3. Donation to students, parents, or non-profit agencies, whichever is appropriate
4. Discard in an appropriate manner

Disposal of real estate shall require the approval of the School Board and a vote of the District voters.

LONDONDERRY SCHOOL BOARD

First Reading to Adopt: November 7, 2023

Second Reading to Adopt: November 28, 2023

Third Reading to Adopt: December 5, 2023



**Londonderry School District**  
**Daniel Black,**  
**Superintendent of Schools**

# Memo

**To:** Londonderry School Board  
**From:** Dan Black  
**Date:** December 1<sup>st</sup>, 2023  
**Re:** EEI Contract

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Earlier this fall the School Board awarded EEI the contract to complete our Infrastructure Project.

After multiple legal reviews, and reviews by the Trident Group and working closely with EEI over the last few months, we have a contract to present to the School Board for their approval.

This contract lays out the scope of the work that will start next summer and be completed by the early fall. EEI has been a great partner in this process so far in terms of helping us come up with cost effective solutions for updates to our HVAC systems that will last for a very long time.

# **ENERGY PERFORMANCE CONTRACT**

**OWNER: Londonderry School District**

**AND**

**ESCO: Energy Efficient Investments, Inc. (EEI)**

## **Preamble**

This Energy Performance Contract (hereinafter "Contract") is entered into as of December 1, 2023 by Energy Efficient Investments, Inc. (hereinafter "ESCO"), a corporation having its principal offices at, with offices at, 19 D Star Drive, Merrimack, NH 03054 and Londonderry School District (hereinafter "the Owner"), having its principal offices 6A Kitty Hawk Landing, Londonderry, NH 03053 for the purpose of providing design, furnishing equipment and required work specified herein designed to improve energy efficiency and reduce operating costs at (the "Work") to the Owner properties (hereinafter the "Premises") listed in the Final Investment Grade Audit in Attachment 1.

This Contract is conditional on the Owner obtaining financing from a reasonably acceptable lender or lessor in an amount not less than the Contract Price in Attachment 3 - Project Cost on terms satisfactory to the Owner, provided Owner shall diligently pursue such financing on such terms as are customary, reasonable and in compliance with Town of Londonderry, NH requirements, pertinent laws and regulations including, without limitation, financing arranged by ESCO.



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## 1. Definitions

The following terms used within this Contract are defined as follows:

**ESCO-** Energy Service Companies (ESCOs) develop, design, build, and arrange financing for projects that save energy, reduce energy costs, and decrease operations and maintenance costs at their Owners' facilities

**Energy Baseline** - A calculation or measure of each type of energy consumed (or, as appropriate, water consumed or operating and maintenance costs) in existing facilities at the Premises prior to the installation of energy conservation measures or energy efficiency measures as described in Attachment 4 - M & V Plan.

**Energy Cost Savings Measures (ECMs)/Operating Cost Savings Measures (OCMs)** - A set of activities that result in savings of energy, water or operating and maintenance costs at the Premises and described in detail in Attachment 2 - Maintenance and Service Agreement. OCMs include any measures that eliminate and/or avoid expense as a result of the installation or modification of equipment, or services performed by ESCO. OCMs do not include any measures that produce savings solely because of a shift in the cost of personnel or other similar short-term cost savings.

**Energy Savings** - The reduction in energy consumption or demand resulting from ESCO's ECMs/OCMs which shall include electric energy savings, gas energy savings, operational savings, maintenance savings, water consumption savings and any other savings achieved as a result of the Work as shall be determined after adjustments for variations in other factors that might substantially affect the data such as weather, changes in operating practices or other external influences.

Energy savings shall be determined by comparing the Energy Baseline with the energy consumed (or demand) after ESCO has implemented ECMs/OCMs. A description of the promised savings and the terms of the Performance Guarantee with respect to promised Energy Savings is included in Attachment 4 - M & V Plan.

**Project Acceptance** - The date when ESCO certifies and warrants by written notice that all Work is properly completed and the Owner accepts all Work warranted by ESCO to be at Final Completion, including all remaining items of Work identified in the notice delivered at the Substantial Completion date. Project Acceptance will not be made until ESCO has demonstrated, through the Guidelines for Project Acceptance as described in Attachment 11 - Final Acceptance, that all ECMs/OCMs are achieving all the stated savings in Attachment 4 - M & V Plan. Project Acceptance shall be by written notice in the form provided in Attachment 11 - Final Acceptance.

**Substantial Completion** - The date on which ESCO warrants by written notice in the form provided in Attachment 10 – Substantial Completion that installation of ECMs/OCMs is substantially complete and the Owner has accepted such ECM/OCM as installed and all authorities having jurisdiction certificates, if and as required, are in place.

**Final Completion** - The date on which ESCO warrants by written notice in the form provided in Attachment 1 - Final Investment Grade Audit and that all Work is completed including all remaining items of Work identified in the notice contained in Attachment 10 –

Substantial Completion delivered at Substantial Completion and the Owner has accepted such ECM/OCM as installed and all authorities having jurisdiction certificates are in hand, if and as required, are in place, and all lender requirements are satisfied.

## **2. Contract Documents**

The Contract consists of this document and all attachments, schedules and any amendments or addenda thereto. In addition, all requirements set forth in the request for proposals/qualifications (RFP) issued by Owner and in ESCO's response, shall be part of the Contract unless specifically excluded.

### **3. Representations and Warranties**

#### **3.1 Representations and Warranties of Both Parties**

Each party hereto represents and warrants to the other that:

- (i) it has adequate power and authority to conduct its business as presently conducted or contemplated hereby to be conducted including legal status in the State of New Hampshire, to enter into this Contract and to perform its obligations hereunder;
- (ii) It possesses full authority to execute and deliver this Contract and that it does not contravene any applicable law, rule or regulation;
- (iii) its execution, delivery and performance of the Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized and it constitutes its legal, valid and binding obligation;
- (iv) its execution, delivery and performance of this Contract will not result in a breach or violation of, or constitute a default under any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- (v) it has not received any notice, nor to the best of its knowledge, is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders that would materially and adversely affect its ability to perform hereunder.

#### **3.2 Representations and Warranties of ESCO**

ESCO hereby warrants, represents, and promises that:

- (i) before starting to perform the Contract, ESCO shall a) provide proof and documentation that it is qualified, licensed or otherwise permitted to do business in the State of New Hampshire including all required insurance and bonds pursuant to this Contract to the extent not included in Attachment 9 - Corporate Resolution;
- (ii) ESCO shall use subcontractors who are qualified, licensed and bonded in this State and not objected to by Owner in writing to perform the Work so subcontracted pursuant to the terms hereof;
- (iii) ESCO has all requisite authority to license the use of proprietary property, both tangible and intangible, contemplated by this Contract;
- (iv) equipment installed as part of the ECMs/OCMs will meet or exceed the equipment standards set forth in Attachment 5 - Major Equipment List and
- (v) ESCO acknowledges that Owner reserves the right to reject all non-conforming Work or goods and to cause their return for credit or replacement at Owner's option;
- (vi) the equipment installed as part of the ECMs/OCMs is or will be compatible with all other Premises' mechanical and electrical systems, subsystems, or components with which such equipment interacts, and that, as installed, neither such equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of equipment installation or operation;
- (vii) ESCO is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete the work and perform its obligations under the Contract and has no outstanding and delinquent debt owed to the State of New Hampshire or any political subdivision thereof;
- (viii) ESCO has not directly or indirectly participated in any collusion or otherwise taken any action in restraint of full competitive bidding with respect to this Contract or the solicitation process leading to this Contract; and
- (ix) ESCO has not paid, and agrees not to pay, any bonus, commission, fee or gratuity to any employee or official of the state or municipal government or the Owner for the purpose

of obtaining this Contract or any other contract or award and that no commission or other payment has been or will be received from or paid to any third party contingent upon the award of any contract except as previously communicated to the Owner in writing (and ESCO acknowledges that subsequent discovery of non-compliance with this provision constitutes sufficient cause for immediate termination of this Contract and other remedial action).

### 3.3 Representations and Warranties of the Owner

Owner hereby represents and warrants that:

(i) It is a tax exempt entity and, therefore, the Work required by this Contract may be subject to tax exemption for New Hampshire sales or use tax purposes upon compliance with the appropriate process.

## **4. Price and Terms**

### **4.1 Contract Price**

Lump Sum phasing breakout in Attachment 3. District can authorize each scope separately and issue a notice to proceed as required.

ESCO will submit a schedule of values to Owner for parts of the Work that ESCO shall have performed on a form issued by the American Institute of Architects G702, G703 ("Schedule of Values"). Owner shall have no objection and authorize release of payment less ten percent (10%) retainage from the Escrow Agent/Trustee to the ESCO within thirty (30) days following Owner's receipt of a properly prepared and submitted Schedule of Values as part of a properly prepared and submitted requisition of payment submission (the "Requisition for Payment"). Owner shall not be required to authorize release of payment for Work yet to be performed or not properly performed. In the event that the Owner disputes a portion of a Requisition for Payment, Owner shall make a timely authorization to release payment in an amount equal to the undisputed part of the Requisition for Payment.

Upon submittal of any Requisition for payment, ESCO shall furnish signed lien waivers from ESCO in a form acceptable to the Owner and/or the lender, and any subcontractors or material suppliers that contributed to the Work that is the subject of the schedule of values. With respect to such Work, the authorized person executing each lien waiver shall voluntarily and with knowledge of that contractor's or supplier's legal rights, waive and release any right that it has or in the future may have to claim a mechanic's lien or any other lien rights, and waive and release all other claims of any kind against (a) the real property where the Work is located; (b) the improvements and other property located thereon; (c) Owner and, as applicable, its title company and lender and their employees, officers, and agents; and (d) as applicable, the surety or sureties of Owner. In addition, in each of its lien waivers, ESCO shall (i) certify that it has paid all subcontractors, suppliers, and employees for all Work related to the submitted schedule of values, and (ii) agree to indemnify and hold harmless Owner and, as applicable, its lender and title company for all costs and expenses, including attorneys fees, incurred as a result of claims that any of the subcontractors, suppliers, or employees have not been paid for such Work.

With each Application for Payment, the ESCO shall submit all information required by the Owner, including, without limitations, subcontractor certified payroll reports (if a federal job) and downstream Lien Waivers. The ESCO lien waiver and all lien waivers from its Subcontractors and Vendors shall be in a form satisfactory to the Owner and executed by Subcontractors and Vendors who are requesting payment, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the ESCO on account of the Cost of the Work equal or exceed progress payments already received by the ESCO, less that portion of those payments attributable to the ESCO Fee, plus all payrolls for the period covered by the present Application for Payment. Notwithstanding anything in the Contract Documents to the contrary, the Application for Payment shall constitute ESCO representation and warranty that the Work has been performed in accordance with the Contract Documents, has progressed to the point indicated in the Application for Payment, and once paid that title to all Work, materials and equipment will pass to Owner free and clear of all claims, obligations, liens, encumbrances, and security interests upon the incorporation of the Work into the Project. As a condition precedent to final payment by the Owner, ESCO shall submit a full Job Cost report indicating all payroll, subcontractor, material vendor, professional design fees, permit fees and all associated costs of the Project.

Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion for the Project shall be the lesser of (1) the percentage of that portion of the Work which has actually been properly completed, or (2) the percentage obtained by dividing (a) the verifiable expense that has actually been properly incurred by the ESCO on account of that portion of the Work and for which the ESCO has made payment or shall make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values

In the event that Owner disputes a Requisition for Payment or a portion of the Requisition for Payment, Owner shall indicate the reason for the dispute in writing to ESCO within fourteen (14) days of receiving a properly prepared and submitted Requisition for Payment and the parties will negotiate in good faith to resolve the dispute prior to the expiration of the thirty (30) day period. If the parties cannot resolve the dispute within such thirty (30) day period, Late Payment interest shall accrue pursuant to Section 4.2 hereof but such Late Payment interest shall be released to ESCO only in the event that the dispute is eventually resolved in favor of ESCO in accordance with Section 9.1's Dispute Resolution procedure.

ESCO shall be responsible for paying all other taxes and tariffs of any sort related to the Work. ESCO shall be responsible to pay for insurance premiums, fees, all labor, materials, equipment, tools, rentals, , construction, equipment and machinery, fuel, transportation and other facilities and services necessary for the proper execution and completion of the Work.

Retainage will be held at 10%. At the sole discretion of the Owner, once progress is 50% complete, the Owner may consider a reduction to 5% through substantial completion. Furthermore, at the sole discretion of the Owner, retainage may be reduced to 2% following Substantial Completion plus twice the value of any remaining punch list work. The remaining contract value will be released as a final payment upon Certification of Project Completion, completion of all required training, completion of any outstanding punch-list, turnover of all final paperwork such as warranties, guarantees, as-builts, O & M manuals, attic stock and satisfaction of all document turnover requirements per the project specifications.

Following Final Acceptance, Owner may terminate this Contract without cause by giving ESCO at least thirty (30) day's written notice. The Owner shall pay ESCO for management, monitoring and verification services as described in Attachment 3 - Project Cost. The continuing payment for monitoring and verification services and any operating services described in Attachment 2 - Maintenance and Service Agreement shall be a condition for the continuing effectiveness of the Performance Guarantee.

ESCO shall provide full disclosure of all costs relating to the Work, including costs to subcontractors and vendors. ESCO shall provide a list of direct costs including copies of purchase orders (PO's) for vendors and subcontractors and a breakdown of indirect costs associated with the project. .

#### 4.1.1 Final Payment

Final payment, constituting the entire unpaid balance of the Contract Sum for the entire Project, shall be made by the Owner to the ESCO when

1. the ESCO has fully performed the Contract (including, without limitation, satisfaction of all conditions to final payment as provided in the Contract Documents except for the ESCO's



- responsibility to correct Work which is deficient, and to satisfy other requirements, if any, which extend beyond final payment;
2. the ESCO has submitted a final accounting for the Cost of the Work and a final Application for Payment;
  3. all lien waivers have been submitted in a form satisfactory to the Owner in its discretion and executed by all persons or entities requesting payment and reviewed by the Owner' representatives; and
  4. a final Certificate for Payment has been issued by the Owner representatives in accordance with this Section.

#### 4.2 Late Payment

Interest shall accrue on any past due balances owed to either party hereunder, including for the Work or pursuant to the Performance Guarantee, at the rate of zero percent (0%) per month (or the highest rate not prohibited by law), whichever is lower. This remedy shall be in addition to, and not exclusive of, any other remedy available under this Contract or applicable law.

#### 4.3 Contract Termination

This Contract shall be effective and binding on the parties when the financing condition in the Preamble is met. Unless otherwise terminated, including pursuant to Section 7 of this Contract, or agreed to in writing pursuant to this Contract, this Contract shall terminate upon completion of the Measurement and verification during finance term.

Following Project Acceptance, Owner may terminate this contract without cause by giving ESCO at least 30 days' written notice. Termination of the Contract shall render the Performance Guarantee null and void, and ESCO shall have no further obligation with respect to the M&V Plan and Performance Guarantee.

## **5. The Work**

### **5.1 Time for Performance and Project Acceptance**

Owner will send a written Notice to Proceed to ESCO on closing of financing. The Notice to Proceed shall clearly identify which measures, defined in the Scope of Work, on which the ESCO should proceed. ESCO shall begin Work within thirty (30) days of receiving the Notice to Proceed. ESCO shall substantially complete the Work consistent with the schedule set forth in Attachment 6 – Scope of Work and Project Schedule. Extension of dates to commence or complete Work shall be granted at the sole discretion of the Owner except as otherwise provided herein. The Owner shall not unreasonably withhold approval for an extension of dates to commence or complete Work if the cause for an extension is pursuant to Sections 5.3, 5.6, 5.8, 5.12, 5.13, or 9.2.

When all of the ECMs/OCMs are implemented, all items on the Checklist for Project Acceptance in the form provided in Attachment 11 – Final Acceptance are complete, and all items that Owner previously deemed not to be in compliance with the requirements set forth in this Contract have been corrected, ESCO shall submit and deliver to Owner a Delivery and Acceptance Certificate Upon Final Completion in the form provided in Attachment 10 – Substantial Completion evidencing in reasonable detail that all items on the Checklist for Project Acceptance located in Attachment 11 - Final Acceptance are complete and that all items that Owner deemed not to be in compliance with the requirements set forth in this Contract have been corrected and which shall also be accompanied by a Final Commissioning Report.

Upon receipt by Owner of Delivery and Acceptance Certificate Upon Final Completion, Owner shall have thirty (30) days to complete review of the ECMs/OCMs in accordance with the Guidelines for Project Acceptance in the form provided in Attachment 11 - Final Acceptance. The Owner shall notify the ESCO of each item that does not satisfy the Guidelines for Project Acceptance within thirty (30) days of receipt of the Delivery and Acceptance Certificate upon Final Completion Form or Final Completion will be deemed to have been achieved.

The Owner reserves the right to reject the Work if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes or is otherwise not in compliance with the terms of this Contract. Upon correcting all items identified by Owner as not satisfying the Guidelines for Project Acceptance, ESCO shall submit and deliver to Owner a new Delivery and Acceptance Certificate upon Final Completion. Owner shall have an additional twenty-one (21) days to complete review of the ECMs/OCMs in accordance with the Guidelines for Project Acceptance upon receipt of a new Delivery and Acceptance Certificate upon Final Completion.

Project Acceptance shall be evidenced by the Owner submitting and delivering to the ESCO the Delivery and Acceptance Certificate Upon Project Acceptance in the form provided in Attachment 11 - Final Acceptance, the delivery of which will indicate that the Final Commissioning Report.

### **5.2 Specifications of Work**

ESCO's obligations hereunder are specified in Attachment 6 – Scope of Work and Project Schedule and related drawings and plans and any subsequent revisions thereto ("Scope of Work"), as approved by the Owner. Any modifications or alterations to the properties not expressly included within the Scope of Work or reasonably inferred or required therein, are

excluded from the Work. The requirements of all applicable laws, regulations and codes of federal, state, and local town or city government shall be met at all times. Additional construction or operation requirements at the Premises, if any, are described in Attachment 7 - Additional Requirements. All Work shall be performed in a good and workmanlike manner. Time is of the essence with respect to the Work.

### 5.3 Construction Procedures, Changes to Work and Coordination

ESCO shall supervise, coordinate and direct the Work using ESCO's best ability, skill, attention, and oversight. ESCO, in consultation with Owner, shall be responsible for the construction means, methods, techniques, sequences, and procedures. Accordingly, no course of conduct or dealings between the parties, nor expressed or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by the any alteration or addition to the Work, whether or not there is in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in the amounts due under the contract documents or a change in any time period provided for in the contract documents.

Agreement to any change order shall constitute a final settlement of all claims of ESCO relating to the change in Work that is the subject of the change order, including, but not limited to, all indirect and direct costs associated with such change and any and all adjustments to the Contract sum and the construction schedule.

The Owner, or its designee or consultants, shall review all proposed modifications to the building and systems and must accept same before commencement of any Work. Such acceptance will be made in a timely manner and will not be unreasonably withheld. No change to the scope or specifications of Work shall be made without the written consent of the Owner, in the form of a revision to the Scope of Work.

If ESCO fails to correct Work which is not in accordance with the specifications or persistently fails to meet specifications herein, Owner may order ESCO to stop the Work, or any portion thereof, until the cause for such order has been eliminated. ESCO shall perform the Work in such a manner as not to harm the structural integrity or operating systems of any building and shall repair and restore any damage caused by the Work at ESCO's expense. ESCO shall not create or allow to continue any condition deemed to endanger health or safety as defined in Section 6.1. If such a condition exists Owner shall have the right to exercise the remedies described therein.

ESCO shall supply to the Owner the telephone number of a responsible person who shall be available and that may be contacted during non-work hours for emergencies arising in connection with or affecting the Work. ESCO shall coordinate any utility hookups provided by others under a separate agreement at no additional cost or expense to the Owner. ESCO acknowledges that there is sufficient space within the Premises for the performance of the Work.

### 5.4 Relationship with Maintenance Staff

ESCO shall cooperate with Owner's operating and maintenance personnel, train said coordinate the Work on a planned and programmed basis including the specific actions described in Attachment 2 - Maintenance and Service Agreement. ESCO shall deliver a preventive maintenance schedule and procedures for any equipment installed as part of the Work.

### 5.5 Material and Equipment Installed

Upon the written notice by the ESCO that confirms and warrants that all material or equipment is furnished and installed as specified in the Scope of Work, the Owner or its designee or consultants shall make the final determination whether any material or equipment installed is as specified in the Scope of Work or, if appropriate, ESCO's Response to the RFP, which is incorporated in this Contract by Section 9.14 below. No substitution of any material or equipment specified shall be made without the written consent of the Owner in the form of a revision to the Scope of Work, and any such substitution shall be at least equal in quality, finish, durability, serviceability and performance for the purpose intended.

If alternative material or equipment is proposed, ESCO must update any and all software associated with the ECMs/OCMs, the Work or the measurement of savings. Owner reserves the right to reject all non-conforming goods and services and to direct ESCO to replace or credit the Owner, at Owner's election. Failure by Owner to discover latent defects or concealed damage or non-conformance shall not foreclose Owner's right to subsequently reject the goods or services delivered pursuant to this Contract. Formal or informal acceptance by the Owner of non-conforming goods or services shall not constitute a precedent or waiver with respect to successive receipts of goods and services. If ESCO fails to promptly cure the defect or replace nonconforming goods or services, the Owner reserves the right to cancel the Contract, contract with a different entity for the goods and services to be provided herein and to invoice ESCO for any differential in price.

ESCO shall install and, when applicable, operate and maintain, or, if specified in the Scope of Work, train Owner personnel to operate and maintain equipment in a manner that will provide standards of service to meet requirements of Section 5.2 and equipment manufacturers' literature, specifications and instructions. ESCO will service and maintain the ECMs/OCMs described in Attachment 2 – If Owner has accepted a Maintenance and Service Agreement and Owner shall pay ESCO for such services during the term of this Contract as provided in Attachment 3 - Project Cost. Except for ECMs/OCMs or other equipment that is to be serviced and maintained by ESCO as provided in Attachment 2 - Maintenance and Service Agreement, Owner shall be responsible for servicing and maintaining equipment at the Premises. ESCO shall prepare and furnish at least three (3) maintenance manuals that include product data and which are subject to acceptance by the Owner for all equipment installations at the Premises.

### 5.6 Asbestos and Hazardous Materials

ESCO will be responsible for proper removal and disposal of construction demolition debris that does not contain Hazardous Materials, as defined herein. ESCO will be responsible for proper removal and disposal of all ballasts containing or suspected of containing PCBs and fluorescent lamps containing mercury. ESCO must prepare and document disposal appropriate transportation and disposal plans and document before removal and disposal begins and document actual disposal to Owner immediately after disposal. ESCO will be responsible to test for and dispose of asbestos containing building material in the boiler rooms and related roof work related to the demolition of existing boilers and piping and Roof Top equipment. ESCO will use licensed asbestos abatement contractors and 3<sup>rd</sup> party testing and monitoring, and comply with all rules and regulations regarding the removal and disposal of all asbestos containing materials.

Excluded Materials and Activities

The Owner recognizes that in connection with the Work, installation and/or service or maintenance of equipment and/or systems at the Owner's facilities, ESCO may encounter, but is not responsible for, any Work outside of the boiler rooms relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, or (ii) mold, materials containing mold, or the existence, use, detection, removal, containment or treatment thereof, or (iii) pollutants, hazardous wastes, hazardous materials, contaminants (collectively "Hazardous Materials"), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof.

The materials and activities listed in the foregoing sentence are hereinafter referred to as "Excluded Materials and Activities". The Owner agrees that if ESCO's performance of any Work under this Contract involves Excluded Materials and Activities, upon receipt of any and all appropriate funding and approval, the Owner will perform or arrange for the performance of such Work. In the event ESCO discovers Hazardous or Excluded Materials, ESCO will immediately cease Work, remove all ESCO personnel or subcontractors from the site, and notify the Owner. The Owner will be responsible to handle such Materials at the Owner's expense.

ESCO will undertake no further Work at the facility except as authorized by the Owner in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Owner will not constitute a default by the Owner.

ESCO will be solely responsible for any hazardous ~~costs, actions, remediation, and penalties for Hazardous Materials~~ or other materials, including without limitation those listed in this paragraph, that it may bring to the site or the Work. And it is the duty of the district to identify any asbestos for EEI with inspection.

#### 5.7 Subcontracting and Assignments

ESCO may elect to use subcontractors in meeting its obligations hereunder. Owner shall approve all subcontractors and outside professionals in advance which approval shall not be unreasonably withheld or delayed. ESCO shall be responsible for the conduct, acts and omissions, whether intentional or unintentional, of its subcontractors, employees, agents, invitees or suppliers. ESCO agrees to bind each of its subcontractors to the terms of ESCO's obligations under Sections 5.1 - 5.6, 5.8, 5.9, 5.14 - 5.16, 8.1 - 8.7, 9.3, 9.4, 9.6 and 9.10 of this Contract. Nothing in this Contract shall create any contractual relationship between any subcontractor, employee, agent, invitee or supplier and the Owner.

#### 5.8 Delays

If ESCO is delayed in the commencement or completion of any part of the Work due to events beyond ESCO's control and without the fault or negligence of ESCO, including but not limited to fire, flood, extended labor disputes, unusual delays in deliveries, unavoidable casualties, abnormal adverse weather, war, and acts of God, or due to Owner's actions or failure to perform its obligations under this Contract, then ESCO will notify Owner in writing of the existence, extent of, and reasons for such delay. ESCO shall have no claim for additional compensation on account of such delays but ESCO and Owner may extend the contract time by revision to the Scope of Work for such reasonable time as they shall agree. If Owner determines that a delay described in the first sentence of this section will result in ESCO not completing the Work for a period of ninety (90) days or more, then Owner or ESCO may terminate this Contract and the Owner shall pay ESCO for the portion of the Work completed up to the Contract termination date.

### 5.9 Equipment Location and Access

The parties understand and agree that the Premises will be occupied during construction. ESCO shall take all necessary precautions to ensure the public safety and convenience of the occupants during construction and Owner shall cooperate with ESCO's reasonable requirements and related requirements described in Attachments 2 and 4. ESCO shall complete the Work in accordance with the schedule in Attachment 2 - Maintenance and Service Agreement. ESCO shall use sufficient personnel and adequate equipment to complete the Work pursuant to Section 5.01.

The Work must be completed in a continuous uninterrupted operation on the days and between the hours specified in Attachment 7 - Additional Requirements, unless otherwise authorized in writing by the Owner. No Work is to be done on holidays, Saturdays, or Sundays except as contemplated in Attachment 7 - Additional Requirements, the Scope of Work in order to maintain the Standards of Comfort described in Attachment 8 - Standards of Comfort or in the event of emergencies unless otherwise approved by Owner. The Owner will provide access to the Premises at the times agreed upon and make all reasonable provisions for ESCO to enter the Premises where Work is to be performed so that Work may be performed in an efficient manner.

ESCO is responsible for the security of partially completed work and for uninstalled materials or equipment stored at Owner properties. Only materials and equipment intended and necessary for immediate use shall be brought into the buildings. Equipment and unused materials shall be removed from each building by the end of each workday unless overnight storage is provided for within the Scope of Work. The Owner shall provide if available, without charge, a mutually satisfactory location or locations for the storage and operation of materials and equipment and the performance of the Work, including a location for staging and mobilization.

Flammables and combustibles shall be stored only in accordance with the requirements of relevant statutes, regulations, NFPA standards and Owner procedures. In the event that the Owner is unable to provide a satisfactory location for the storage of flammables and combustibles, then ESCO shall provide and pay for suitable storage at no additional cost to the Owner.

### 5.10 Permits and Fees

ESCO shall secure and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the Work that are required by federal, state, or town or city governments. In the event that fees for any permits are reduced or waived by request, standing or intervention of the Owner, then, at the Owner's option, the amount of the savings of the fee shall be deducted from the line item in the Work budget and added to the contingency line item or the Contract Price reduced by that amount.

### 5.11 Utilities

The Owner shall provide and pay for water, heat, fuel and utilities consumed by ESCO or in any additional equipment that may be used by ESCO during performance of the Work. ESCO shall install and pay for any facilities or modifications not already in existence that are necessary to access such water, heat, and utilities during the Work.

### 5.12 Concealed or Unknown Conditions

If ESCO finds conditions during the Work that are subsurface or otherwise concealed

physical conditions that differ materially from those indicated on the drawings or are unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in similar construction activities, ESCO shall notify Owner of such conditions promptly, prior to significantly disturbing the same, and in no event later than one (1) business day after first observing the conditions.

Such conditions may include, but are not limited to, water damage, termite damage, or structural building defects. If such conditions differ materially and cause an increase in ESCO's cost of, or time required for, performance of any part of the Work, ESCO shall submit a written estimate of the material and labor cost increase and time delay. If the Owner concurs with the need, cost estimate, and time delay, Owner and ESCO shall make an equitable adjustment in the Contract Price or Time for Performance and Final Completion, or both. Pursuant to Section 5.8 above, ESCO shall not be entitled to damages for delay beyond Owner's control.

#### 5.13 Casualty, Condemnation, Damage

If any fire, flood, other casualty, or condemnation renders a portion of any property described in Attachment 1 - Final Investment Grade Audit unsuitable for habitation or destroys a substantial part of the area within which the Work is to be performed or which the Work affects, the Owner and ESCO may terminate or modify this Contract by mutual agreement. The Owner shall pay ESCO for all Work completed to the date of termination. If any materials or equipment are damaged by the negligence or willful misconduct of an employee, agent or invitee of Owner, Owner shall repair or replace said item within a reasonable period of time, or, adjust the Contract Price to pay for repair or replacement or adjust Time for Performance and Final Completion, or both.

#### 5.14 Standards of Service and Comfort

The facility performance requirements of service and comfort applicable to the Premises for heating, cooling, hot water, ventilation and lighting are stated in Attachment 8 - Standards of Comfort ("Standards of Comfort") and shall apply throughout the Contract. If ESCO is unable to meet these Standards of Comfort for any reason, the Owner and ESCO shall mutually agree upon an appropriate adjustment to Energy Savings, the price paid for the Work or any corrective measures that shall be provided and paid for by ESCO.

#### 5.15 Shutdown of Services

ESCO hereby acknowledges that continuous operation of services, including but not limited to heat, water, domestic hot water, electricity, gas, sanitary facilities, elevators, fire alarms or protections, and access to the building and/or property, or common areas is essential to the operation of the Owner's properties as reflected in the Standards of Comfort. If any such service, or access to the building and/or property, or any common area is to be discontinued for any period of time in order to perform the Work (including actions described within the Scope of Work), ESCO shall give the Owner as much notice in writing as is practicable, but in no event less than seven (7) business days in which event the Owner shall, by written response, approve unconditionally or with conditions such shutdown of services and the timing thereof.

The use of any portion of the Premises by ESCO for parking or staging areas for the Work shall be expressly approved by Owner prior to the Commencement of the Work. Such conditional approval may include a requirement for ESCO to provide and pay for temporary services including, but not limited to security or safety, may limit the time period for which

services or access may be shut down, or may require other actions, accommodations or expenditures on the part of ESCO. With respect to fire alarm or other fire protections, ESCO shall also notify the local fire department of any shutdown of service and notify the fire department when such service is restored.

ESCO shall pay for any services shutdown costs and interim fire watch required for the facility to remain functioning as an occupied premises. The Owner acknowledges that such shutdowns may be necessary to perform the Work from time to time and will not unreasonably withhold approval. The Owner agrees to communicate with occupants on plans to shut down services or access and temporary measures, if any, which will be made in such circumstances.

#### 5.16 Indemnification and Limitation of Liability (Non-Patent or Copyright)

ESCO shall be responsible for the Work and take all precautions for preventing injuries to persons and property in or about the Work and shall bear the costs of all losses or damages resulting from or on account of the Work. ESCO shall pay or cause payment to be made for all labor performed or furnished and for all material used or employed in carrying out this Contract. ESCO shall assume and pay for the defense, with legal counsel acceptable to the Owner, of, indemnify and hold harmless the Owner and its officials, employees, volunteers and agents from all claims relating to:

- 1) Labor performed or furnished and materials used or employed for the Work;
- 2) Injuries to any person received or sustained by or from ESCO and its employees, subcontractors and its employees, any agents, suppliers and invitees in doing the Work, or as a consequence of any improper materials, implements of labor used or employed therein; and
- 3) Any act, omission, or neglect of ESCO and any employees, subcontractors and employees, agents, suppliers and invitees.

#### 5.17 Indemnification (Patent and Copyright)

(a) ESCO will, at its own expense, defend or at its option settle any suit or proceeding brought against Owner in so far as it is based on an allegation that any Work (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if ESCO is promptly provided Notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. ESCO will pay the damages and costs awarded in any suit or proceeding so defended. ESCO will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Work, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Owner is enjoined, ESCO will, at its option and its own expense, either: (i) procure for Owner the right to continue using said Work; (ii) replace it with substantially equivalent non-infringing Work; or (iii) modify the Work so it becomes non-infringing.

(b) ESCO will have no duty or obligation to Owner under Section 5.17(a) to the extent that the Work is: (i) modified by Owner or its contractors after delivery; or, (ii) combined by Owner or its contractors with items not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Owner. In addition, if by reason of such modification or combination, a suit or proceeding is brought against ESCO, unless expressly prohibited by law, Owner shall protect ESCO in the same manner and to



the same extent that ESCO has agreed to protect Owner under the provisions of Section 5.17(a) above.

(c) THIS SECTION 5.17 IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF OWNER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS. Compliance with Section 5.17 as provided herein shall constitute fulfillment of all liabilities of the parties under the Contract with respect to intellectual property indemnification.

5.18 All indemnification requirements of this contract related to work installed by ESCO shall survive termination or expiration of this Contract.

## **6. Performance and Evaluation Subsequent to Work**

### **6.1 Workmanship and Equipment Warranty**

ESCO hereby assigns to the Owner all manufacturer's warranties of all equipment and materials used in the Work. Attachment 2 - Maintenance and Service Agreement lists equipment and material warranties, however, failure to meet manufacturer's warranty registration or other requirements or include any equipment or materials having a warranty neither excludes said equipment or materials from the provisions of this section nor ESCO's responsibilities hereunder. ESCO shall provide Owner with a list of all serial numbered items of equipment installed as part of the Work at or before the Project Acceptance.

ESCO warrants that, for a period of two years from a date of a Certificate of Substantial Completion ("Warranty Period"), the relevant equipment, materials and Work shall be new and free from defects in material, manufacture, workmanship and performance as set forth by the catalogs, bulletins and specifications included within ESCO's Response to the RFP or the Scope of Work, whichever is appropriate. If such defect occurs within the Warranty Period, ESCO shall correct and pay for correction of all defects including replacement or repair and all parts and labor.

ESCO warrants that, for any equipment or materials used in the Work with a warranty period in excess of one year, ESCO shall correct all defects including replacement or repair provided that ESCO's obligation is limited to the terms of the warranty and provided further that the Owner, by mutual consent with ESCO, may correct said defect and be reimbursed by ESCO.

No warranty liability shall attach to ESCO until Work has achieved Substantial Completion. ESCO's warranties expressly exclude any remedy for damage or defect caused by the Owner's abuse, improper operation, unapproved modifications or improper repairs. In the event that equipment is procured early and is stored by ESCO, all warranties shall begin no earlier than the Date of Substantial Completion.

Owner may correct any defect and ESCO shall reimburse Owner for its reasonable expenses incurred in performing such correction subject to any limitations contained within this section if ESCO fails to correct defective equipment, materials or Work within a reasonable period of time, but no less than seventy-two (72) hours, upon written notice from the Owner unless such defect is a condition deemed to endanger health or safety, is a fire hazard or would otherwise render the Premises unfit for occupancy.

Conditions which are deemed to endanger health or safety are applicable provisions of the state or local sanitary code, fire hazards under applicable fire prevention regulations and codes and other emergency conditions that shall be addressed promptly and jointly, if necessary, by ESCO and Owner assuring that immediate precautions are taken to avoid risk to persons or property, immediate measures are taken to prevent deterioration of condition, occupants are alerted to any dangers or hazards, and steps for final correction taken within twenty-four (24) hours. Owner may take reasonable steps to protect the Premises or the Work on an emergency if it is not possible or reasonable to notify ESCO before taking such actions.

### **6.2 Evaluation of Savings Achieved**

ESCO shall also prepare and deliver to Owner a bound written annual report of the savings achieved at the Premises for each of the twelve-month periods specified in Attachment 4 - M & V Plan in a form suitable for review and subsequent forwarding to the Owner and any

consultant or auditor designated by Owner. ESCO shall include in such written report, to the extent practicable, emissions reduction quantities or similar data attributable to or resulting from the Work and shall advise Owner on opportunities to achieve monetary benefits from such credits or attributes which shall be the property of Owner.

The Owner shall notify ESCO of substantive changes in the properties or the operation or occupancy thereof which could affect energy or water use. Such substantive change shall be agreed upon by the parties and incorporated in the determination and evaluation of savings. The obligations under this Article are also described in Attachment 4 - M & V Plan. ESCO shall be compensated at the rate described in Attachment 3 - Project Cost for maintaining, monitoring and verification and reporting services.

### 6.3 Performance Guarantee

ESCO hereby warrants and guarantees the level of savings for the time periods and to the level described in Attachment 4 - M & V Plan ("Performance Guarantee"). The Performance Guarantee commencement date shall not occur and the Owner shall not be required to accept the Work unless and until all equipment installation at the Premises and training is completed in accordance with the terms and conditions of this Contract, including, without limitation, the satisfaction of all claims for labor and materials. In the event that Final Acceptance occurs after the commencement date of the Performance Guarantee (See Attachment 4 - M & V Plan), then the parties will mutually agree on a modified Attachment 4 - M & V Plan to accommodate the delay in beginning the Performance Guarantee.

The Performance Guarantee is to be achieved as a result of the Work and the ECMs/OCMs and the resulting savings, if any, shall be calculated in accordance with the procedures described in Attachment 4 - M & V Plan. The Performance Guarantee is subject to the satisfactory performance by Owner of all of its obligations under this Contract. In the event that this Contract is terminated by an uncured Event of Default by Owner, the Performance Guarantee shall be cancelled. The Performance Guarantee shall remain in effect for a term not less than the time required to finance the Work.

The Performance Guarantee shall thereafter terminate. In any event, ESCO and Owner have structured the Energy Savings and the Performance Guarantee to be sufficient so that the conversion to US Dollars results in amounts sufficient to exceed any and all payments required by Owner in connection with the acquisition of equipment to be installed by ESCO pursuant to this Contract, the Owner's lease or financing obligations and any related agreements associated with the execution of this Contract or the implementation of the Work.

ESCO shall have no liability to continue providing measurement and verification services or to honor the Performance Guarantee with respect to any portion of the Work in the event the Owner: (i) fails to authorize a reacceptance test or recommissioning that ESCO reasonably deems necessary in order to prevent a savings shortfall with respect to such

portion of the Work; (ii) fails to provide access to a site where such portion of the Work was performed as required herein; (iii) fails to service and maintain all equipment associated with such portion of the Work in accordance with the manufacturers' recommendations in order to prevent a savings shortfall; or (iv) cancels or terminates the Performance Assurance TSP.

#### 6.4 Performance Remedies

Energy-related cost savings shall be measured and/or calculated as specified in the measurement and verification plan provided in Attachment 4 - M & V Plan or as may be mutually agreed upon in writing. In the event that the energy and cost savings achieved during such twelve-month period is less than the corresponding Guaranteed Savings for the same annual period as reflected in Attachment 4 - M & V Plan while the Performance Guarantee is in effect, ESCO shall pay to Owner within thirty (30) days of the delivery of such report an amount equal to the deficiency.

In the event of such deficiency, ESCO reserves the right, subject to Owner's written approval, which shall not be unreasonably withheld, to implement additional operation improvements or conservation measures, at no cost to Owner, that will improve energy savings in future years of Performance Guarantee.

All costs associated with having the ECMs/OCMs repaired, replaced, adjusted or re-engineered and re-installed shall be paid by ESCO and presentation of evidence of such payment shall be a condition to any Owner acceptance of such Work. If during any twelve-month period specified in Attachment 2 - Maintenance and Service Agreement and Attachment 4 - M & V Plan the savings achieved are greater than the Guaranteed Energy and Cost Savings, such excess shall be retained by the Owner and not applied to ESCO's requirement to deliver Energy Savings beyond the stated year.

#### 6.5 Security for Performance Guarantee – Not Included

#### 6.6 Independent Audit – Not Included

#### 6.7 Other Performance Terms and Conditions

All actions taken under Section 6, including but not limited to correction of warranties, remedy of performance shortfalls and maintenance of equipment by ESCO, shall conform with Sections 5.2 through 5.17 inclusive.

#### 6.8 Contract Closeout Responsibility

At the termination of the Contract, ESCO shall perform a walk-through survey of the properties covered by this Contract and prepare an assessment of the condition of the equipment and materials installed as part of the Work and subsequent thereto under this Article. This written and bound closeout report shall include but not be limited to the following, as appropriate:

- 1) Operating and maintenance recommendations during the remaining life of equipment installed if different from requirements furnished upon installation or if changes in technology or procedures affecting the equipment could extend the useful life of the equipment or increase the conservation efficiency,
- 2) An overview of new technology or additional conservation measures for the Owner to consider.

## **7. Obligations of the Parties**

### **7.1 Obligations of ESCO**

ESCO acknowledges and agrees that ESCO's obligations hereunder are in the capacity of providing professional services for the purposes described in the Preamble to this Contract and in said capacity ESCO is expected to provide energy, water and operational auditing, engineering, design and monitoring services, construction management including general contracting as necessary, and other related services as solicited in the RFP and as may normally be incidental to these types of professional services. ESCO acknowledges and agrees that any other functions, including, but not limited to, manufacturer's representative, dealer or distributor of equipment, materials or commodity specified herein or as subcontractor, or any ownership interest in whole or in part, or financial affiliation with a company that performs such other function shall constitute a conflict of interest which shall constitute a material breach of this Contract unless 1) fully disclosed in ESCO's Response to the RFP, and 2) accepted by the Owner under terms which are specified in the Scope of Work. ESCO acknowledges and agrees that this paragraph applies to all its officers and employees.

The following events or conditions shall, without limitation, constitute a breach by ESCO and shall give the Owner the right, without an election of remedies, to proceed pursuant to Section 9.01 and/or terminate this Contract by delivery of written notice declaring termination, upon which event ESCO shall be liable to the Owner for any and all damages sustained by the Owner:

- 1) Any attempt by ESCO to increase the Contract price for reasons other than those related to changes in the Work pursuant to Section 5.3;
- 2) Any failure by ESCO to provide annual monitoring reports pursuant to Section 6.2 provided that such failure continues for ten (10) days after notice from Owner;
- 3) Any failure by ESCO to make payments pursuant to the Performance Guarantee provided that such failure continues for three (3) business days after notice from Owner;
- 4) Any representation or warranty furnished by ESCO in ESCO's Response to the RFP, the Scope of Work or this Contract which is false or misleading in any material respect when made;
- 5) Any state, county or federal license, authorization, waiver, permit, qualification or certification by statute, ordinance, law or regulation to be held by ESCO to provide the goods or services required by this Contract is denied, revoked, debarred, excluded, terminated, suspended, lapsed or not renewed;
- 6) The filing of bankruptcy by ESCO or by ESCO's creditors, an involuntary assignment for the benefit of creditors, or the liquidation of ESCO;
- 7) Any failure by ESCO to perform or comply with any other material term or condition of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to ESCO demanding that such failure be cured or, if cure cannot be effected in thirty (30) days, ESCO fails to begin to cure and proceed to completion thereof as quickly as is reasonably possible;

- 8) Any failure to maintain the Standards of Comfort and service set forth in Attachment 8 - Standards of Comfort due to the failure of ESCO to properly design, install, maintain, repair or adjust the equipment installed and maintained as part of the Work except that such failure, if corrected or cured within seven (7) days after written notice by Owner to ESCO demanding that such failure be cured, shall be deemed cured for purposes of this Contract;
- 9) Any failure to furnish and install the equipment or ECMs/OCMs or continuously perform the Work and make it ready for use within the time specified by this Contract as set forth in Attachment 2 - Maintenance and Service Agreement;
- 10) Any lien or encumbrance upon the equipment or the Premises by any subcontractor, laborer or material man of ESCO which is not released in thirty (30) days;
- 11) Any failure by ESCO to pay any amount due or perform any material obligation under the terms of this Contract; and
- 12) It is determined that ESCO has failed to disclose a material conflict of interest relative to the performance of this Contract or if it is found that any gift or gratuity were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Owner with a view toward securing a contract or favorable treatment with respect to performance of the Contract.

## 7.2 Obligations of the Owner

Owner shall respond to all written audits, proposed revisions and related requests on a timely basis, but not less than five (5) business days from receipt of a written request, for the expeditious design, implementation and monitoring of conservation measures. Furthermore, Owner shall comply with the Owner Responsibilities as are detailed in Attachment 2 - Maintenance and Service Agreement.

Each of the following events or conditions shall constitute a breach by Owner and shall give ESCO the right, without an election of remedies to proceed pursuant to Section 9.1 and terminate this Contract by delivery of written notice declaring termination, upon which event the Owner shall be liable to ESCO for all Work furnished to date:

- 1) Any failure by the Owner, without cause, to authorize payment properly due and owing more than thirty (30) days after receipt of written notice that the Owner is delinquent in making payment;
- 2) Any representation by Owner in the RFP and this Contract is false or misleading in any material respect when made; and
- 3) Any failure by the Owner to perform or comply with any other material term or condition of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to the Owner demanding that such failure be cured or, if cure cannot be effected in thirty (30) days, the Owner fails to begin to cure and proceed to completion thereof as quickly as is reasonably possible.

## **8. Insurance and Bond Requirements**

### **8.1 Worker's Compensation Insurance**

ESCO shall provide during the life of this Contract Worker's Compensation Insurance as follows:

- |                                    |                         |
|------------------------------------|-------------------------|
| 1) Workers Compensation Coverage A | Statutory Minimum       |
| Employer's Liability Coverage B    | \$500,000 each accident |
| 2) \$500,000 disease per employee  |                         |
| 3) \$500,000 disease policy        |                         |

### **8.2 Comprehensive General Liability**

ESCO shall provide Comprehensive General Liability with the following minimum coverage with respect to the Work and other operations performed by ESCO and its employees, subcontractors, supplier's agents and invitees:

- 1) Bodily Injury and Property Damage \$1,000,000 each occurrence, \$1,000,000 aggregate
- 2) Products and Completed Operations \$1,000,000 each occurrence, \$1,000,000 aggregate
- 3) Contractual Liability and Property Damage \$1,000,000 each occurrence, \$2,000,000 aggregate
- 4) Per the contract, the insurance will include the rates included on the EEI certificate which includes a \$10,000,000.00 umbrella policy.

### **8.3 Vehicle Liability**

ESCO shall provide the following minimum coverage with respect to the operations of the any employee, including coverage for owned, non-owned, and hired vehicles:

Bodily Injury \$1,000,000 each occurrence

Property Damage \$1,000,000 each occurrence

Combined Single Limit \$1,000,000

### **8.4 Property Coverage**

ESCO shall provide the following coverage against loss or damage by fire and against loss or damage covered by the special perils insurance endorsement on all Work:

All Risk 80% of Contract Price minimum.

Upon completion of Work at Owner buildings, ESCO shall provide an installation floater, in the full amount of the Contract Price, for the requirements set forth above. The policy or policies shall specifically state that they are for the benefit and payable to the Owner, ESCO, and all persons furnishing labor or labor and materials for the Work, shall be listed as loss payee as their interests may appear.

### **8.5 Professional Liability Insurance**

ESCO shall maintain in full force and effect, at ESCO's expense, an Errors and Omissions or Professional Liability Insurance Policy in the amount of \$31,000,000 minimum coverage. The policy shall remain in effect for the duration of the applicable statute of limitations for claims against construction professionals. Per the contract, the insurance will include the rates included on the EEI certificate which includes a \$10,000,000.00 umbrella policy.

ESCO shall be responsible for all claims, damages, losses or expenses, including attorneys fees, arising out of or resulting from the performance of professional services contemplated by this Contract, provided that any such claim is attributable to bodily injury or death, or injury to or destruction of tangible personal property, or to failures of the Work, including the

loss of use resulting therefrom, and is caused, in whole or in part, by any negligent act, error or omission of ESCO, any consultant or associate thereof, anyone directly or indirectly employed by ESCO. ESCO shall submit a Certificate of Insurance and policy endorsement verifying said coverage upon execution of this Agreement and also any notices of renewals of such policy as they occur.

#### 8.6 Environmental Impairment Liability Insurance

ESCO shall maintain in full force and effect, at ESCO's expense, a Sudden & Accidental Environmental Impairment Liability Insurance Policy in the amount of \$2,000,000 minimum coverage unless comparable coverage is provided pursuant to the policy required in Section 8.05. The policy shall remain in effect for the duration of the applicable statute of limitations for claims against construction professionals.

ESCO shall be responsible for all claims, damages, losses or expenses, including attorneys fees, arising out of or resulting from the cleanup, removal, and handling of hazardous materials contemplated by this Contract and is caused, in whole or in part, by any negligent act, error or omission of ESCO, any consultant or associate thereof, anyone directly or indirectly employed by ESCO. ESCO shall submit a Certificate of Insurance and policy endorsement verifying said coverage upon execution of this Agreement and also any notices of renewals of such policy as they occur.

#### 8.7 Owner as Additional Insured

The Owner and its Consultants shall be named as additional insured on ESCO's Liability Policies (named as a Certificate Holder is not acceptable).

#### 8.8 Certificates of Insurance, Policies

Certificates of insurance and policy endorsements, acceptable to the Owner, shall be submitted to the Owner upon the execution of this Contract and shall be renewed upon expiration of the policies. Certificates shall indicate that the coverage required by section

8.1 through 8.6 is in effect. If the Owner is damaged by ESCO's failure to maintain such insurance, then ESCO shall be responsible for all reasonable costs or damages attributable thereto. Certificates shall note the thirty (30) day cancellation notice requirement of Section 8.9. All policies shall be issued by companies authorized to write that type of insurance under the laws of the State of New Hampshire. Any and all deductibles and self-insured retention contained in any insurance policy shall be assumed by and at the risk of ESCO.

#### 8.9 Cancellation

Owner shall endeavor to provide notice of cancellation at least thirty (30) days prior to the effective date thereof for any insurance policy required of ESCO by this Contract.

#### 8.10 Bonds

ESCO shall provide a performance and payment bond of \$ 4,650,745.00 through a treasury listed company licensed to do business in the State of New Hampshire with a Best Rating of not less than A or a comparable rating from a recognized financial rating firm on AIA bond forms. The surety's liability under these bonds is limited to one year after Substantial Completion.



## **9. General Provisions**

### **9.1 Dispute Resolution**

Disputes regarding changes in and interpretations of the terms or scope of the Contract and denials of or failures to act upon claims for payment for extra work or materials shall be resolved according to the following procedures:

- 1) All claims by ESCO shall be made in writing and submitted to the Owner for a written decision.
- 2) ESCO shall not delay, suspend, or curtail performance under the Contract as a result of any dispute subject to this section.
- 3) Within sixty (60) days of submission of the dispute to the Owner, the Owner shall issue a written decision stating the reasons therefor and shall notify the parties of their right of appeal under this section. If the official of the Owner is unable to issue a decision within sixty (60) days, he shall notify ESCO in writing of the reasons and of the date by which the decision shall issue.
- 4) Failure to issue a decision within one hundred and twenty (120) day period or within the additional period specified in such written notice shall give ESCO the right to pursue any legal remedies available to him without further delay.
- 5) ESCO and Owner agree that all disputes relating to this Contract and performance thereunder shall be resolved through courts and legal process in the State of New Hampshire and any appellate court from which an appeal may be taken therefrom. To the fullest extent permitted by law, the parties irrevocably and unconditionally submit to the exclusive jurisdiction of said court.
- 6) Waiver of Claims for Consequential Damages- Notwithstanding the terms of the Agreement between the Contractor and the Owner, the Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there which were not directly related to the Project or Work, for losses of financing, business and reputation, and for loss of profit.

This waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 15. Nothing contained in this Article 15.1.7 shall be deemed to preclude assessment of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents

### **9.2 Conditions Beyond Control of the Parties**

Except as otherwise provided herein, if either party shall be unable to carry out any material obligation under this Contract due to events beyond its control, such as acts of God, governmental or judicial action, insurrections, riots, extended labor disputes, fires, explosions or floods, this Contract shall remain in effect but the affected party's obligations shall be suspended until the uncontrollable event terminates or is resolved, unless the Contract is terminated by either party following a ninety (90) day delay, in which event, Owner shall pay ESCO for all parts of the Work furnished to the date of termination or as otherwise agreed.

### 9.3 Labor Laws

ESCO shall obey and abide by all laws and regulations of the State of New Hampshire relating to the employment of labor and public work, including, without limitation, the State's drug-free workplace policy (ESCO shall deliver to Owner a certificate of compliance with such policy).

ESCO shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices. ESCO shall not discriminate in the delivery of services against any person who otherwise meets the eligibility criteria for services, or in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, status as a Vietnam Era Veteran, sexual orientation or for exercising any rights or benefits afforded by law including the requirements of Federal Executive Orders 11246, 11625, 11375 and 11830 and Title 28 Chapter 5.1.

### 9.4 Prevailing Wage Rate- Not Applicable

### 9.5 Appropriations

The Owner reasonably believes that funds can be obtained sufficient to make all payments due to ESCO under this Contract. The Owner hereby covenants that it will make reasonable and diligent efforts to obtain and maintain funds from which such payments may be made, including making provisions for such payments to the extent necessary in each annual or supplementary budget submitted for the purpose of obtaining funds, and using reasonable efforts to have such portion of the budget approved. Nothing herein shall obligate the Owner to institute legal action before any court, to commence proceedings before any forum, or to institute proceedings in the nature of mandamus against any public official in attempting to obtain said funds.

### 9.6 Laws, Regulations, Ordinances and Standard Practices

ESCO shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, regulations, ordinances and by-laws, including applicable licensing and permitting requirements, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules or policies of the Owner relative to the properties. ESCO shall be responsible for obtaining all governmental permits, licenses, consents, and authorizations as may be required to perform its obligations hereunder (see also Section 5.10 regarding permits and fees pertaining to the Work).

### 9.7 Access and Inspection

Owner shall have access to inspect, upon reasonable notice, the Work and the books, records, and other compilations of data which pertain to this Contract. Records shall be kept on a generally recognized accounting basis and calculations kept on file in legible form. Records shall be saved or archived by ESCO for a period of three (3) years after the termination of this Contract and shall be kept or made available within New Hampshire.

ESCO shall have access, upon reasonable notice to the Owner, to inspect the property to assess the condition and operation of material and equipment installed.

### 9.8 Ownership Rights

All drawings, reports and other materials prepared by ESCO specifically in performance of

this Contract shall become the property of the Owner as needed or upon the termination of the Contract. Owner shall be entitled to any currently or future available credits other than those agreed to by the Parties to be assigned to the ESCO, i.e. utility rebates, or rights of use associated with the reduction of energy use, particular technologies employed in or any attributes associated with the Work.

#### 9.9 Certificates

ESCO certifies as follows:

- 1) Certificate of Authorization: If ESCO is a corporation, each person executing this Contract on behalf of ESCO hereby covenants, represents and warrants that ESCO is a duly incorporated or duly qualified (if foreign) corporation and is authorized to do business in the State of New Hampshire (a copy of evidence thereof to be supplied to the Owner upon request); and that each person executing this Contract on behalf of ESCO is an officer of ESCO and that he or she is duly authorized to execute, acknowledge and deliver this Contract to the Owner, a copy of a corporate resolution to this effect is attached hereto as Attachment 9 – Corporate Resolution.
- 2) Tax Compliance Certification: Each person signing this Contract on behalf of ESCO hereby certifies, under the penalties of perjury, that to the best of his/her knowledge and belief, ESCO has complied with any and all applicable state tax laws.
- 3) Certificate of Non-collusion: The undersigned certifies under penalties of perjury that this Contract has been made in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity of group of individuals.
- 4) Foreign Corporation: ESCO, if a foreign corporation, hereby certifies that it is in compliance with Title 7 Chapter 1.1 of the General Laws of New Hampshire and that the name and address of the resident agent is included with Attachment 9 – Corporate Resolution.

#### 9.10 Assignment

ESCO shall not assign, transfer, convey, or otherwise dispose of this Contract, or any part hereof, or its right, title or interest in the same or any part thereof, without the prior written consent of the Owner or its lender provided, however, that Owner may not unreasonably withhold or delay its consent to an assignment of its interest in this Contract to a corporate affiliate and provided further that ESCO may without the consent of Owner assign its rights for payments under this Contract to any financial institution, lender or investor in connection with a leasing or financing arrangement for the ECMs/OCMs. ESCO shall not otherwise assign by power-of-attorney, or otherwise, any of the moneys due or to become due and payable under this Contract, without the prior written consent of the Owner.

#### 9.11 Applicable Law and Severability

This Contract is made and shall be interpreted and enforced in accordance with the laws of the State of New Hampshire without regard to its conflict of laws provision. If any provision of this Contract shall be determined to be invalid or unenforceable under applicable law, such provision shall, insofar as possible, be construed or applied in such manner as will permit enforcement; otherwise this Contract shall be construed as if such provision had never been made part thereof.

#### 9.12 Independent Contractor

The Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither the Contractor nor any agent or employee of the Contractor shall be deemed to be an agent or employee of the State of New Hampshire or any agency of subdivision thereof. Contractor shall be responsible for all payroll taxes and benefits for its employees and the acts and omissions of its employees, agents, contractors, and subcontractors.

#### 9.13 Complete Contract

This Contract, together with any documents incorporated herein by attachment as an exhibit or by reference, shall constitute the entire and exclusive Contract between both parties, except as may be provided by relevant law or regulation, and supersedes and terminates all prior or contemporaneous arrangements, understandings and agreements, whether oral or written, and this Contract may not be amended or modified except in writing and executed by the Owner and ESCO. The RFP and ESCO's response thereto are incorporated by reference to the extent not superseded by the Scope of Work or this Contract.

The failure of either ESCO or the Owner to insist upon the strict performance of any term or condition hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Contract.

#### 9.14 Further Documents

The parties shall timely execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

#### 9.15 Counterparts

This Contract may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and in making proof of this Contract it shall not be necessary to produce or account for more than one such counterpart.

#### 9.16 Enforceability

ESCO acknowledges that Owner is a government entity that enjoys limited immunity and other protections under state law from tort claims. As a result, any language in the Contract that provides for indemnification by Owner, including but not limited to Section 5.17, shall be enforceable only to the extent permitted by law and shall be limited to the extent of available proceeds under the insurance policies actually maintained by Owner. Further, no indemnification by Owner under the Contract shall be deemed or construed to operate in practical effect to waive any statutory immunity or statutory limitation of liability of Owner from claims of any third party, or to impose any further or additional liability to ESCO, that Owner is or would be subject to in a direct claim by such third party.

10. Contract Signatures

IN WITNESS THEREOF, the parties have each caused this Contract to be executed in counterparts on the dates set forth below (the last of which shall be considered the date of execution hereof) by their duly authorized representatives.

To assist in Energy Efficient Investments, Inc.'s tax compliance, upon final acceptance, the Contracting Officer of an Authorized Representative of the owner of the building agrees to execute any documents related to Section 179D of the Internal Revenue Code.

Energy Efficient Investments, Inc.'s will be responsible for preparing these documents, all accompanying documentation and the contents therein EEI will ensure that all subcontractors, engineers and vendors, by contract, will waive the right to any 179D benefit.

**Company:** Londonderry School District

**Energy Efficient Investments, Inc.**

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

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

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

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

**Title:** Director

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

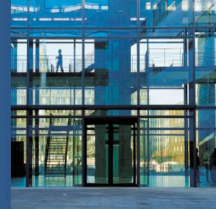
**Date:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

## **Attachment 1 - Final Investment Grade Audit**

Please see below.



## **Energy Efficient Investments, Inc. Investment Grade Audit**

FOR:

# **Londonderry School District**

Prepared by:

Mike Davey

Date: Dec 1, 2023



## Executive Summary

EEI is located in Merrimack, NH, and has a proven track record of designing and implementing energy improvements to mechanical systems, building controls systems, insulation, and renewable systems. EEI is also an approved energy management contractor with Better Buildings, Pay for Performance, Eversource, Liberty Utilities, and Unitil in New Hampshire.

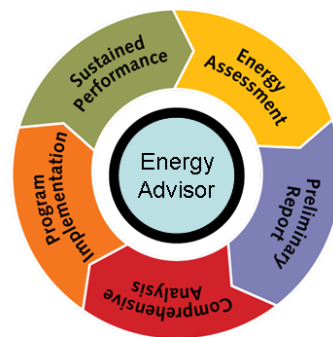
**EEI has developed a plan which will reduce annual energy expenditures in the district by almost \$40,000 per year.**

EEI in its role as Energy Service Company (ESCO) has agreed to develop an energy project targeting energy savings at the locations identified below:

Building	Location
<b>Londonderry HS</b>	295 Mammoth Rd, Londonderry, NH 03053
<b>Londonderry Middle School</b>	313 Mammoth Rd, Londonderry, NH 03053
<b>South School</b>	88 South Rd, Londonderry, NH 03053

The development of every energy project starts with the initial energy assessment which includes a site visit and the collection of utility and operational costs for each location. The next step entails defining measures, budgetary costs, and estimated savings values by measure for each building.

On the following page, the Energy Conservation Measures Matrix shows the proposed upgrades for Londonderry School District. Once measures are selected from the Preliminary Investment Grade Audit a Final Investment Grade Audit will be produced.





## ECM Matrix

Londonderry, NH School			
ECM	Scope	Cost	Location
1	Design Build with Lochinvar boilers Crest High Mass Boilers, New pumps with VFD Drives, Boiler plant controls	\$526,810.00	Middle School
2	Design build new Ventilation Unit for Cafeteria, Unit with have HWC Coils energy recovery with Dehumidification	\$393,370.00	South School
3	High School Controls Complete	\$442,225.00	High School
4	Londonderry HS Boilers 2 New Condensing	\$850,000.00	High School
5	Middle School Controls	\$412,300.00	Middle School
6	High School 2 Trane units and top Floor ERV all with Cooling	\$890,000.00	High School
7	Replace 1ERVS and add Dehumidification	\$309,890.00	High School
8	South boiler Plant (oil tank Removal and Purchase of tanks)	\$625,100.00	South School
9	South School Controls	\$166,250.00	South School
10	High school pump Consolidation	\$65,000.00	High School
11	Contingency	\$34,800.00	District
	District Total	\$4,715,745.00	
	Total	\$4,715,745.00	
	Projected Rebates	\$65,000.00	
	Total	\$4,650,745.00	

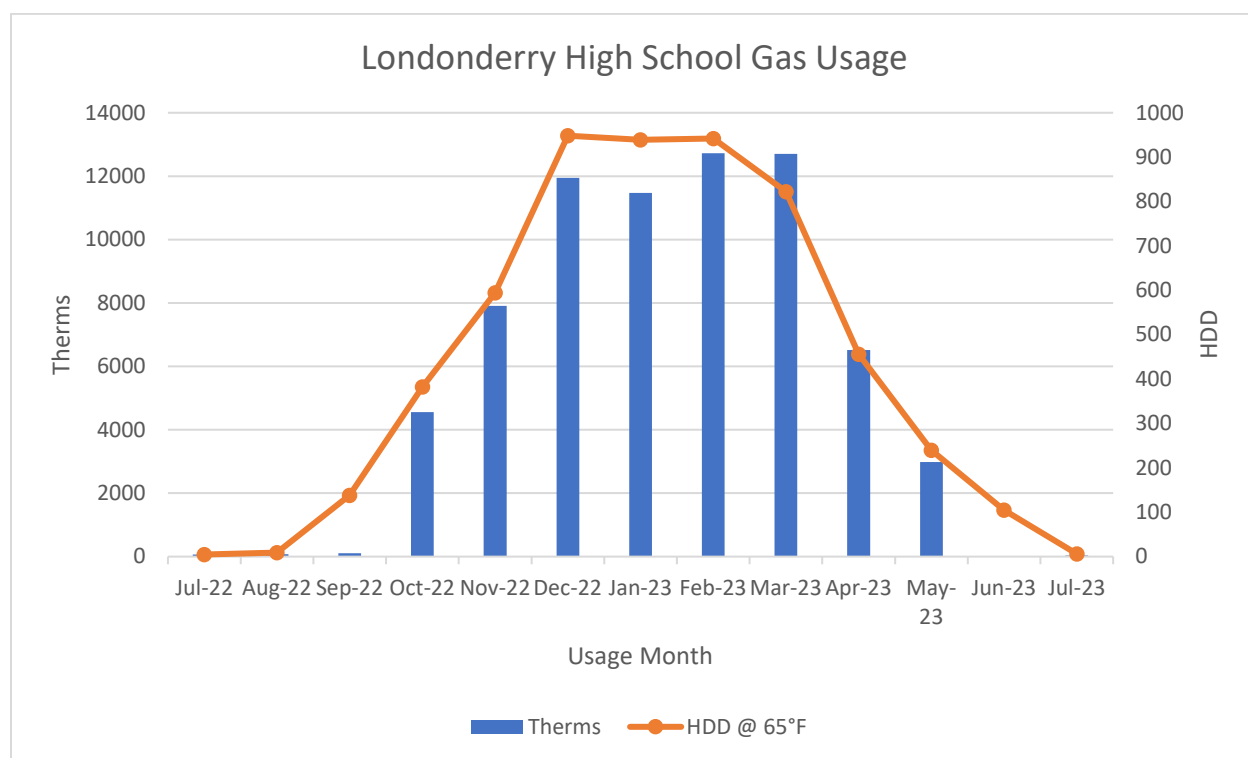
### x – Londonderry School District

## 1. Utility Data Analysis

In order to understand the energy use of each building we analyzed the energy consumption data of each building. We used historical oil delivery data and electrical bills. To understand how the buildings behave during the heating and cooling seasons we analyze the consumption as it is related to heating degree days (HDD), hours of the year requiring a building to be heated, and cooling degree days (CDD), hours of the year requiring the building to be cooled. This gives us a baseline to understand how the building may react to changes that we make to the heating system, cooling system, and building envelope of the building.

### Londonderry High School

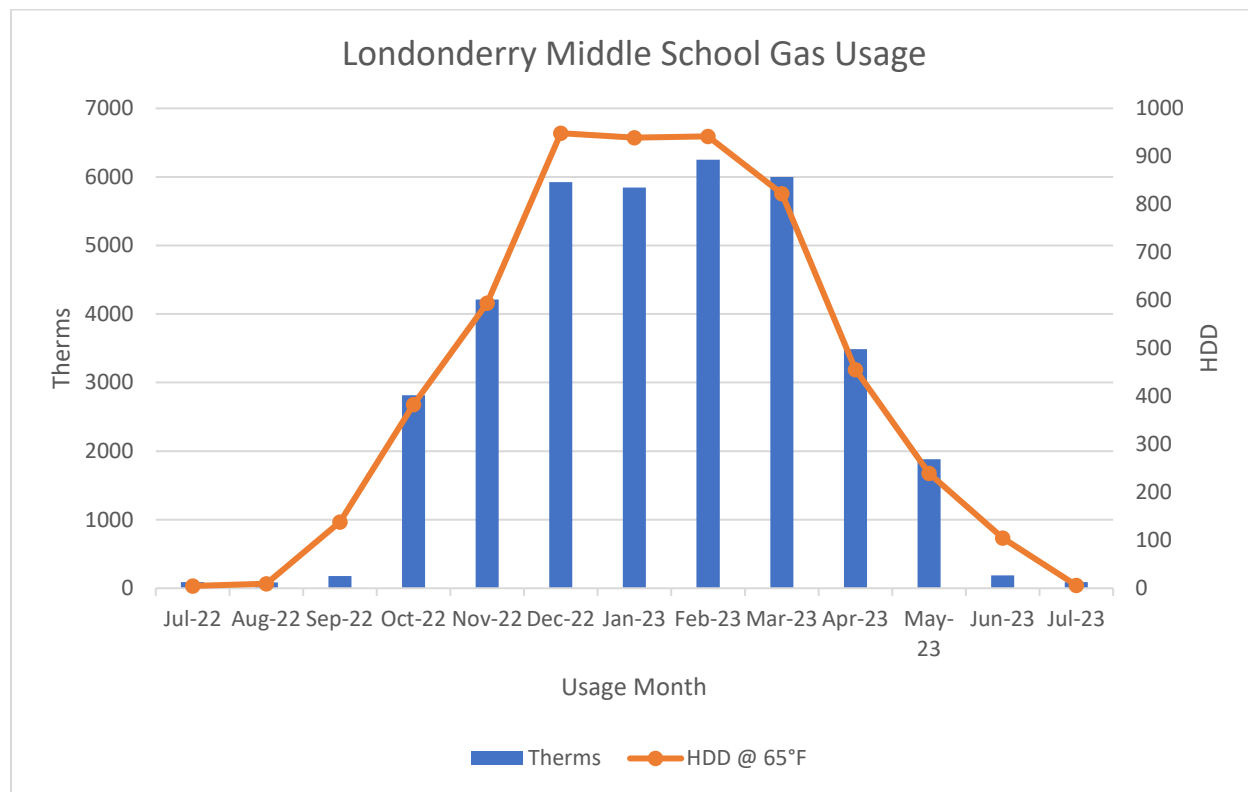
The Graph below shows the relationship between Heating degree days and natural gas usage Londonderry High School used over the past year. The natural gas usage tracks closely with the HDD with no significant outlying data points. This matches expectations as the only natural gas use for the school is the building's heating system. New high efficiency condensing boilers will be able to reduce the overall natural gas energy consumption over the existing 85% efficient boilers in the school.



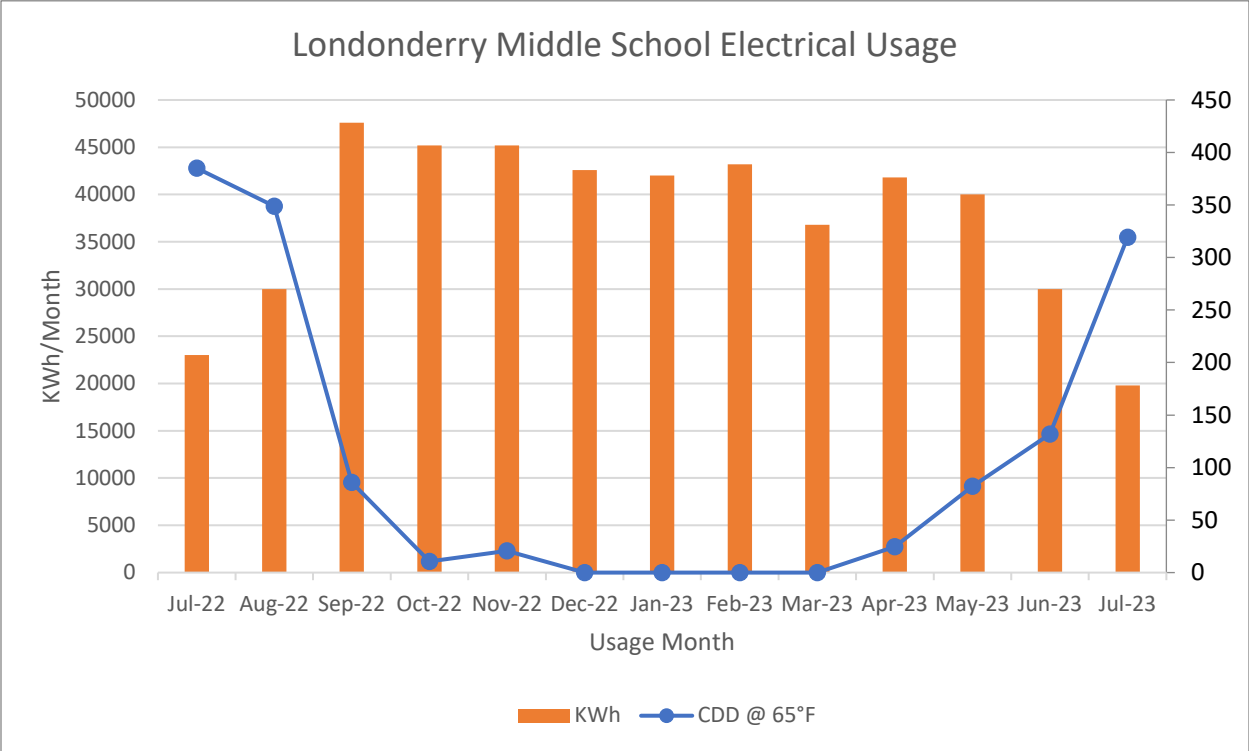
Further analysis of the school's electrical usage compared to the CDD will require more information on electrical utility data to be provided to EEI.

## Londonderry Middle School

Below, the relationship between the Londonderry Middle School's natural gas usage and the heating degree days over the past year can be observed. The natural gas usage tracks closely with the HDD with no significant outlying data points. This matches expectations as the only natural gas use for the school is the building's heating system. New high efficiency condensing boilers will be able to reduce the overall natural gas energy consumption over the existing 85% efficient boilers in the school.

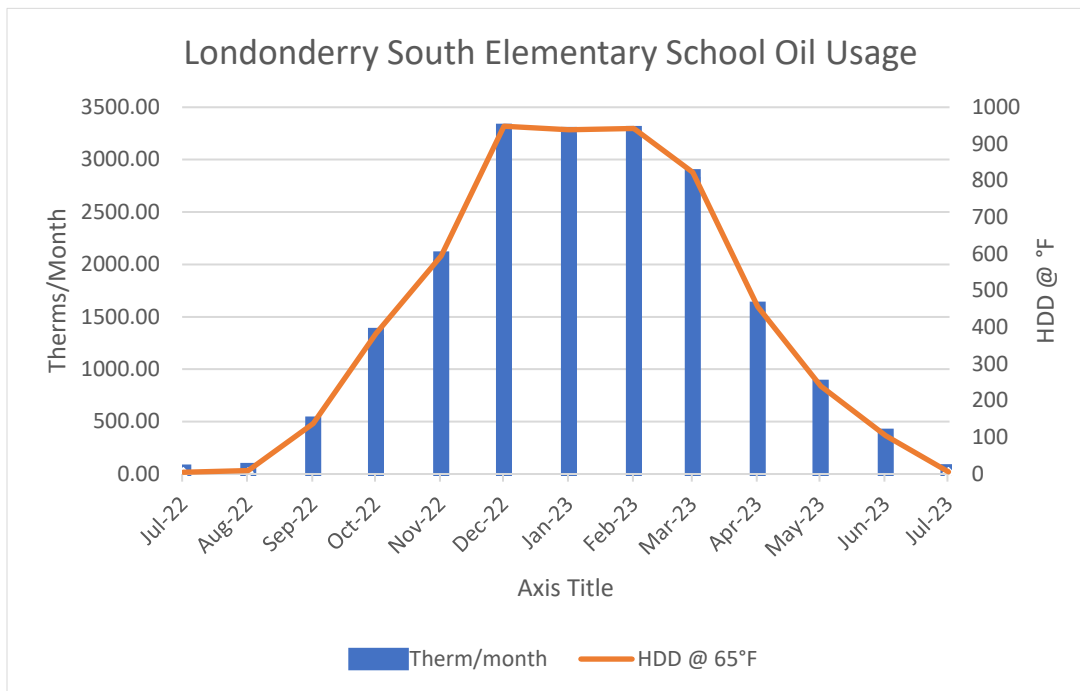


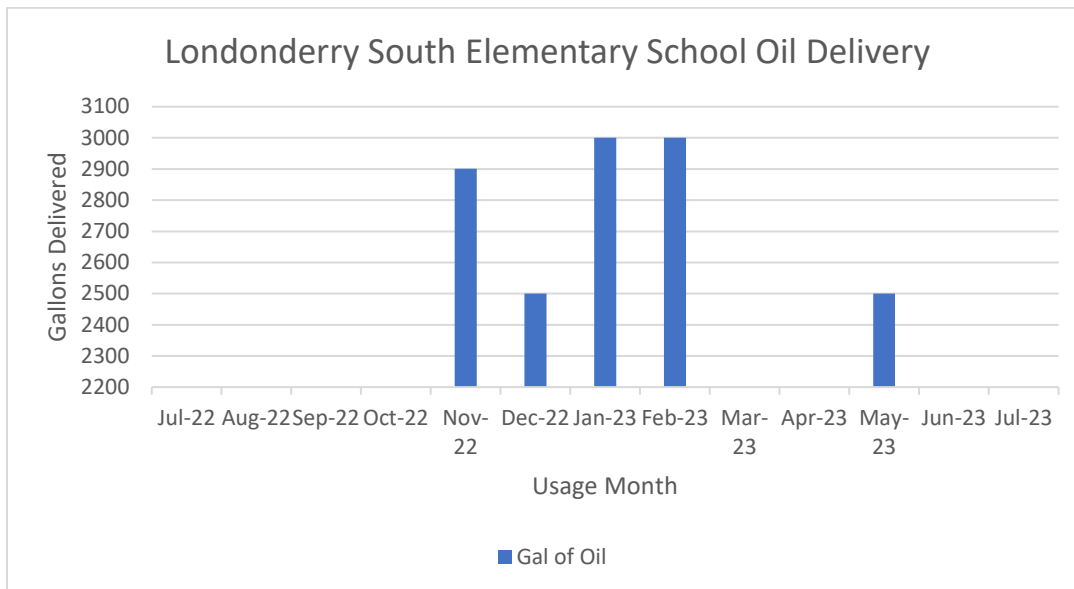
The below graph shows the relationship between Londonderry Middle School's natural gas usage and the cooling degree days over the past year. This shows the electricity the school uses does not track with the CDD over the past year. This is due to the main electrical use of the building belongs to lighting and power during the school year. The school's cooling has a minor effect on the overall electrical usage.



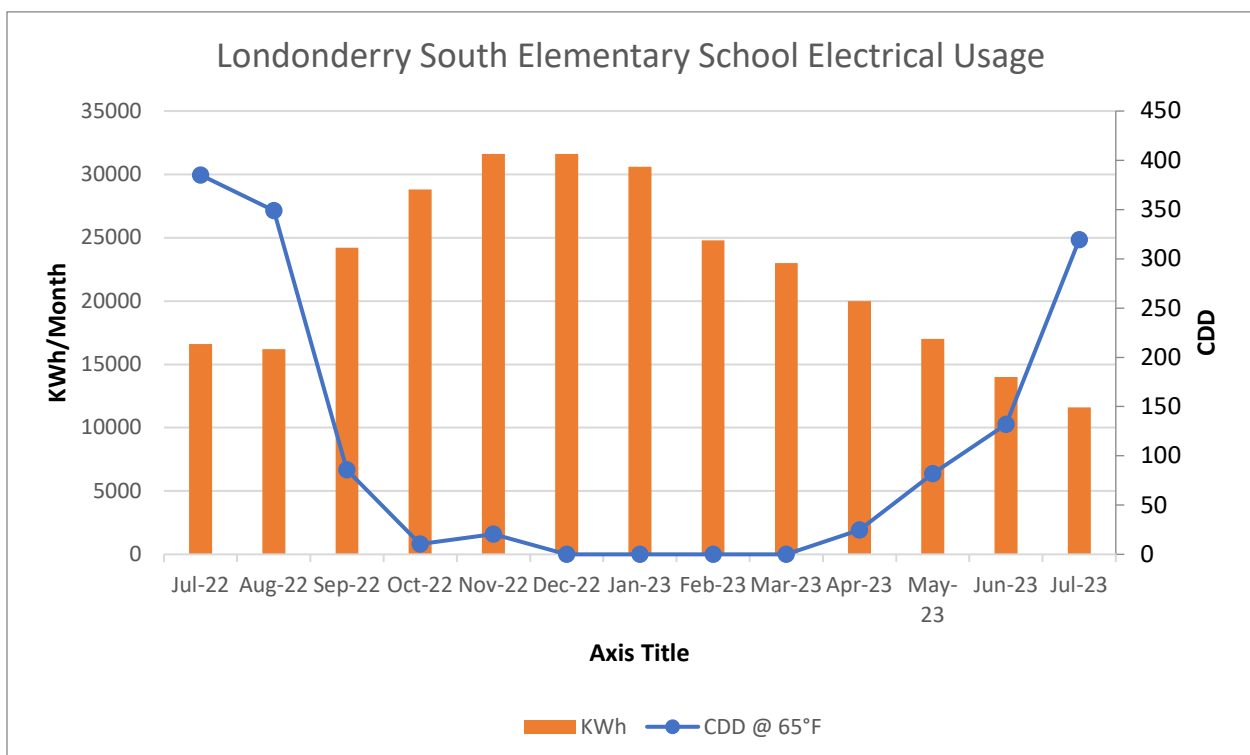
## Londonderry South Elementary School

The South Elementary School is the outlier of the three schools as its fuel to heat the building is oil. To track the relationship between oil usage and HDD assumptions shall be made using the percentage of the heating degree day for the whole year and the overall oil delivery for the year. This relationship assumption can be observed below. The schools only fuel usage is produced by the schools heating systems therefore the assumption can be made that the building heating load follows the HDD for the year. Converting to propane from oil will reduce the overall energy use for the school as LP boilers operate at a higher efficiency rate than the 80% efficiency from oil burning boilers. Oil produces 138 MBH per gallon of fuel verse 91MBH per gallon of LP. The average rate of oil last year was \$5.06 per gallon vs \$3.74 per gallon of LP. Although oiler produces more BTU per gallon of fuel, the overall cost of propane and the higher efficiency of the boilers will help to reduce the energy consumption for the school.





The below graph shows the relationship between Londonderry Middle School's natural gas usage and the cooling degree days over the past year. Similar to the middle school, the electricity the school uses does not track with the CDD over the past year. This is due to the main electrical use of the building belongs to lighting and power during the school year. The school's cooling has a minor effect on the overall electrical usage.



## Economic Analysis

Making good economic decisions requires analysis of available information and understanding the monetary value of time. A Discounted Life Cycle Cost Analysis (DLCCA) is very useful for this type of analysis when multiple alternatives exist. This is the Federal Energy Management Program (FEMP) approved method of analysis and is used to aid in decisions that are based on the most favorable economic outcome. The School District can see the estimated time it will take for this energy project to payback shown on the ECM Matrix on page 3.

EEI is working with many other area school districts to reduce their dependence on #2 fuel oil by conversion or partial conversion of all buildings to either biomass, LP gas, or natural gas.

The key assumptions EEI used in our Economic Analysis include the baseline fuel usage and kWh use in which savings calculations were based on the average from fiscal year 2019-2021 totals. Building interior lighting fixtures were assumed to run 2,500 hours per year, this is based on observation and interviews with staff. Exterior fixtures were assumed to run 4,380 hours per year. Our Guaranteed Energy Savings is 80% of projected savings.

## Energy Conservation Measures

In this section of the document, we will define the Energy Conservation Measures we have evaluated for this project. Careful consideration was given to each measure and its interaction with the overall building performance.

### ECM 1 Middle School Boiler

#### Existing Conditions:

Replacement of existing HB Smith boilers with High Efficiency Natural Gas Fired Condensing Boilers, Lochinvar.

Boiler room work will include new circulation pumps, hydronic accessories, (i.e. multipurpose valves, suction diffusers, strainers), air control separator & vent, expansion tanks, pressure reducing station/back flow cold water fill.

New near boiler piping in accordance with the manufacturer's recommendations. Piping connections to existing distribution will be appropriately valved and isolated for future service. All new piping will be insulated.

New speed control VFD's will be incorporated into the new boiler plant. Pumps speed will vary to maintain a constant pressure. This strategy allows for energy savings by slowing down the pumps when there is minimal load. This technology works best when employing 2 way control valves on all the heating elements installed in the building. A survey of the existing valves and controls on the heating elements will be included in the studies.

### ECM 2 South School Cafeteria Unit

Remove existing (3) Heating and Ventilation units that serve the Cafeteria and install a Roof Mounted Valent ERV with Dehumidification. Unit will be 5,000 CFM and feature hot gas reheat for dehumidification.

Scope of work will include:

1. Structural Support as required for new roof mounted unit.
2. Duct smokes connected to the fire alarm system.
3. Stamped permit drawings.

### ECM 3 HVAC Controls

Furnish and install Reliable DDC Controls system to replace pneumatic system at High School. The new DDC Controls system will be included.

**Scope of Work:** The control system will be as manufactured by Reliable Controls with the following clarifications / exclusions:



The control system will be manufactured by Reliable Controls and will include Bacnet compliant, controls. A graphical user interface server is included with supervisor ability including trending, alarming, and analytics.

Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing rooftop air handling units are included. Existing control devices will be reused. New communicating room thermostats with carbon dioxide monitoring are included.

Bacnet compliant DDC controls and associated low voltage interlock wiring serving the boiler plant and existing pumps are included. Existing pump VFD's will be reused. Integration into new boiler manufacturer Bacnet compliant controls is included.

Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing exhaust fans are included. Fan status will be monitored and alarmed.

Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing unit ventilators are included. New communicating room thermostats are included.

Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing duct mounted reheat coils are included. New communicating room thermostats are included. Existing valves will be reused.

Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing unit heaters and cabinet unit heaters are included. New blank plate wall temperature sensors are included.

Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing fin tube radiation zones are included. New communicating room thermostats are included. Existing zone valves will be reused.

Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing heat recovery units are included. Fan status will be monitored and alarmed.

#### **ECM 4 Londonderry HS Boilers**

The boiler room will be consolidated to reduce overall circulation pumps from 10 to 2. EEI to install new main circulation pumps with VFD Drives. Furnish and install (2) 3 million BTU Condensing Lochinvar Boilers. Demo 1 clever Brooks Boiler. Furnish and install 3 new expansion tanks. EEI will provide vent piping and make up air. The existing Hot water heater will remain.

The CREST with Hellcat Combustion Technology features an O<sub>2</sub> sensor system designed for a condensing, hydronic boiler combined with Lochinvar's Smart Touch control that adapts to the environment it's installed in.

- RealTime O<sub>2</sub> Trim™
- 8 Models from 999,000 to 6.0 Million Btu/hr

- Up to 96.2% Thermal Efficiency
- Up to 25:1 Turndown Ratio
- Featuring CON·X·US® Remote Connectivity and SMART TOUCH™ Operating Control

## **ECM 5 Middle School Controls**

1. The control system will be manufactured by Reliable Controls and will include Bacnet compliant, controls. A graphical user interface server is included with supervisor ability including trending, alarming, and analytics.
2. Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing air handling units is included. Existing control devices will be reused. New communicating room thermostats with carbon dioxide monitoring are included.
3. Bacnet compliant DDC controls and associated low voltage interlock wiring serving the boiler plant and existing pumps are included.
4. Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing exhaust fans are included. Fan status will be monitored and alarmed.
5. Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing duct mounted reheat coils are included. New communicating room thermostats are included. Existing valves will be reused.
6. Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing unit heaters and cabinet unit heaters are included. New blank plate wall temperature sensors are included.
7. Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing fintube radiation zones are included. New communicating room thermostats are included. Existing zone valves will be reused.
8. Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing heat recovery units are included. Fan status will be monitored and alarmed.
9. All existing pneumatic control devices will be replaced.
10. Valve installation is excluded.

### **ECM 6 High School HVAC**

Provide new ERU 7 and 8 to replace existing Trane DX Units. The new units will be offset from their current locations to provide additional clearance for service. New units will have energy recovery and dehumidification. The new units will be Valent XE 112.

### **ECM 7 Dehumidification for classroom unit**

Existing HRU serving upper floor classrooms will be replaced with new ERV with dehumidification. Furnish and install a Valent 312 and provide ductwork and the unit.

### **ECM 8 South School Boiler Plant**

Furnish and install new Lochinvar Condensing Propane boilers. The existing oil boilers will be removed. The new Lochinvar units are 1,700,000 BTU Crest units.

### **ECM 9 South Controls**

Existing HVAC Controls at South Elementary will be upgraded to DDC Controls.

1. The control system will be manufactured by Reliable Controls and will include Bacnet compliant, controls. A graphical user interface server is included with supervisor ability including trending, alarming and analytics.
2. Bacnet compliant DDC controls serving existing rooftop air handling units are included. Existing control devices will be reused. New communicating room thermostats with carbon dioxide monitoring are included.
3. Bacnet compliant DDC controls serving existing Kitchen MUA unit is included.
4. Bacnet compliant DDC controls and associated low voltage interlock wiring serving the boiler plant and existing pumps are included. Existing low voltage wiring will be reused as appropriate.
5. Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing exhaust fans are included. Fan status will be monitored and alarmed.
6. Bacnet compliant DDC controls and associated low voltage interlock wiring serving one blower coil unit is included.
7. Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing duct mounted reheat coils are included. New communicating room thermostats are included. Existing valves will be reused.

8. Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing unit heaters and cabinet unit heaters are included. New blank plate wall temperature sensors are included.
9. Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing fintube radiation zones are included. New communicating room thermostats are included. Existing zone valves will be reused.
10. Bacnet compliant DDC controls and associated low voltage interlock wiring serving existing heat recovery units are included. Fan status will be monitored and alarmed.

### **ECM 10 Pump Consolidation**

The Boiler room at the high school will be repiped to consolidate pumps to allow for 2 main circulators replacing the 10 zone pumps currently serving each wing. Pumps will be sized for entire building and be equipped with VFD Drives.

## **Attachment 2 - Maintenance and Service Agreements**

**To ensure the guaranteed School District must maintain equipment as required by Operational and Maintenance Manuals / Manufacturer Recommendations.**

### **Attachment 3 – Project Cost**

Please see below.

**Project Cost**  
**Londonderry, NH School**

ECM	Scope	Cost	Location
1	Design Build with Lochinvar boilers Crest High Mass Boilers, New pumps with VFD Drives, Boiler plant controls	\$526,810.00	Middle School
2	Design build new Ventilation Unit for Cafeteria, Unit with have HWC Coils energy recovery with Dehumidification	\$328,370.00	South School
3	High School Controls Complete	\$442,225.00	High School
4	Londonderry HS Boilers 2 New Condensing	\$850,000.00	High School
5	Middle School Controls	\$412,300.00	Middle School
6	High School 2 Trane units and top Floor ERV all with Cooling	\$890,000.00	High School
7	Replace 1ERVS and add Dehumidification	\$309,890.00	High School
8	South boiler Plant (oil tank Removal and Purchase of tanks)	\$625,100.00	South School
9	South School Controls	\$166,250.00	South School
10	High school pump Consolidation	\$65,000.00	High School
11	Contingency	\$34,800.00	District
	District Total	\$4,650,745.00	
	<b>Total</b>	<b>\$4,650,745.00</b>	
	Note any rebates will be paid directly to EEI by Utilities		

## **Attachment 4 - Measurement and Verification Plan**

Please see below.



Project Information

Project ID: : Londonderry School District	Implementation Engineer: Brown
Project Title: LSD SAU#12	Reviewer: Davey
Year Completed: 2	Date: 12/1/2023
	Baseline Period: 2023

International Performance Measurement and Verification Protocol (IPMVP®), EVO 10000-1:2022. March 2022.

## 1 Facility and Project Overview

Project Consists of Boiler Upgrades, controls improvements and partial ventilation improvements at Londonderry Middle, Londonderry High School and South Elementary School.

**TABLE 1: OVERVIEW OF ECMs**

ECM Number	ECM Title	Description/Scope
ECM 1	Boiler Upgrades	Installation of condensing gas boilers at LHS, LMS and South School
ECM 2	Controls upgrade	Controls improvements for South, LMS and LHS
ECM 3	Ventilation Upgrades	4 new Units 3 at LHS and 1 a South. Improvements will add dehumidification

### ECM 1 Boiler Upgrades

Replacing Standard Efficiency boilers with condensing boilers at HS and MS. Install Gas LP boilers to replace oil boilers at South.

## ECM2 – Controls Upgrade

The proposed control system is a BACnet-compliant web enabled system manufactured by Reliable Controls Inc. The scope of work is described in Table 2.

**TABLE 2: ECM3 DESCRIPTION OF CONTROLS**

Control System	Equipment Controlled	Description
Trending Capabilities	All	Customized web graphics for each piece of equipment with floor plan layouts with links to individual zones. Trend archiving will be available for use in developing system analytical profiles created by others.
BACnet-compliant DDC controls and associated low voltage interlock wiring	Boilers and Pumps	Includes VFDs on main heating loop pumps.
	RTU's & ERV's (Including associated HW Coils)	All new RTUs & ERVs. New damper actuators, freezestats, supply air temperature sensors, and fan status switches. Carbon dioxide monitoring in the gymnasium, cafeteria, and library.
	Exhaust fans	Controls and associated low voltage interlock wiring for existing exhaust fans. Fan status trending.

The improved controls will save energy by reducing the runtime of equipment in some cases and reducing the energy used in other cases (such as the VFDs). There will be a significant net increase in KWH as shown in the attached simulation, this is due to adding cooling to the building.

## ECM 3 – Ventilation

Installation of 4 HW Valent ERU with energy recovery and dehumidification

### 1.1 Baseline Description Period and Operating Conditions

Baseline energy use was established based on 2022-2023 natural gas, oil and 2022-2023 electrical historical energy use for the Londonderry School District. The fuel usage for the measurement and verification (M&V) post-install period will be normalized with temperature data to allow direct comparison to the baseline case.

## ECM 1 – Boiler Upgrades

The schools utilized sectional boilers to provide 180°F water to hot water coils throughout the buildings.

The existing boiler demand (therms) is based on the provided utility data to show the boiler load throughout the past year. The baseline operation will be assumed to match the existing therms compared to the heating degree days (HDD) to provide trending data for the boilers.

## ECM 2 – Controls Upgrade

Prior to the installation, the school had a control system that operated the boilers and shut them down when the outdoor air temperature was above the set point. All the classrooms had ventilation air that is supplied on and off hours and the heating setpoint is based on maintenance hours (no setback is taking place for the classrooms heating and ventilation.

Operating hours for other equipment, such as boiler, fans, pumps, *etc.*, are based on the baseline calculations done by EEI from the initial site visit. In the case of a substantial change in schedule, EEI should be notified by the customer so that baseline adjustments can be made.

## 1.2 Reporting Period Operating Conditions

EEI is to be notified by the customer of any substantial change in schedule as that could impact the savings. Other than the improved controls (ECM 2), the installed ECMs do not make changes to the energy-related operations.

## 2 M&V Overview

This section discusses the IPMVP option and measurement boundary for each measure.

The IPMVP options are described in Table 3 for reference. Options A, B, and C will be applied to this project, depending on the measure.

**TABLE 3: DESCRIPTION OF IPMVP OPTIONS<sup>1</sup>**

IPMVP Option	Description
A. Retrofit Isolation: Key Parameter(s) Measurement	Savings are determined by field measurement of the key parameter(s) which define the energy consumption and/or demand of the ECM affected system(s). Measurements range from periodic short-term to continuous long-term, depending on the expected variations in the key parameters. Parameters not selected for field measurements are estimated values. Estimates can be based on historical data, manufacturer specifications, or engineering judgment.
B. Retrofit Isolation: All Parameter Measurement	Savings are determined by continuous field measurement of the energy consumption and/or demand or validated proxy variables and the related independent variables of the ECM affected system(s). Measurements range from periodic short-term to continuous long-term, depending on the expected variations in the key parameters.
C. Whole Facility	Savings are determined by measuring energy and/or demand at the whole facility or sub-facility level, often using utility meter data. Routine and non-routine adjustments as required, typically based on regression analysis techniques
D. Calibrated Simulation	Savings are determined through simulation of the energy consumption and demand of the whole facility or of sub-system in the facility and comparing results with actual energy consumption and demand. Simulation models are demonstrated to adequately model actual energy performance in the facility.

Table 4 shows the IPMVP option to be applied to each measure or measure group. Fossil fuel use for measure ECM 1 will be evaluated through a whole building analysis.

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<sup>1</sup> International Performance Measurement and Verification Protocol (IPMVP®), EVO 10000-1:2022, March 2022

**TABLE 4: M&V OPTION SUMMARY**

ECM	Fuel Type	M&V Option	Boundary
ECM 1 Boilers	Fossil Fuel (Natural Gas & LP Gas)	Option A	Measurement of Boilers efficiency pre and post installation
ECM 2 Control upgrade	Gas and Elec	Option c	Whole building simulated with adjustments for actual runtime
ECM 3 Ventilation	Electric	Option C	Whole building simulation with adjustments for added A/c Load

Estimated annual savings \$38,3410

## 3 Data Collection

### 3.1 Data Requirements and Sources

**TABLE 5: SUMMARY OF DATA REQUIREMENTS AND SOURCES**

Type of Data	Source	Measures	Purpose
Billing records (fossil fuels)	Customer or fuel dealer	ECM 1 - Boilers	Determine whole building baseline and efficient energy use.
Metering	EEl or M&V Contractor	ECM -3 Ventilations May add ECM2 for spot measurement	Ventilation and AC power.
Trend data	BMS	Controls	Determine hours of use of H&V equipment.
Spot measurements (Electric)	EEl or M&V Contractor	ECM2 Controls	Determine kW draw of controlled equipment.
Equipment specs	Manufacturers or photos of nameplates	ECM 1 Boiler Upgrades and conversion, ECM 2 controls upgrades, ECM 3 ventilation upgrades	Verify installation. Verify baseline and efficient conditions.
Weather data (HDD, CDD)	Nearest NOAA weather station	ECM 1 Boiler conversion and ECM 3 Ventilation/Added AC	Normalizing heating and cooling use.

EEl confirmed the installation of all measures and that they are properly operating. For controls and boiler measures, the operation will be confirmed on an ongoing basis using the BMS trend data.

### 3.2 Existing Baseline Energy Use

The existing baseline use only includes total annual usage from bills. This was from the 2022-2023 year. From the audit report:

Londonderry High School:

Baseline gas usage: 71,120 Therms and

Baseline electricity: more information required for the high school electrical data

Londonderry Middle School:

Baseline gas usage: 36,957 Therms and

Baseline electricity: 467,400 kWh

South Elementary School:

Baseline oil usage: 19,253 Therms and

Baseline electricity: 278,400 kWh

### 3.3 Metering Details

This section includes metering and data collection details for measures using Options A or B.

#### ECM 2 – Controls Upgrades

All available trend data from the new BMS will be collected on runtime, fan/motor/pumps speeds, power use and setpoints. If needed, spot measurements of Amps will be taken to combine with runtime trend data for calculating the energy savings.

### 3.4 Metering Summary

Table 6 provides a summary of technical metering requirements for the metering to be completed for each measure group.

For AC metering, the power meters are Dent Instrument ElitePro meters. These meters can measure amps, volts, power factor and kW with <1% accuracy for 80-600V and 0.25-80A value with a 50A hinged current transformer (CT).

These meters collect data in meter specific formats which will be exported to .csv files for easy use in analysis and to allow review by 3<sup>rd</sup> parties if necessary.

**TABLE 6: METERING EQUIPMENT SUMMARY FOR ALL MEASURES**

Equipment Identifier	Metering Season	Meter Type	Metered Variables	Metering Interval	Metering Duration	Quantity of Meters
AC	Summer	Dent ElitePro	kW, V, A, PF	5 minutes	3+ weeks	5
Pumps/Fans	Any	Amp Meter	A, V	N/A	Spot measurement	1
Number of Hobos: 11						
Total Number of Dents: 5						

### 3.5 Data Issues

Table 7 lists some possible data issues and the approaches to be used to minimize impacts on the analysis.

**TABLE 7: POSSIBLE DATA ISSUES AND APPROACHES**

Type of Data	Description	Approach
Dent meters (AC)	Meter installed on incorrect circuit, errors in meter setup, or installation	Confirm that circuits metered match equipment by turning off/on equipment rather than relying on circuit labels. Confirm meter readings are as expected during setup.
Billing data	Irregular deliveries or deliveries where tank is not filled	Combine deliveries without a filled tank with the next delivery to reduce uncertainty. Use HDD/day and MMBtu/day in analysis to account for differences in delivery period lengths.
BMS trend data	Erroneous records, gaps in trend data	Data quality checks on trend data. Exclude data gaps from analysis, adjust analysis to normalize if gap is seasonal

### 3.6 Quality Assurance

EEI may conduct an annual site visit during which the Boiler system and other ECMs will be inspected to verify proper operation, ensure that it has been maintained, and ensure that it continues to have the potential to generate the expected savings.

Customer will report on all maintenance work completed annually and will continue to maintain records and make these records available to EEI upon request.



## 4 Methods

### 4.1 Calculation Methods

This section covers the methods for calculating the efficient case consumption and savings by measure, including routine and non-routine events (REs and NREs).

#### 4.1.1 Electric Measures

For this project, only monthly electric bills will be available. Given the lack of granularity in the consumption data and lack of temperature-dependency common in electric consumption, the Option C analysis is unlikely to provide accurate results. For this reason, metering will be required for the Ventilation and AC measures. Estimating the additional use from AC will be important to be able to accurately assess the reduced use due to the other electric measures. As part of the baseline calculations the results of the metering will be compared to the monthly bills as a reality check.

REs that could impact the analysis in schools are commonly associated with the school schedules, which generally have a major impact on annual hours of use. The metering will be scheduled to include weeks when the school is in normal operation and weeks when the school is not in session. The annual hours of use will be adjusted according to the published school schedule.

AC metering is likely to be conducted mostly when school is in session or in regular use in preparation of beginning the school year. In this case, interviews with school maintenance staff, BMS trend data and review of billing data throughout the summer will be used to determine whether the in-session metering should be adjusted to reflect actual use over all summer months.

NREs will be evaluated on a case-by-case basis. Possible NREs are changes in ventilation requirements or changes in schedule. The BMS trend data combined with information from the site on any non-routine periods be used to determine appropriate NRE adjustments to the analysis. For example, if classes were taught remotely during a part of the baseline year, that period will be excluded from the analysis and instead replaced with usage based on the normal operation from the remainder of the year or the previous year. Changes in ventilation levels following the installation of the BMS may be identified through review of the BMS trend data.

All kWh savings values calculated for electric measures will be converted to cost savings using the rate of \$0.17/kWh outlined in the contract. EEI will assume annual escalation in the utility rates based on Consumer Price Index.

## ECM 2 – Controls Upgrades

The electric savings from the control upgrades will be calculated based on reduced runtime of the various equipment and spot measurements of the equipment being controlled to determine the kW draw. The efficient runtime will be determined from the trending data with the new controls systems.

The baseline runtimes will be the available data on existing operations and may require some assumptions if the existing data is insufficient; relying on assumptions could introduce additional uncertainty into the analysis. For example, the VFD analysis will use the pump speed trend data combined with the assumption that the existing pumps would have operated at the same times, but at full speed. The HVAC controls such as carbon dioxide monitoring in various spaces will calculate savings based on the reduced runtime compared to the baseline operations.

The basic formula for VFDs is as follows:

$$\Delta \text{kWh} = (\text{kW}_{\text{BASE}} - \text{kW}_{\text{EE}} \times \text{VFD}\%) \times \text{Hours}$$

The basic formula for fans:

$$\Delta \text{kWh} = (\text{Hours}_{\text{BASE}} - \text{Hours}_{\text{EE}}) \times \text{kW}$$

The primary routine adjustment needed for this analysis is the variation due to out of session periods such as the summer and holiday vacation periods. The trending data will cover the entire year, including any seasonal variations.

Any fossil fuel savings due to the controls measure will be incorporated into the Option C analysis covering the boiler conversion and weatherization.

### ECM 3 Ventilation

The added AC will increase the summer load due to the additional cooling. This additional load will be calculated using an Option B analysis. Trend data will be used for this analysis; however direct metering of the AC units will be needed if kW is not trended. The calculations will use weather data to normalize the usage to the baseline period for consistency with other measures.

The equation for the AC savings usage over the range of temperature bins (T) normalized to the baseline.

$$\Delta kWh = \sum_{T_{min}}^{T_{max}} kW_{AC} \times Hours_T$$

Where,

$T_{min}$  is the lowest temperature bin.

$T_{max}$  is the highest temperature bin.

$kW_{AC}$  is the average metered kW at each temperature bin.

$Hours_T$  is the number of hours at each temperature bin.

#### 4.1.2 Fossil Fuel Measures

Fossil fuel impacts will be calculated using Option C. The consumption data is expected to be limited to monthly bills, possibly less regular at times due to the timing of fuel deliveries. Any fossil fuel base use, such as water heating, will need to be identified to determine how the regression model should be specified.

There are no expected routine adjustments needed for the fossil fuel analysis as the billing data will cover the seasonal variation in usage. The most likely need for a non-routine adjustment is if there were any changes in ventilation requirements following Covid-19 changes or temporary schedule changes at the school due to Covid-19. For example, reduced after-school activities could result in a lower set point for part of the day. Any changes in the post period can use the trend data and information provided by the site to determine the non-routine adjustment needed.

All MMBtu values calculated for electric measures will be converted to cost savings using the fixed rate of \$3.74/gallon LP and 5.06/gallon oil outlined in the contract based on 2022-2023 average fuel rates.

## ECM 1 – Boiler Upgrades

These measures will be analyzed together using Option C. The billing data will be reviewed to determine that it is sufficient for the regression analysis. The baseline and efficient case billing records will be analyzed using temperature dependent regressions and normalized using weather data. The analysis will be normalized to the weather in the baseline year for calculation of the savings.

The simple regression equation to be used is:

$$\text{MMBtu consumption} = \text{MMBtu/HDD} \times \text{HDD/day} + \text{MMBtu/day}$$

Where:

MMBtu/HDD is the slope and represents the heating use.

HDD/day is from the weather data for each billing period.

MMBtu/day is the intercept that represents any base load (from hot water or kitchen usage)

If the base load does not use the same fuel, then a non-intercept model will be used.

Review of the regression analysis will include assessing the magnitudes of the heating slope, intercept,  $R^2$ , and standard errors and identifying any data anomalies that may be affecting the results. The  $R^2$  will be reported in addition to the slope and intercept values with standard errors. Excel or Python will be used to conduct the regression analysis.

## 4.2 Expected Accuracy

Common sources of uncertainty in the analysis include the following:

- Incomplete baseline data requiring assumptions about baseline conditions.
- Data anomalies, which will be identified and discussed.
- REs and NREs, as previously discussed.

Specific sources of uncertainty will be identified and discussed in the M&V report.

## 5 Reporting

### 5.1 Reporting Period and Ongoing Reporting

EEI will submit a Measurement & Verification Report to the customer twice annually throughout the guarantee period.

### 5.2 Monitoring and Reporting Responsibilities

ECM 1/ECM 3 HVAC equipment: EEI will ensure the performance of equipment outlined in project scope and verify performance during commissioning. The customer is responsible for maintaining all equipment and providing annual maintenance records to EEI upon request. The customer is also responsible for reporting any substantial changes to the operational schedule.

ECM2 Controls measures: EEI is responsible for maintaining fan, pump motors, *etc.* so that the power draw remains at the baseline level. The customer is responsible for reporting any substantial changes to the operational schedule.

### 5.3 M&V Report Format

The annual report will include a detailed description of the ECMs and any relevant installation details not previously included in this M&V plan. The report will include the following:

- A description of the analysis including the IPMVP options used.
- Measure baselines and any assumptions used for the analysis.
- A description of the data collection methods and data sources with the measurement period for any collected data.
- The evaluated savings in energy and dollars and compare the verified savings to the estimated savings.
- List any sources of uncertainty and their potential impacts on savings.
- The results of the annual inspection and any significant problems such as burned-out lamps, change in operating hours, building size, addition of new equipment following project completion, *etc.*
- Evaluations beyond the first year will use data from previous evaluations if it is relevant and no changes have occurred.

## **Attachment 5 - Major Equipment List (Bill of Materials)**

- New Cafeteria Valent ERU
- 2 Lochinvar Crest Boilers for the High School
- 3 Valent ERUs for the High School
- 2 LP Lochinvar Boilers for the South School
- 2 Natural Gas Boilers for the Middle School
- 4 LP Tanks 1,000 gallon for the South School

## Attachment 6 – Scope of Work and Project Schedule

### Scope of Work

Please reference the Londonderry School District EEI SD Drawings dated 11-20-23 and the M&V Plan for detail.

### Project Schedule

Sign Contract	<u>December 8, 2023</u>
Design complete	<u>November 29, 2023</u>
Job Start	<u>Spring 2024</u> (please see project schedule)
Punchlist and owner acceptance	<u>Fall 2024</u> (please see project schedule)

Please see below for detail.

D	Task Mode	Task Name	Duration	Start	Finish	3rd Quarter			4th Quarter			1st Quarter			2nd Quarter			3rd Quarter			4th Quarter		
						Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	
1																							
2		<b>Londonderry Overall Project</b>	<b>307 days</b>	<b>Thu 8/10/23</b>	<b>Fri 10/11/24</b>																		
3		Preliminary Approval	14 days	Thu 8/10/23	Tue 8/29/23																		
4		EEl Presents Concept Design and price	1 day	Wed 8/30/23	Wed 8/30/23																		
5		EEl Completes Design MEPS	65 days	Thu 8/31/23	Wed 11/29/23																		
6		Owner Approval	10 days	Thu 11/30/23	Wed 12/13/23																		
7		Permit Approval	30 days	Thu 12/14/23	Wed 1/24/24																		
8		EEl Procures Equipment	160 days	Thu 1/25/24	Wed 9/4/24																		
9		Installation	120 days	Mon 4/29/24	Fri 10/11/24																		
10																							
11																							
12		<b>Londonderry Middle School Boilers</b>	<b>267 days</b>	<b>Thu 8/31/23</b>	<b>Fri9/6/24</b>																		
13		Design	15 days	Thu 8/31/23	Wed 9/20/23																		
14		Approval Owner	5 days	Mon 10/9/23	Fri 10/13/23																		
15		Procurement	30 days	Mon 10/16/23	Fri 11/24/23																		
16		Installation	80 days	Mon 5/13/24	Fri 8/30/24																		
17		Start up	5 days	Mon 9/2/24	Fri 9/6/24																		
18																							
19																							
20																							
21																							
22		<b>South School Cafeteria</b>	<b>285 days</b>	<b>Mon 9/18/23</b>	<b>Fri 10/18/24</b>																		
23		Design	40 days	Mon 9/18/23	Fri 11/10/23																		
24		Approval Owner	5 days	Mon 11/13/23	Fri 11/17/23																		
25		Procurement	160 days	Mon 11/13/23	Fri 6/21/24																		
26		Installation	80 days	Mon 6/24/24	Fri 10/11/24																		
27		Start up	5 days	Mon 10/14/24	Fri 10/18/24																		
28																							
29																							
30		<b>High School Controls</b>	<b>225 days</b>	<b>Mon 11/13/2</b>	<b>Fri 9/20/24</b>																		
31		Design	15 days	Mon 11/13/23	Fri 12/1/23																		
32		Approval Owner	5 days	Mon 12/4/23	Fri 12/8/23																		
33		Procurement	120 days	Mon 12/11/23	Fri 5/24/24																		
34		Installation	80 days	Mon 5/27/24	Fri 9/13/24																		
35		Start up	5 days	Mon 9/16/24	Fri 9/20/24																		
36																							
37																							
38		<b>Londonderry HS HVAC</b>	<b>301 days</b>	<b>Thu 8/10/23</b>	<b>Thu10/3/24</b>																		
39		Design	45 days	Thu 8/31/23	Wed 11/1/23																		
40		Approval Owner	5 days	Thu 11/2/23	Wed 11/8/23																		
41		Procurement	115 days	Thu 11/9/23	Wed 4/17/24																		

Project: Londonderry School  
Date: Tue 8/15/23

Task

Split

Milestone

Summary

Project Summary

External Tasks

External Milestone

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

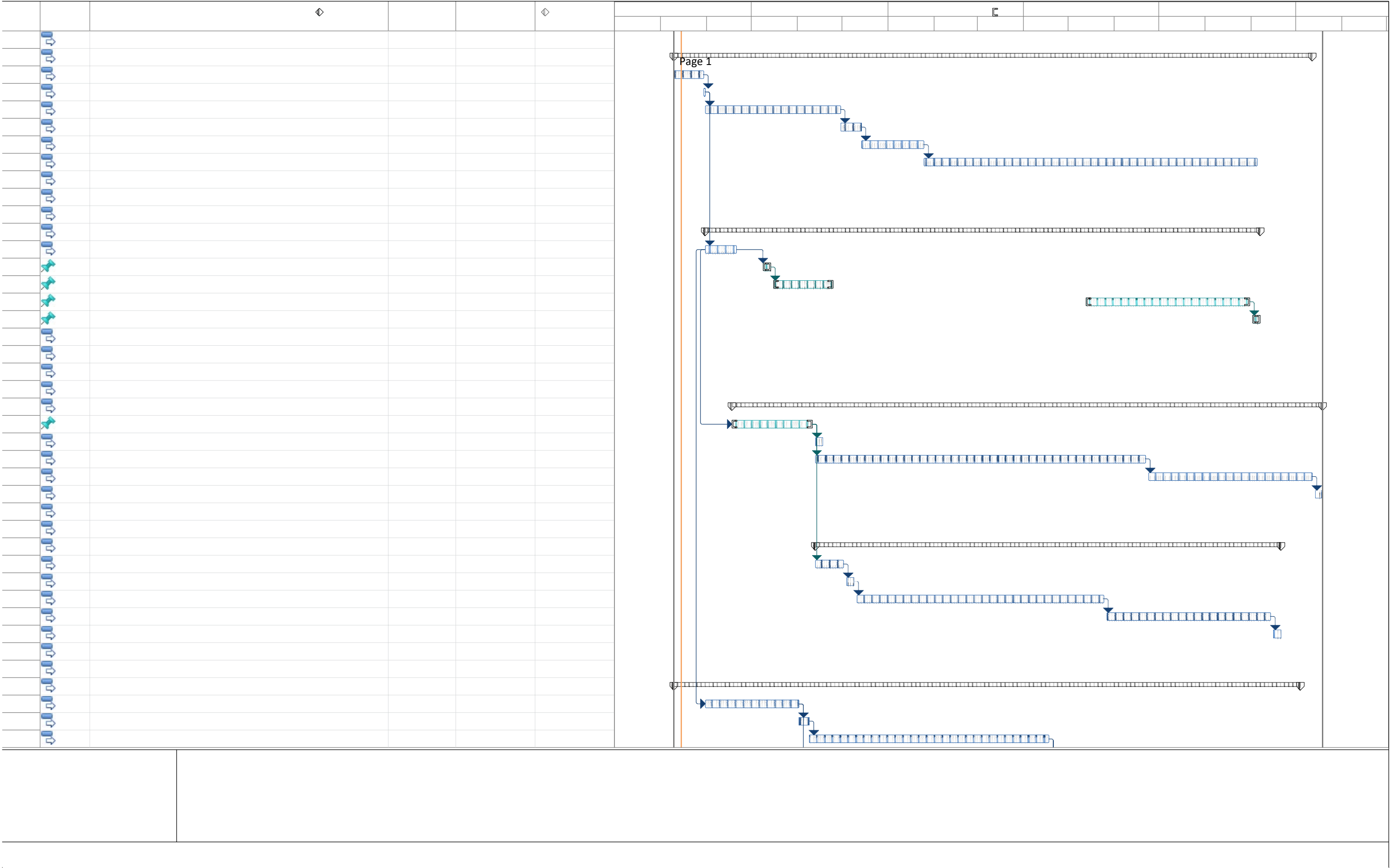
Start-only

Finish-only

Deadline

Progress







## **Attachment 7 - Additional Construction or Operational Requirements**

At the time of this document engineering and design of the project was not 100% complete. There may/will be some modifications in the project design and the selected materials for the project. These modifications need to be accepted by both parties prior to implementation. Funds for these changes will utilize the Design and Construction Contingency funds that have been set aside for this project.

The Owner will be required to provide the ESCO access to the work site during normal business hours. Some of the work activities may require the Owner to work around the contractors performing the work. Scheduling and coordination of construction activities will take place on a weekly basis to avoid unnecessary delay or disruptions to the contractors work and that of the Owner.

## **Attachment 8 – Standards of Comfort**

See M&V Report

## **Attachment 9 - Corporate Resolution, Certificate of Foreign Corporation**

N/A

## **Attachment 10 - Substantial Completion**



Date: xx/xx/xx

To: \_\_\_\_\_

Subject: Substantial Completion of Work

To Whom it May Concern,

This letter is to inform you that, in accordance with our ESCO Contract Section 5.01, work has been substantially complete, and Owner is receiving benefits of the heating systems. Attached is a punchlist of remaining items that will be completed for Final Acceptance. These punchlist items will be completed in an expeditious manner.

Please let us know if you have any concerns.

Sincerely,

Michael Davey, CEM  
Business Executive/Project Manager  
Energy Efficient Investments, Inc.

Letter of Substantial Completion of Work received and acknowledged by

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Date

**ENERGY EFFICIENT INVESTMENTS, INC.**

19D Star Drive ▪ MERRIMACK, NH 03054 ▪ Tel. (603) 423-6000 ▪ Fax (603) 423-6001

[www.EEISERVICES.com](http://www.EEISERVICES.com)

## **Attachment 11 - Final Acceptance**





Attachment 12



### CUSTOMER CHANGE ORDER AUTHORIZATION FORM

Project Information	
Customer Name	
Project Name	
Project Location	
Project Number	200xxxxx
Change Order Number / Name	

#### DESCRIPTION OF CHANGE:

Sample Language - EEI was given Notice to Proceed (NTP) on xx/xx/xx and proceeded with the final design and procurement of ..... This Change Order reflects the .....

See Attachment A – Additional Supporting Documents: \_\_\_\_\_

Reference Documents – Email from / to Subject, Date

#### CONTRACT VALUE:

Original Contract Amount	\$
Amount of Previous Change Orders	\$
Amount of This Change Order	\$
Revised Contract Amount	\$

*This Change Order becomes part of and is in conformance with the existing Agreement. All terms and conditions of the agreement apply.*

Customer Authorized

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

Name: \_\_\_\_\_

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

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

EEI Authorized Signature

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

Name: \_\_\_\_\_

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

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

Energy Efficient Investments, Inc. – Confidential - Doc: 200XXXX-C000 - Description Change Order



## **Londonderry School District Business Office**

# **Memo**

**To:** Dan Black  
**From:** Lisa McKenney  
**Date:** November 28, 2023  
**Re:** Bond Loan Agreement

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### **\$5.0M Bond – Article 2, March 2023**

The voters of the Town of Londonderry approved a \$5,000,000 bond article at the March 2023 town election for District Wide Infrastructure Repair and Replacement. The article included the design and construction of repairs and the replacement of the District's HVAC systems, pump house and other infrastructure projects, including but not limited to, heating plant and boilers, air handling and ventilation equipment, energy recovery units, pneumatic controls, and security systems.

At the September 5, 2023, Board meeting, the Board voted unanimously to approve the hiring of EEI/ENE to design build the HVAC infrastructure system for our schools. The pump house is still in the planning phase by Stantec and will be bid out when a conceptual plan is developed and finalized.

Since the vote to approve the bond, we have been gathering all documentation required by Bond Council. There are many steps involved in the sale of a new bond including Bond Council verifying all postings and notices to make sure they are in accordance with State law. They also verify the proposed project meets the criteria and the schedule is within the guidelines to be funded with bond proceeds and the District can issue tax exempt bonds. After all this is certified, we can move forward with the bond sale. The NH Municipal Bond Bank issues two bonds per year – July and January. Due to arbitrage rules, we opted to wait for the January bond sale rather than the July sale knowing that the project wouldn't begin until the Spring 2024, to keep the cash flow requirement within the guidelines of the IRS.

We are proposing the bond sale with the NH Municipal Bond Bank on January 9, 2024, \$5,000,000 for a term of fifteen years. The interest rate is not determined until the date of the sale but has a maximum of 5%. The Bond Bank aggregates multiple issuers, which can product a better interest rate and reduces the administrative reporting requirements.

LONDONDERRY SCHOOL DISTRICT, NEW HAMPSHIRE  
(the "Issuer")

CERTIFICATE OF VOTE REGARDING AUTHORIZATION  
OF BONDS AND APPROVAL OF  
LOAN AGREEMENT WITH THE NEW HAMPSHIRE MUNICIPAL BOND BANK

I, the undersigned Clerk of the Issuer, hereby certify that a meeting of the Governing Board of Issuer (the "Board") was held on \_\_\_\_\_, 2023. A quorum of the Board was in attendance and voting throughout.

I further certify that there are no vacancies on the Board, that all of the members of the Board were duly notified of the time, place and purposes of said meeting, including as one of the purposes the authorization of bonds and the approval of a Loan Agreement between the New Hampshire Municipal Bond Bank (the "Bond Bank") and the Issuer.

I further certify that the following is a true copy of resolutions unanimously adopted at said meeting:

RESOLVED: That under and pursuant to the Municipal Finance Act, Chapter 33, N.H.R.S.A., as amended, the New Hampshire Municipal Bond Bank Law, Chapter 35-A, N.H.R.S.A., as amended, and other laws in addition thereto, and to votes of the Issuer duly adopted on March 14, 2023 under Article 2 of the Warrant for such annual meeting of the Issuer there be and hereby is authorized the issuance of a \$5,000,000 Bond of the Issuer (the "Bond") which is being issued by the Issuer for the purpose of financing the design and construction of repairs and the replacement of the Issuer's HVAC systems, pump house and other infrastructure projects, including but not limited to, heating plant and boilers, air handling and ventilation equipment, energy recovery units, pneumatic controls and security systems.

The Bond shall be dated as of its date of issuance, shall be in such numbers and denominations as the purchaser shall request, shall mature in accordance with the schedule set forth in Exhibit A to a certain Loan Agreement hereinafter described (the "Loan Agreement"), shall bear a net interest cost rate (as defined in the Loan Agreement) of five percent (5.00%) per annum or such lesser amount as may be determined by a majority of the Board. The Bond shall be substantially in the form set forth as Exhibit B to the Loan Agreement and otherwise shall be issued in such manner and form as the signatories shall approve by their execution thereof.

RESOLVED: That the Bond shall be sold to the Bond Bank at the par value thereof plus any applicable premium.

RESOLVED: That in order to evidence the sale of the Bond, the Treasurer of Issuer and a member of the Board are authorized and directed to execute, attest and deliver, in the name and on behalf of the Issuer, a Loan Agreement in substantially the form submitted to this meeting, which is hereby approved, with such changes therein not inconsistent with this vote and approved by the officers executing the same on behalf of the Issuer. The approval of such changes by said officers shall be conclusively evidenced by the execution of the Loan Agreement by such officers.

RESOLVED: That all things heretofore done and all action heretofore taken by the Issuer and its officers and agents in its authorization of the project to be financed by the Bond are hereby ratified, approved and confirmed.

RESOLVED: That the Clerk and the signers of the Bond are each hereby authorized to take any and all action necessary and convenient to carry out the provisions of this vote, including delivering the Bond against payment therefor.

RESOLVED: That the useful life of the project being financed is in excess of fifteen (15) years.

I further certify that said meeting was open to the public; the aforesaid vote was not taken by secret ballot nor in executive session; that notice of the time and place of said meeting was posted in at least two (2) appropriate public places within the territorial limits of the Issuer, or published in a newspaper of general circulation in said area, at least twenty-four (24) hours, excluding Sundays and legal holidays, before said meeting; that no deliberations or actions with respect to the vote were taken in executive session; and that the minutes of said meeting have been promptly recorded and have been or will be made open to inspection within one hundred forty-four (144) hours of said meeting, all in accordance with Chapter 91-A, N.H.R.S.A., as amended.

I further certify that the above vote has not been amended or rescinded and remains in full force and effect as of this date.

WITNESS my hand and seal of the Issuer this \_\_\_\_ day of \_\_\_\_\_, 2023.

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CLERK OF ISSUER

(SEAL)

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**L O A N   A G R E E M E N T**

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AGREEMENT, dated the 9th day of January, 2024 between the New Hampshire Municipal Bond Bank, a public body corporate and politic constituted as an instrumentality of the State of New Hampshire exercising public and essential governmental functions (hereinafter referred to as the "Bank"), created pursuant to the provisions of Chapter 35-A of the New Hampshire Revised Statutes Annotated, as amended (hereinafter referred to as the "Act"), having its principal place of business in Concord, New Hampshire, and **Londonderry School District** (hereinafter referred to as the "Governmental Unit"):

W I T N E S S E T H :

WHEREAS, pursuant to the Act, the Bank is authorized to loan money (hereinafter referred to as the "Loans") to the Governmental Unit and the Governmental Unit is authorized to contract with the Bank with respect to such Loans to be evidenced by its municipal bonds (as defined in the Act) to be purchased by the Bank; and

WHEREAS, the Governmental Unit has requested a loan from the Bank in the amount of **\$5,000,000** (hereinafter referred to as the "Loan") and, to evidence the indebtedness to be incurred thereby, has duly authorized the issuance of its bonds in at least that principal amount (the "Municipal Bonds"), which Municipal Bonds are to be purchased by the Bank in accordance with this Loan Agreement; and

WHEREAS, the Bank has adopted or will adopt a General Bond Resolution (hereinafter referred to as the "Bond Resolution") authorizing the issuance of its bonds from time to time, a portion of the proceeds of which will be expended for the purpose of making the Loan, and will adopt a resolution authorizing the making of the Loan to the Governmental Unit by the purchase of the Municipal Bonds,

NOW, THEREFORE, the parties agree:

1. The following words or terms used herein shall have the following meanings:

(a) "Fees and Charges" shall mean all fees and charges authorized to be charged by the Bank for the use of its services or facilities pursuant to paragraph VIII of Section 6 of the Act.

(b) "Governmental Unit's Allocable Proportion" shall mean the proportionate amount of the total requirement in respect of which the term is used, determined by the ratio that the Loan then outstanding bears to the total of all Loans which are then outstanding, as certified by the Bank.

(c) "Loan Obligation" shall mean that amount of bonds issued by the Bank which is equal to the principal amount of the Municipal Bonds outstanding.

(d) "Maximum Interest Cost Rate" shall mean an interest cost rate 5.00% per centum per annum.

(e) "Municipal Bonds Interest Payments" shall mean the amount to be paid by the Governmental Unit pursuant to this Loan Agreement representing interest due or to become due on its Municipal Bonds.

(f) "Municipal Bonds Principal Payments" shall mean the amount to be paid by the Governmental Unit pursuant to this Loan Agreement representing principal due or to become due on its Municipal Bonds.

2. The Bank hereby agrees to make the Loan and the Governmental Unit hereby agrees to accept the Loan and to sell to the Bank the Municipal Bonds in the principal amount of the Loan. The Municipal Bonds shall bear interest from the date of their delivery to the Bank at such rate or rates per annum as will result in an interest cost rate to the Governmental Unit of the Maximum Interest Cost Rate (as calculated by the "Interest Cost Per Annum" method) or at rates per annum as will result in a lesser interest cost rate to the Governmental Unit as determined by the Bank. The interest cost rate for purposes of this Loan Agreement will be computed as if the Municipal Bonds bore interest from the delivery date of the Bank's bonds, and without regard to Sections 4 and 5 hereof which require that Governmental Unit make funds available to the Bank for the payment of principal and interest at least thirty (30) calendar days (inclusive of Saturdays, Sundays and holidays) prior to each respective principal and interest payment date. Subject to any applicable legal limitations, the rate or rates of interest borne by the Municipal Bonds shall be not less than the rate or rates of interest borne by the bonds issued by the Bank (for corresponding maturities) the proceeds of sale of which were used to make the Loan and to purchase the Municipal Bonds. Notwithstanding the above, the obligation of the Bank to make the Loan shall be conditioned upon receipt by the Bank of the proceeds of bonds issued by the Bank both for the purposes set forth herein and to create the reserves required by the Bond Resolution.

3. The Governmental Unit has duly adopted or will adopt all necessary votes and resolutions and has taken or will take all proceedings required by law to enable it to enter into this Loan Agreement and issue its Municipal Bonds for purchase by the Bank.

4. The Municipal Bonds Interest Payments shall be not less than the total amount of interest the Bank is required to pay on the Loan Obligation and shall be scheduled by the Bank in such manner and at such times as to provide funds sufficient to pay interest as the same becomes due on the Loan Obligation and the Governmental Unit shall make such funds available to the Bank at least thirty (30) calendar days (inclusive of Saturdays, Sundays and holidays) prior to each interest payment date.

5. The Municipal Bonds Principal Payments shall be scheduled by the Bank in such manner and at such times as to provide funds sufficient to pay the principal of the Loan Obligation as the same matures (based upon the maturity schedule provided by and for the Governmental Unit and appended hereto as Exhibit A) and the Governmental Unit shall make such funds available to the Bank at least thirty (30) calendar days (inclusive of Saturdays, Sundays and holidays) prior to each principal payment date.



6. The Governmental Unit agrees to be obligated to pay Fees and Charges to the Bank. Such Fees and Charges, if any, collected from the Governmental Unit shall be in an amount sufficient, together with the Governmental Unit's Allocable Proportion of other monies available therefore, including any grants made by the United States of America or any agency or instrumentality thereof or by the State or any agency or instrumentality thereof, to pay on a semi-annual basis:

(a) as the same becomes due, the Governmental Unit's Allocable Proportion of the administrative expenses of the Bank; and

(b) as the same becomes due, the Governmental Unit's Allocable Proportion of the fees and expenses of the trustee and paying agents for the bonds of the Bank.

7. The Governmental Unit agrees to be obligated to make the Municipal Bonds Principal Payments scheduled by the Bank on an annual basis and agrees to be obligated to make the Municipal Bonds Interest Payments scheduled by the Bank and to pay any Fees and Charges imposed by the Bank on a semi-annual basis.

8. The Governmental Unit agrees that any loan agreements previously entered into between the Bank and the Governmental Unit in connection with loan obligations previously undertaken and presently outstanding between the Bank and the Governmental Unit, are hereby amended so as to provide that the Governmental Unit shall make such funds available to the Bank with respect to the payment of interest and principal of each such loan obligation, if any, at least thirty (30) calendar days (inclusive of Saturdays, Sundays and holidays) prior to each interest or principal payment date pertaining thereto.

9. The Bank shall not sell and the Governmental Unit shall not redeem prior to maturity any of the Municipal Bonds with respect to which the Loan is made by the Bank prior to the date on which all outstanding bonds issued by the Bank with respect to such Loan are redeemable, and in the event of any sale or redemption prior to maturity of such Municipal Bonds thereafter, the same shall be in an amount equal to the aggregate of (i) the principal amount of the Loan Obligation so to be redeemed, (ii) the interest to accrue on the Loan Obligation so to be redeemed to the next redemption date thereof not previously paid, (iii) the applicable premium, if any, payable on the Loan Obligation so to be redeemed, (iv) the costs and expenses of the Bank in effecting the redemption of the Loan Obligation, and (v) at the direction of the Bank, an amount equal to the proportionate amount of bonds so to be redeemed which were issued by the Bank with respect to the Loan Obligation and necessary to fund a portion of the reserve fund authorized by Section 11 of the Act, less the amount of monies or investments available for withdrawal from such reserve fund and for application to the redemption of such bonds issued by the Bank in accordance with the terms and provisions of the Bond Resolution, as determined by the Bank; provided, however, that, in the event the Loan Obligation has been refunded and the refunding bonds issued by the Bank were issued in a principal amount in excess of or less than the Loan Obligation remaining unpaid at the date of issuance of such refunding bonds, the amount which the Governmental Unit shall be obligated to pay under item (i) hereof shall be the amount set forth in the resolution of the Bank. In the event the Loan Obligation has been refunded and the interest the Bank is required to pay on the refunding bonds is less than the interest the Bank was required to pay on such Loan Obligation, the amount which the Governmental Unit shall be obligated to pay under item (ii) above shall be the amount of interest set forth in the resolution

of the Bank. In no event shall any such sale or redemption of Municipal Bonds be affected without the prior written agreement and consent of both parties hereto.

10. Simultaneously with the delivery to the Bank of the Municipal Bonds, which Municipal Bonds shall be in a form acceptable to the Bank, the Governmental Unit shall furnish to the Bank an opinion of bond counsel satisfactory to the Bank which shall set forth among other things, the unqualified approval of said Municipal Bonds then being delivered to the Bank and that said Municipal Bonds will constitute valid general obligations of the Governmental Unit as required by the Act. The Governmental Unit shall bear the cost of such opinion.

11. The Governmental Unit shall be obligated to notify the Bank and the corporate trust office of the trustee for the bonds of the Bank in writing at least 30 days prior to each interest payment date of the name of the official of the Governmental Unit to whom invoices for the payment of interest and principal should be addressed.

12. The Governmental Unit and the Bank agree that the Municipal Bonds Principal Payments, the Municipal Bonds Interest Payments and the Municipal Bonds or a portion thereof may be pledged or assigned by the Bank under and pursuant to the Bond Resolution.

13. The Governmental Unit agrees upon surrender to it of the Municipal Bonds by the Bank it will, at the option of the Bank, cause there to be delivered to the Bank either registered or coupon Municipal Bonds as the case may be.

14. Prior to payment of the amount of the Loan, or any portion thereof, and the delivery of the Governmental Unit's Municipal Bonds to the Bank or its designee, the Bank shall have the right to cancel all or any part of its obligations hereunder if:

(a) any representation made by the Governmental Unit to the Bank in connection with application for Bank assistance shall be incorrect or incomplete in any material respect; or

(b) the Governmental Unit has violated commitments made by it in its application and supporting document or has violated any of the terms of this Loan Agreement.

15. (a). The Governmental Unit agrees to furnish to the Bank annually as long as any of the Municipal Bonds remain outstanding such financial reports, audit reports and other financial information as the Bank may reasonably require.

(b). So long as the Governmental Unit shall constitute an obligated person within the meaning of S.E.C. Rule 15c2-12 (the "Rule") as in effect from time to time, the Governmental Unit agrees to furnish to the Bank (1) such financial information and operating data with respect to the Governmental Unit at such times and in such forms as the Bank shall reasonably request in order to comply with the provisions of the Rule, (2) when and if available, the Governmental Unit agrees promptly to provide the Bank with its audited financial statements for each fiscal year and (3) the Governmental Unit agrees to provide to the Bank in a timely manner, notice of any of the following events with respect to the Municipal Bonds, if material:

- (a) Principal and interest payment delinquencies.
- (b) Non-payment related defaults, if material.
- (c) Unscheduled draws on debt service reserves reflecting financial difficulties.
- (d) Unscheduled draws on credit enhancements reflecting financial difficulties.
- (e) Substitution of credit or liquidity providers, or their failure to perform.
- (f) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Municipal Bonds, or other material events affecting the tax-exempt status of the Municipal Bonds.
- (g) Modifications to rights of the beneficial owners of the Municipal Bonds, if material.
- (h) Bond calls, if material, and tender offers.
- (i) Defeasance of the Municipal Bonds or any portion thereof.
- (j) Release, substitution or sale of property securing repayment of the Municipal Bonds, if material.
- (k) Rating changes.
- (l) Bankruptcy, insolvency, receivership or similar event of the Government Unit.
- (m) The consummation of a merger, consolidation, or acquisition involving the Government Unit or the sale of all or substantially all of the assets of the Government Unit, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
- (n) Appointment of a successor or additional trustee or the change of name of a trustee, if material.
- (o) Incurrence of a financial obligation of the Obligated Person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Obligated Person, any of which affect Owners of the Notes, if material; and
- (p) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the Obligated Person, any of which reflect financial difficulties.

The Governmental Unit agrees that from time to time it will also provide notice to the Bank of the occurrence of other events, in addition to those listed above, if such other event is material with respect to the Municipal Bonds.

The Governmental Unit will provide, in a timely manner, to the Bank, notice of a failure to satisfy the requirements of this Section.

The intent of the Governmental Unit's undertaking pursuant to this Section is to facilitate the Bank's ability to comply with the requirements of the Rule. Accordingly, the Governmental Unit agrees to provide the Bank with any additional information the Bank may reasonably require in order to comply with the requirements of the Rule, as in effect from time to time.

To the extent the Rule no longer requires issuers of municipal securities to provide all or any portion of the information the Governmental Unit has agreed to provide pursuant to this Section, the obligation of the Governmental Unit to provide such information pursuant to this Section also shall cease immediately.

The sole remedy available to the Bank or to any other person for the failure of the Governmental Unit to comply with any provision of this Section shall be an action for specific performance of the Governmental Unit's obligations under this Section.

16. The Governmental Unit shall not take, or permit to be taken, any action or actions that would cause any Municipal Bond to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as from time to time in effect (the "Code") or a "private activity bond" within the meaning of Section 141(a) of the Code or that would cause any Municipal Bond to be "federally guaranteed" within the meaning of Section 149(b) of the Code, or that would otherwise cause interest on the Municipal Bonds to become included in gross income of the recipient thereof for the purpose of federal income taxation.

The Governmental Unit shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Governmental Unit on the Municipal Bonds shall be excluded from gross income of the recipient thereof for the purpose of federal income taxation under any valid provision of law and to assure that the Municipal Bonds shall not be "private activity bonds" within the meaning of Section 141(a) of the Code, including the preparation and filing of any statements required to be filed by the Governmental Unit in order to maintain such exclusion.

17. If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

18. This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments, and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

19. No waiver by either party of any term or conditions of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase, or other provision of this Loan Agreement.

20. This Loan Agreement merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire agreement between the parties hereto in respect hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

**NEW HAMPSHIRE MUNICIPAL BOND BANK**

Attest:

By \_\_\_\_\_  
**Secretary, NHMBB**

**(NHMBB SEAL)**

By \_\_\_\_\_  
**Chairman, NHMBB Board of Directors**

\*\*\*\*\*

Attest:

By \_\_\_\_\_  
**Member of School Board**

By \_\_\_\_\_  
**District Clerk**

By \_\_\_\_\_  
**Deputy/District Treasurer**

**(School SEAL)**

EXHIBIT A  
MATURITY SCHEDULE  
Londonderry School District  
15 year Level Principal  
Governmental Unit's Bonds

<b>Due</b>	<b>Principal Amount</b>
2/15/2025	335,000
2/15/2026	335,000
2/15/2027	335,000
2/15/2028	335,000
2/15/2029	335,000
2/15/2030	335,000
2/15/2031	335,000
2/15/2032	335,000
2/15/2033	335,000
2/15/2034	335,000
2/15/2035	330,000
2/15/2036	330,000
2/15/2037	330,000
2/15/2038	330,000
2/15/2039	330,000
Total Proceeds	5,000,000



## **Londonderry School District Daniel Black, Superintendent of Schools**

# **Memo**

**To:** Londonderry School Board  
**From:** Dan Black  
**Date:** December 1<sup>st</sup>, 2023  
**Re:** Early January 2024 School Board Calendar

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Looking at the January 24 School Board Calendar we wanted to surface potential issues with how it was originally planned out.

The calendar as of now is:

- **Thursday - Jan. 4<sup>th</sup> Budget Meeting** – This is when the School Board decides on their budget.
- **Monday – Jan. 8<sup>th</sup> Adult Ed Graduation** – The School Board usually attends.
- **Tuesday – Jan. 9<sup>th</sup> – Regular School Board Meeting** – We have no pressing issues currently scheduled.
- **Thursday – Jan. 11<sup>th</sup> – Public Hearing on the Operating Budget** – We present the Operating Budget to the Public for comment. The School Board could then choose to hold a meeting to adjust the budget if the deem necessary.

If the School Board wishes to condense this calendar, there are a few options – but we do not need to change any dates.

We also have the Jan. 16<sup>th</sup> Bond Hearing for the Moose Hill Project that we do need to keep and cannot adjust.

Combine the Budget Meeting and the Regular School Board Meeting similarly to how we have it planned in December.

- We could hold one combined meeting on Jan. 4<sup>th</sup> or Jan. 9<sup>th</sup>. How much preparation between that meeting and the public hearing the administration would need is based on how much change would occur between the current proposed Superintendent's Budget and the School Board's proposed budget.

- If we combined the meetings on Jan. 4<sup>th</sup>, we could move the Jan. 11<sup>th</sup> Public Hearing, but we do not recommend that as that might be confusing to the public. We also don't want any claims we made it hard for the public to attend because we changed the dates.

If the School Board is fine with our current early January schedule, we can simply keep it.

We do not need to make any decisions at this time and can just see how the budget process goes in December.