



Table of Articles

1. Agreement
2. New York Executory Statement
3. Substantial Completion, Final Completion
4. Delays and Impacts
5. Access
6. Permits, Taxes, and Fees
7. Warranty
8. Asbestos-Containing Materials/Other Hazardous Materials
9. Change Orders
10. Customer Financing, Treatment, Taxes
11. Insurance
12. Miscellaneous Provisions

Table of Schedules

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

Table of Attachments

1. Certificate of Substantial Completion
2. Certificate of Final Completion
3. Addendum 1 - Per Unit Pricing Breakouts
4. Lighting Survey

Article 1 AGREEMENT

1.01 ENERGY PERFORMANCE CONTRACT

This Performance Contract (this "Agreement") is made this 3rd day of October 2019 between:

PARTIES

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

And

Town of Lysander
8220 Loop Road
Baldwinsville, NY 13027

RECITALS

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

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

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

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

1.02 SCOPE OF THE AGREEMENT. Danforth shall perform the Work set forth in Schedule 1. After the Work is Substantially Complete (as defined below) and the Certificate of Substantial Completion is executed by Customer and Danforth, Danforth shall provide the assured performance guarantee (the "Assured Performance Guarantee") and the measurement and verification services (the "M&V Services") set forth in Schedule 2. Customer shall make payments to Danforth for the Work and the M&V Services in accordance with Schedule 4 (Price and Payment Terms).

1.03 AGREEMENT DOCUMENTS: In addition to the terms and conditions of this Agreement, the Schedules and Attachments listed below are incorporated into and shall be deemed an integral part of this Agreement. In the event of any conflict between the Schedules or Attachments and this Performance Contract, the terms of this Performance Contract shall govern.

Article 2 NEW YORK EXECUTORY STATEMENT

2.01 This contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefore shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract.

Article 3 SUBSTANTIAL COMPLETION, FINAL COMPLETION

3.01 This Agreement shall become effective (the "Effective Date") on the date of the last signature contained on the signature page (page #8 of this document). Danforth shall commence performance of the Work within ten (10) business days after the Effective Date and when financing is in place, and shall achieve Substantial Completion of the

Work by the Substantial Completion Date. For purposes of this Agreement, the term “Substantial Completion Date” means the date on which Customer executes a Certificate of Substantial Completion substantially in the form attached hereto as Attachment 1.

3.02 For purposes of this Agreement, “Substantial Completion” means that Danforth has provided sufficient materials and services to permit Customer to operate the Improvement Measures. The M&V Services shall commence on the first day of the month following the month in which Customer executes a Certificate of Substantial Completion and shall continue throughout the Guarantee Term (as defined in Schedule 2), subject to earlier termination of the Assured Performance Guarantee as provided herein. Customer acknowledges and agrees that if, for any reason, it

- (a) cancels or terminates receipt of M&V Services,
- (b) fails to pay for M&V Services in accordance with Schedule 4,
- (c) fails to fulfill any of Customer’s responsibilities necessary to enable Danforth to complete the Work and provide the M&V Services, or
- (d) otherwise cancels, terminates or materially breaches this Agreement, the Assured Performance Guarantee (and the Guarantee Term) shall automatically terminate and Danforth shall have no liability there under.

Article 4 DELAYS AND IMPACTS

4.01 If Danforth is delayed in the commencement, performance, or completion of the Work and/or M&V Services by causes beyond its control and without its fault, including but not limited to inability to access property; concealed or unknown conditions encountered at the project, differing from the conditions represented by Customer in the bid documents or otherwise disclosed by Customer to Danforth prior to the commencement of the Work; a

4.02 Force Majeure (as defined below) condition; failure by Customer to perform its obligations under this Agreement;

4.03 or failure by Customer to cooperate with Danforth in the timely completion of the Work, Danforth shall provide written notice to Customer of the existence, extent of, and reason for such delays and impacts. Under such circumstances, an equitable adjustment in the time for performance, price and payment terms, and the Assured Performance Guarantee shall be made.

Article 5 ACCESS

5.01 Customer shall provide Danforth, its subcontractors, and its agents reasonable and safe access to all facilities and properties in Customer’s control that are subject to the Work and M&V Services. Customer further agrees to assist Danforth, its subcontractors, and its agents to gain access to facilities and properties that are not controlled by Customer but are necessary for Danforth to complete the Work and provide the M&V Services. An equitable adjustment in the time for performance, price and payment terms, and Assured Performance Guarantee shall be made as a result of any failure to grant such access.

Article 6 PERMITS, TAXES, AND FEES

6.01 Unless otherwise specified in Schedule 3 (Contractual Obligations of Client), Danforth shall be responsible for obtaining all building permits required for it to perform the Work. Unless otherwise specified in Schedule 1 (Scope of Work), Customer shall be responsible for obtaining all other permits, licenses, approvals, permissions and certifications, including but not limited to, all zoning and land use changes or exceptions required for the provision of the Work or the ownership and use of the Improvement Measures.

6.02 Danforth shall not be obligated to provide any changes to or improvement of the facilities or any portion thereof required under any applicable building, fire, safety, sprinkler or other applicable code, standard, law, regulation, ordinance or other requirement unless the same expressly regulates the installation of the Improvement Measures. Without limiting the foregoing, Danforth’s obligations with respect to the Work is not intended to encompass any changes or improvements that relate to any compliance matters (whether known or unknown) that are not directly related to the installation of the Improvement Measures or which have been imposed or enforced because of the occasion or opportunity of review by any governmental authority.

6.03 Customer shall be responsible for and shall pay when due all assessments, charges and sales, use, property, excise, or other taxes now or hereafter imposed by any governmental body or agency upon the provision of the Work or

the M&V Services, implementation or presence of the Improvement Measures, the use of the Improvement Measures or payments due to Danforth under this Agreement, other than taxes upon the net income of Danforth.

6.04 Customer shall also be responsible for real or personal property taxes relating to equipment or material included in the Improvement Measures. Any fees, taxes, or other lawful charges paid by Danforth on account of Customer shall become immediately due from Customer to Danforth.

Article 7 WARRANTY

7.01 Danforth will perform the Work in a professional, workman-like manner.

7.02 Danforth will promptly re-perform any non-conforming Work for no charge, as long as Customer provides written notice to Danforth within one (1) year following the Substantial Completion Date or such other period identified in Schedule 1.

7.03 If Danforth installs or furnishes goods or equipment under this Agreement, and such goods or equipment are covered by an end-user warranty from their manufacturer, Danforth will, to the extent permissible, transfer the benefits of such warranty to Customer.

7.04 The foregoing remedy with respect to the Work, together with any remedy provided by goods or equipment manufacturers, shall be Customer's sole and exclusive remedies for warranty claims.

7.05 Customer agrees that the one (1) year period following the Substantial Completion Date, or such other period identified in Schedule 1, shall be a reasonable time for purposes of submitting valid warranty claims with respect to the Work. NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE PROVIDED BY Danforth.

7.06 This warranty does not extend to any Work that has been abused, altered, or misused, or repaired by Customer or third parties without the supervision or prior written approval of Danforth. Except with respect to goods or equipment manufactured by Danforth and furnished to Customer hereunder, for which Danforth shall provide its express written manufacturer's warranty, Danforth shall not be considered a merchant or vendor of goods or equipment.

Article 8 ASBESTOS-CONTAINING MATERIALS/ OTHER HAZARDOUS MATERIALS

8.01 Asbestos-Containing Materials: Neither party desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of asbestos-containing materials ("ACM"). Consistent with applicable Laws, Customer shall supply Danforth with any information in its possession relating to the presence of ACM in areas where Danforth undertakes any Work or M&V Services that may result in the disturbance of ACM.

8.02 It is Danforth's policy to seek certification for facilities constructed prior to 1982 that no ACM is present, and Customer shall provide such certification for buildings it owns, or aid Danforth in obtaining such certification from facility owners in the case of buildings that Customer does not own, if Danforth will undertake Work or M&V Services in the facility that could disturb ACM.

8.03 If either Customer or Danforth becomes aware of or suspects the presence of ACM that may be disturbed by Danforth's Work or M&V Services, it shall promptly stop the Work or M&V Services in the affected area and notify the other. As between Customer and Danforth, Customer shall be responsible at its sole expense for addressing the potential for or the presence of ACM in conformance with all applicable Laws and addressing the impact of its disturbance before Danforth continues with its Work or M&V Services.

8.04 Other Hazardous Materials: Danforth shall be responsible for removing or disposing of any Hazardous Materials (as defined below) that it uses in providing Work or M&V Services ("Danforth Hazardous Materials") and for the remediation of any areas impacted by the release of Danforth Hazardous Materials.

8.05 For other Hazardous Materials that may be otherwise present at Customer's facilities ("Non-Danforth Hazardous Materials"), Customer shall supply Danforth with any information in its possession relating to the presence of such materials if their presence may affect Danforth's performance of the Work or M&V Services.

8.06 If either Customer or Danforth becomes aware of or suspects the presence of Non-Danforth Hazardous Materials that may interfere with Danforth's Work or M&V Services, it shall promptly stop the Work or M&V Services in the affected area and notify the other. As between Customer and Danforth, Customer shall be responsible at its sole

expense for removing and disposing of Non-Danforth Hazardous Materials from its facilities and the remediation of any areas impacted by the release of Non-Danforth Hazardous Materials.

8.07 For purposes of this Agreement, "Hazardous Materials" means any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under applicable Law relating to or addressing public or employee health and safety and protection of the environment, or which is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel, fuel, another petroleum hydrocarbon product, or polychlorinated biphenyls.

8.08 "Hazardous Materials" specifically includes mold and lead-based paint and specifically excludes ACM. Notwithstanding anything herein to the contrary, Danforth shall have no obligations relating to the identification, abatement, cleanup, control, removal, or disposal of mold, regardless of the cause of the mold.

8.09 Environmental Indemnity: To the fullest extent permitted by Law, Customer shall indemnify and hold harmless Danforth and Danforth's subcontractors, and their respective directors, officers, employees, agents, representatives, shareholders, affiliates, and assigns and successors, from and against any and all losses, costs, damages, expenses (including reasonable legal fees and defense costs), claims, causes of action or liability, directly or indirectly, relating to or arising from the Customer's use, or the storage, release, discharge, handling or presence of ACM, mold (actual or alleged and regardless of the cause of such condition) or Non-Danforth Hazardous Materials on, under or about the facilities, or Customer's failure to comply with this Section 10.

Article 9 CHANGE ORDERS

9.01 The parties, without invalidating this Agreement, may request changes in the Work to be performed under this Agreement, consisting of additions, deletions, or other revisions to the Work ("Change Orders"). The price and payment terms, time for performance and, if necessary, the Assured Performance Guarantee, shall be equitably adjusted in accordance with the Change Order. Such adjustments shall be determined by mutual agreement of the parties.

9.02 Danforth may delay performance until adjustments arising out of the Change Order are clarified and agreed upon. Any Change Order must be signed by an authorized representative of each party. If concealed or unknown conditions are encountered at the project, differing from the conditions represented by Customer in the bid documents or otherwise disclosed by Customer to Danforth prior to the commencement of the Work, price and payment terms, time for performance and, if necessary, the Assured Performance Guarantee, shall be equitably adjusted.

9.03 Claims for equitable adjustment may be asserted in writing within a reasonable time from the date a party becomes aware of a change to the Work by written notification. Failure to promptly assert a request for equitable adjustment, however, shall not constitute a waiver of any rights to seek any equitable adjustment with respect to such change.

Article 10 CUSTOMER FINANCING; TREATMENT; TAXES

10.01 The parties acknowledge and agree that Danforth is not making any representation or warranty to Customer with respect to matters not expressly addressed in this Agreement, including, but not limited to:

- (a) Customer's ability to obtain or make payments on any financing associated with paying for the Improvement Measures, related services, or otherwise;
- (b) Customer's proper legal, tax, accounting, or credit rating agency treatment relating to this Agreement; and
- (c) the necessity of Customer to seek additional funding for any purpose.

10.02 Customer is solely responsible for its obligations and determinations with respect to the foregoing matters. In addition, the parties acknowledge and agree that Customer shall be responsible to comply, at its cost and expense, with all Laws that may be applicable to it relating to performance contracting, including, without limitation, any

requirements relating to the procurement of goods and/or services and any legal, accounting, or engineering opinions or reviews required or obtained in connection with this Agreement.

Article 11 INSURANCE

11.01 Danforth shall maintain insurance in amounts no less than those set forth below in full force and effect at all times until the Work has been completed, and shall provide a certificate evidencing such coverage promptly following Customer's request therefore.

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

11.02 Danforth shall be responsible for obtaining builder's risk insurance coverage for the Improvement Measures and shall at all times be responsible for any loss or casualty to the Improvement Measures. Customer shall maintain insurance coverage, of the types and in the amounts customary for the conduct of its business, throughout the term of this Agreement.

11.03 INDEMNIFICATION. To the fullest extent permitted by applicable Law, each party shall indemnify the other with respect to any third party claim alleging bodily injury, including death, or property damage to the extent such injury or damage is caused by the negligence or willful misconduct of the indemnifying party. A condition precedent to any obligation of a party to indemnify the other pursuant to this Section 14 shall be for the indemnified party to promptly advise the indemnifying party of the claim pursuant to the notice provision of this Agreement.

11.04 LIMITATION OF LIABILITY. Neither DANFORTH nor Customer will be responsible to the other for any special, indirect, consequential, remote, punitive, exemplary, loss of profits or revenue, loss of use, or similar damages, regardless of how characterized and regardless of a party having been advised of the possibility of such potential losses or relief, arising in any manner from this Agreement, the Work, the Improvement Measures, the premises, the M&V Services, or otherwise. WITHOUT LIMITING DANFORTH'S EXPRESS OBLIGATIONS UNDER THE ASSURED PERFORMANCE GUARANTEE, DANFORTH'S liability under this agreement, regardless of the form of action, shall in no event exceed the amount of the payments actually received by Danforth under schedule 4.

11.05 If this Agreement covers fire safety or security equipment, Customer understands that Danforth is not an insurer regarding those services, and that Danforth shall not be responsible for any damage or loss that may result from fire safety or security equipment that fails to prevent a casualty loss. The foregoing waivers and limitations are fundamental elements of the basis for this Agreement between Danforth and Customer, and each party acknowledges that Danforth would not be able to provide the work and services contemplated by this Agreement on an economic basis in the absence of such waivers and limitations, and would not have entered into this Agreement without such waivers and limitations.

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

11.07 DANFORTH'S PROPERTY. All materials furnished or used by Danforth personnel and/or Danforth subcontractors or agents at the installation site, including documentation, schematics, test equipment, software and associated media remain the exclusive property of Danforth or such other third party. Customer agrees not to use such materials for any purpose at any time without the express authorization of Danforth. Customer agrees to allow Danforth personnel and/or Danforth subcontractors or agents to retrieve and to remove all such materials remaining after installation or maintenance operations have been completed. Customer acknowledges that any software

furnished in connection with the Work and/or M&V Services is proprietary and subject to the provisions of any software license agreement associated with such software.

11.08 DISPUTES. Danforth and Customer will attempt to settle any controversy, dispute, difference, or claim between them concerning the performance, enforcement, or interpretation of this Agreement (collectively, "Dispute") through direct discussion in good faith, but if unsuccessful, will submit any Dispute to non-binding mediation in the nearest major metropolitan area of the state where the project is performed.

11.09 If the parties are unable to agree on a mediator or a date for mediation, either party may request JAMS, Inc. to appoint a mediator and designate the time and procedure for mediation. Such mediator shall be knowledgeable, to each party's reasonable satisfaction, with respect to matters concerning construction law.

11.10 Neither Danforth nor Customer will file a lawsuit against the other until not less than sixty (60) days after the mediation referred to herein has occurred, unless one or both parties is genuinely and reasonably concerned that any applicable statute of limitations is on the verge of expiring.

11.11 DANFORTH AND CUSTOMER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL AS TO ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR DIRECTLY OR INDIRECTLY RELATED TO THIS AGREEMENT, INCLUDING CONTRACT, TORT AND STATUTORY CLAIMS, AND EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS UNDER THIS AGREEMENT.

Article 12 MISCELLANEOUS PROVISIONS

12.01 GOVERNING LAW. This Agreement and the construction and enforceability thereof shall be interpreted in accordance with the laws of the State of New York without regard to principles of conflicts of laws.

12.02 CONSENTS; APPROVALS; COOPERATION. Whenever Customer's consent, approval, satisfaction or determination shall be required or permitted under this Agreement, and this Agreement does not expressly state that Customer may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement.

12.03 Whenever Customer's cooperation is required by Danforth in order to carry out Danforth's obligations hereunder, Customer agrees that it shall act in good faith and reasonably in so cooperating with Danforth and/or Danforth's designated representatives or assignees or subcontractors. Customer shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the performance of the Work or M&V Services.

12.04 FURTHER ASSURANCES. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

12.05 INDEPENDENT CONTRACTOR. The relationship of the parties hereunder shall be that of independent contractors. Nothing in this Agreement shall be deemed to create a partnership, joint venture, fiduciary, or similar relationship between the parties.

12.06 POWER AND AUTHORITY. Each party represents and warrants to the other that (i) it has all requisite power and authority to execute and deliver this Agreement and perform its obligations hereunder, (ii) all corporate, board, body politic, or other approvals necessary for its execution, delivery, and performance of this Agreement have been or will be obtained, and (iii) this Agreement constitutes its legal, valid, and binding obligation.

12.07 SEVERABILITY. In the event that any clause, provision, or portion of this Agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or materially impair the benefits intended to inure to either party under this Agreement.

12.08 COMPLETE AGREEMENT. It is understood and agreed that this Agreement, together with the Schedules and Attachments, contains the entire agreement between the parties relating to all issues involving the subject matter of this Agreement. No binding understandings, statements, promises or inducements contrary to this Agreement exist.

12.09 This Agreement supersedes and cancels all previous agreements, negotiations, communications, commitments and understandings with respect to the subject matter hereof, whether made orally or in writing. Each of the parties to this Agreement expressly warrants and represents to the other that no promise or agreement which is not herein expressed has been made to the other, and that neither party is relying upon any statement or representation of the

other that is not expressly set forth in this Agreement. Each party hereto is relying exclusively on the terms of this Agreement, its own judgment, and the advice of its own legal counsel and/or other advisors in entering into this Agreement.

12.10 Customer acknowledges and agrees that any purchase order issued by Customer associated with this Agreement is intended only to establish payment authority for Customer's internal accounting purposes. No purchase order shall be considered a counteroffer, amendment, modification, or other revision to the terms of this Agreement.

12.11 HEADINGS. The captions and titles in this Agreement are for convenience only and shall not affect the interpretation or meaning of this Agreement.

12.12 COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one single agreement between the parties.

12.13 NOTICES. All notices or communications related to this Agreement shall be in writing and shall be deemed served if and when sent by facsimile or mailed by certified or registered mail: to Danforth at the address listed on the first page of this Agreement, ATTN: VP of Sales, with a copy to Danforth, ATTN: General Counsel – Client Solutions, 300 Colvin Woods Parkway, Tonawanda, New York, 14150: and to Customer at the address listed on the first page of this Agreement.

12.14 CLEANUP. Danforth shall keep the premises and the surrounding area free from accumulation of waste materials or rubbish caused by the Work and, upon completion of the Work, Danforth shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials.

12.15 SAFETY; COMPLIANCE WITH LAWS. Danforth shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work and M&V Services. Each of Danforth and Customer shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities (collectively, "Laws") in connection with its performance hereunder.

CUSTOMER

DANFORTH

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Schedule 1

SCOPE OF WORK

FIM 1. Street Lighting Conversion

1.01 Scope of Work:

Post Top Fixtures:

Retrofit of (168) existing lamps to LED lamps. Remove existing lamp and bypass associated ballast. Ballast/capacitors to be abandoned in place. Screw in new LED lamp. Install in-line fused disconnects (see section 'In-line Fused Disconnects' below). Photo-eyes are part of existing fixture hardware/circuit and will be reused.

Cobra Fixtures:

Replace (193) existing light fixture heads with new LED fixtures. Install in-line fused disconnects (see section 'In-line Fused Disconnects' below).

Shoebox Fixtures:

Replace (231) existing light fixture heads with new LED fixtures. Install in-line fused disconnects (see section 'In-line Fused Disconnects' below).

New Poles (fixture, pole, base, wiring):

Install (35) new street lights in residential neighborhoods during Summer installation period from May 1st to November 30th. New wiring, hand-hole, in-line fused disconnect, base, pole, arm, and LED fixture. New wiring from NGRID connect point to light pole up to fixture. Install in-line fused disconnects (see section 'In-line Fused Disconnects' below). The locations for these will be at intersections and cul-de-sac loops. Trenching in soil conditions with basic turf restoration included. Digging in asphalt or concrete is not included. New underground wiring locations to be recorded on paper (NGRID maps, or Google maps) for the Town's records and use.

Audit of Existing Street Lighting:

The following data will be gathered for each of the 592 existing street lights:

- GPS coordinates - in degrees, minutes, seconds (e.g. 43°09'31.81"N, 76°19'58.76"W)
- NGRID Pole Tag ID number
- Pole type - wood, aluminum, square, approximate height, color, etc.
- Fixture type - cobra, shoebox, post-top (4 kinds)
- Note any special circumstances - failing hardware, damage, difficult access, etc.

Danforth to provide for traffic safety coordination involving work to be performed. Danforth will submit safety plan to customer.

In-line Fused Disconnects:

Danforth will provide and install in-line fused disconnects in compliance with National Grids "Customer Owned Outdoor Lighting Standard 10 (COOL-S10)," or negotiated alternate locations. New hand-hole installations are included in the scope of work.

If a new hand-hole installation warrants special requirements, that add cost, Danforth will present this to the Town of Lysander for adjustment approval before installing.

All in-line fused disconnect locations will be documented. For example; pole top, pole base access plate, fixture head, hand-hole. For a hand-hole, the location will be recorded on paper (NGRID maps, or Google maps) for the Town's records and use.

Negotiation Assistance with the Utility and PSC:

Danforth will assist with the evaluation and acquisition of street lighting assets from local utility, National Grid. Danforth to provide knowledge and experience with the New York State Public Service Commission (NYSPSC) and National Grid for street lighting asset purchase and approval.

Development of a Design Specification for Street Lighting:

Danforth to provide specifications to be included in the Town of Lysander Code for developers to follow on any future installations of street lighting. These specifications will be based on final design of this energy performance contract.

Other Services Included:

Assistance in setting up a preventative and emergency repair contract with local electrical contractor.

Provide training to staff members of newly upgraded equipment.

Applications for incentives and grant monies available.

Poles and fixtures will have new labels in compliance with NGRID's "Customer Owned Outdoor Lighting Standard 10 (COOL-S10)."

Provide Disconnect Device Security Bond.

Prototyping for one of each type of new fixture head (cobra-head, area, post top retrofit). New poles not included.

Assistance with "811 Call before-U-Dig" call center set-up, and USIC contractor for call response.

Not Included:

GIS data entry is excluded.

New fixture color may not be an exact match to the existing poles or mounting arms.

Painting or repairs to the existing poles/arms/mounting hardware is excluded.

Replacement of faulty existing wiring is excluded.

Removal of existing NGRID pole ID Tags is excluded

Repair or replacement of existing fixture hardware is excluded (post top fixture: photo-eyes, housing, glass, wiring, etc.).

NGRID charges for services: power cut off/on, access to NGRID equipment, are excluded.

Digging/trenching through asphalt or concrete is excluded.

Schedule 2

ASSURED PERFORMANCE GUARANTEE

2.01 PROJECT BENEFITS

1. **Certain Definitions.** For purposes of this Agreement, the following terms have the meanings set forth below:
 - a. **Annual Project Benefits** are the portion of the projected Total Project Benefits to be achieved in any one year of the Guarantee Term.
 - b. **Annual Project Benefits Realized** are the Project Benefits actually realized for any one year of the Guarantee Term.
 - c. **Annual Project Benefits Shortfall** is the amount by which the Annual Project Benefits exceed the Annual Project Benefits Realized in any one year of the Guarantee Term.
 - d. **Annual Project Benefits Surplus** is the amount by which the Annual Project Benefits Realized exceed the Annual Project Benefits in any one year of the Guarantee Term.
 - e. **Baseline** is the mutually agreed upon data and/or usage amounts that reflect conditions prior to the installation of the Improvement Measures as set forth in 2.08 below.
 - f. **Guarantee Term** will commence on the first day of the next month following the Substantial Completion date and will continue through the duration of the M&V Services, subject to earlier termination as provided in this Agreement.
 - g. **Installation Period** is the period beginning as set forth in Section 2 of the Energy Performance Contract and ending on the commencement of the Guarantee Term.
 - h. **Measured Project Benefits** are the utility savings and cost avoidance calculated in accordance with the methodologies set forth in 2.06 below.
 - i. **Non-Measured Project Benefits** are identified in 2.05 below. The Non-Measured Project Benefits have been agreed to by Customer and will be deemed achieved in accordance with the schedule set forth in the Total Project Benefits table below. Customer and Danforth agree that: (i) the Non-Measured Project Benefits may include, but are not limited to, future capital and operational costs avoided as a result of the Work and implementation of the Improvement Measures, (ii) achievement of the Non-Measured Project Benefits is outside of Danforth's control, and (iii) Customer has evaluated sufficient information to conclude that the Non-Measured Project Benefits will occur and bears sole responsibility for ensuring that the Non-Measured Project Benefits will be realized. Accordingly, the Non-Measured Project Benefits shall not be measured or monitored by Danforth at any time during the Guarantee Term, but rather shall be deemed achieved in accordance with the schedule set forth in the Total Project Benefits table below.
 - j. **Project Benefits** are the Measured Project Benefits plus the Non-Measured Project Benefits to be achieved for a particular period during the term of this Agreement.
 - k. **Total Project Benefits** are the projected Project Benefits to be achieved during the entire term of this Agreement.

2.02 PROJECT BENEFITS SUMMARY

Subject to the terms and conditions of this Agreement, Danforth and Customer agree that Customer will be deemed to achieve a total of **\$6,618,102** in Non-Measured Project Benefits, and Danforth guarantees that Customer will achieve a total of **\$847,648** in Measured Project Benefits during the term of this Agreement, for Total Project Benefits of **\$7,465,750**, as set forth in the Total Project Benefits Table 2.2 below. Project Benefit dollar value is based on Utility Rate Structures and Escalation Rates as defined in 2.03.

2.03 UTILITY RATE STRUCTURES AND ESCALATION RATES

The average unit energy costs for the facility are set forth in Table 2.3 and shall be used for all calculations made under this schedule for the complete term of the contract. Guaranteed annual savings are in units of energy and represented in Table 2.1.

TOTAL ANNUAL GUARANTEED SAVINGS

Table 2.1

Year	Electric Energy Saved (kWh)	Electric Demand Saved (Kw)
Annual Quantity	209,258	NA

TOTAL CALCULATED PROJECT BENEFITS

Table 2.2

Year	Calculated Utility Cost Avoidance	Operations & Maintenance Cost Avoidance	Incentives/ Rebates	Calculated Annual Project Benefits
1	\$31,546	\$245,928	\$5,955	\$283,429
2	\$32,492	\$253,306	\$3,970	\$289,768
3	\$33,467	\$260,905	\$0	\$294,372
4	\$34,471	\$268,732	\$0	\$303,203
5	\$35,505	\$276,794	\$0	\$312,299
6	\$36,570	\$285,098	\$0	\$321,668
7	\$37,667	\$293,651	\$0	\$331,318
8	\$38,797	\$302,460	\$0	\$341,258
9	\$39,961	\$311,534	\$0	\$351,496
10	\$41,160	\$320,880	\$0	\$362,040
11	\$42,395	\$330,507	\$0	\$372,902
12	\$43,667	\$340,422	\$0	\$384,089
13	\$44,977	\$350,635	\$0	\$395,611
14	\$46,326	\$361,154	\$0	\$407,480
15	\$47,716	\$371,988	\$0	\$419,704
16	\$49,147	\$383,148	\$0	\$432,295
17	\$50,622	\$394,642	\$0	\$445,264
18	\$52,140	\$406,482	\$0	\$458,622
19	\$53,705	\$418,676	\$0	\$472,381
20	\$55,316	\$431,236	\$0	\$486,552
Total	\$847,648	\$6,608,177	\$9,925	\$7,465,750

- i. **Utility Cost Avoidance is a Measured Project Benefit. Anticipated dollar savings based on guaranteed units of energy saved. Utility Cost Avoidance figures in the table above are based on anticipated increases in unit energy costs as set forth in 2.08.
- ii. *** Operations & Maintenance Cost Avoidance and Future Capital Cost Avoidance are Non-Measured Project Benefits. Operations & Maintenance Cost Avoidance and Future Capital Cost Avoidance figures in the table above are based on a mutually agreed fixed annual escalation rate of three (3%).

- iii. Within sixty (60) days of the commencement of the Guarantee Term, Danforth will calculate the Measured Project Benefits achieved during the Installation Period plus any Non-Measured Project Benefits applicable to such period and advise Customer of same. Any Project Benefits achieved during the Installation Period may, at Danforth's discretion, be allocated to the Annual Project Benefits for the first year of the Guarantee Term. Within sixty (60) days of each anniversary of the commencement of the Guarantee Term, Danforth will calculate the Measured Project Benefits achieved for the applicable year plus any Non-Measured Project Benefits applicable to such period and advise Customer of same.
- iv. ***Customer acknowledges and agrees that if, for any reason, it (i) cancels or terminates receipt of M&V Services, (ii) fails to pay for M&V Services in accordance with Schedule 4, (iii) fails to fulfill any of its responsibilities necessary to enable Danforth to complete the Work and provide the M&V Services, or (iv) otherwise cancels, terminates or materially breaches this Agreement, the Assured Performance Guarantee shall automatically terminate and Danforth shall have no liability hereunder.***

2.04 PROJECT BENEFITS SHORTFALLS OR SURPLUSES

- 1. ***Project Benefits Shortfalls.*** If an Annual Project Benefits Shortfall occurs for any one year of the Guarantee Term, Danforth shall, at its discretion and in any combination, (a) set off the amount of such shortfall against any unpaid balance Customer then owes to Danforth, (b) where permitted by applicable law, increase the next year's amount of Annual Project Benefits by the amount of such shortfall, (c) pay to Customer the amount of such shortfall, or (d) subject to Customer's agreement, provide to Customer additional products or services, in the value of such shortfall, at no additional cost to Customer.
- 2. ***Project Benefits Surpluses.*** If an Annual Project Benefits Surplus occurs for any one year of the Guarantee Term, Danforth may, at its discretion and in any combination, (a) apply the amount of such surplus to set off any subsequent Annual Project Benefit Shortfall during the Guarantee Term, or (b) bill Customer for the amount of payments made pursuant to Section C(i)(c) above and/or the value of the products or services provided pursuant to clause C(i)(d) above, in an amount not to exceed the amount of such surplus.
- 3. ***Additional Improvements.*** Where an Annual Project Benefits Shortfall has occurred, Danforth may, subject to Customer's approval (which approval shall not be unreasonably withheld, conditioned, or delayed), implement additional Improvement Measures, at no cost to Customer, which may generate additional Project Benefits in future years of the Guarantee Term.
 - a. In the event Danforth is providing an Assured Performance Guarantee under **Schedule 2**. Annual Project Benefits Shortfalls and Annual Project Benefits Surpluses under such Schedule shall be reconciled against one another.

2.05 NON-MEASURED PROJECT BENEFITS

ANNUAL SAVINGS OF FIM's

Facility	Description	No. of Annual Periods Savings Are Applied	First Year Annual Saving Achieved
Street Lighting	Street Lighting Service Class Change	20	\$245,928

OPERATIONAL COST AVOIDANCE

NGRID has furnished the foregoing information to Danforth, which information forms the basis of the Non-Measured Project Benefits. Customer agrees that the Non-Measured Project Benefits are reasonable and that the installation of the Improvement Measures will enable Customer to take actions that will result in the achievement of such Non-Measured Project Benefits.

2.06 MEASUREMENT AND VERIFICATION METHODOLOGIES

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

2.06.01 OPTION A – PARTIALLY MEASURED RETROFIT ISOLATION

1. Measured Project Benefits are determined by partial field measurement of the energy use of the system(s) to which an Improvement Measure was applied separate from the energy use of the rest of the facility. Measurements will be short-term with only one-time measurements before and after the Installation Period.
2. Partial measurement means that some but not all parameters will be measured. Careful review of the design and installation of Improvement Measures is intended to demonstrate that the stipulated values fairly represent the probable actual values. Agreed-upon values will be shown in the measurement and verification plan, along with analysis of the significance of the error they may introduce. Engineering calculations using short-term pre and post-retrofit measurements and stipulations are used to calculate Measured Project Benefits for the duration of the Guarantee Term.
3. Measured Project Benefits from the following Improvement Measures will be calculated using Option A:

FIM #	Description
1	Street Lighting Conversion

2.06.02 OPTION B – RETROFIT ISOLATION

1. Measured Project Benefits are determined by field measurement of the energy use of the systems to which an Improvement Measure was applied separate from the energy use of the rest of the facility. Short-term, long-term or continuous measurements are taken throughout the pre and post-retrofit periods. Engineering calculations using short term, long-term or continuous pre and post-retrofit measurements are used to calculate the Measured Project Benefits for the duration of the Guarantee Term.
2. Measured Project Benefits from the following Improvement Measures will be calculated using Option B: None

2.06.03 OPTION C – WHOLE FACILITY

1. Option C involves use of utility meters or whole building sub-meters to assess the energy performance of a total building. Option C assesses the impact of any type of Improvement Measure, but not individually if more than one is applied to an energy meter. This option determines the collective Measured Project Benefits of all Improvement Measures applied to the part of the facility monitored by the energy meter. Also, since whole building meters are used, Measured Project Benefits reported under Option C include the impact of any other change made in facility energy use (positive or negative).
2. Measured Project Benefits from the following Improvement Measures will be calculated using Option C: None

2.06.04 OPTION D – STIPULATED

1. Option D is intended for Facility Improvement Measures where the end use capacity or operational efficiency; demand, energy consumption or power level; or manufacturer’s measurements, industry standard efficiencies or operating hours are known in advance and used

in a calculation or analysis method that will stipulate the outcome. Both the Client and Danforth agree to the stipulated inputs and outcome(s) of the analysis methodology. Based on the established analytical methodology, the savings stipulated will be achieved upon the completion of the Facility Improvement Measures Work and no further measurements or calculations will need to be performed. The methodology and calculations to establish savings value will be defined below.

2. Measured Project Benefits from the following Improvement Measures will be calculated using Option D: None

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

1. Customer agrees to notify Danforth, within fourteen (14) days, of (i) any actual or intended change, whether before or during the Guarantee Term, in the use of any facility, equipment, or Improvement Measure to which this Schedule applies; (ii) any proposed or actual expansions or additions to the premises or any building or facility at the premises; (iii) a change to utility services to all or any portion of the premises; or (iv) any other change or condition arising before or during the Guarantee Term that reasonably could be expected to change the amount of Project Benefits realized under this Agreement.
2. Such a change, expansion, addition, or condition would include, but is not limited to: (a) changes in the primary use of any facility, Improvement Measure, or portion of the premises; (b) changes to the hours of operation of any facility, Improvement Measure, or portion of the premises; (c) changes or modifications to the Improvement Measures or any related equipment; (d) changes to the M&V Services provided under this Agreement; (e) failure of any portion of the premises to meet building codes; (f) changes in utility suppliers, utility rates, method of utility billing, or method of utility purchasing; (g) insufficient or improper maintenance or unsound usage of the Improvement Measures or any related equipment at any facility or portion of the premises (other than by Danforth); (h) changes to the Improvement Measures or any related equipment or to any facility or portion of the premises required by building codes or any governmental or quasi-governmental entity; or (i) additions or deletions of Improvement Measures or any related equipment at any facility or portion of the premises.
3. Such a change or condition need not be identified in the Baseline in order to permit Danforth to make an adjustment to the Baseline and/or the Annual Project Benefits. If Danforth does not receive the notice within the time period specified above or travels to either Customer’s location or the project site to determine the nature and scope of such changes, Customer agrees to pay Danforth, in addition to any other amounts due under this Agreement, the applicable hourly consulting rate for the time it took to determine the changes and to make any adjustments and/or corrections to the project as a result of the changes, plus all reasonable and documented out of pocket expenses, including travel costs. Upon receipt of such notice, or if Danforth independently learns of any such change or condition, Danforth shall calculate and send to Customer a notice of adjustment to the Baseline and/or Annual Project Benefits to reflect the impact of such change or condition, and the adjustment shall become effective as of the date the change or condition first arose. Should Customer fail to promptly provide Danforth with notice of any such change or condition, Danforth may make reasonable estimates as to the impact of such change or condition and as to the date on which such change or condition first arose in calculating the impact of such change or condition, and such estimates shall be conclusive.

2.08 BASELINE CALCULATIONS AND UTILITY RATES

The unit utility costs for the Baseline period are set forth below as “**Base Utility Cost**” and shall be used for all calculations made under this Schedule. The Base Utility Cost shall be escalated annually by the actual utility cost escalation but such escalation shall be no less than the mutually agreed “floor” escalation rate of three percent (3%). The Base Utility Cost for each type of utility represents the 12 month average utility costs for the Town of Lysander from September 2016 through August 2017.

Table 2.3 BASE UTILITY COST

Building/ Energy	Years 1-20	Years 1-20
	kWh	kW
Street Lighting / Electric	\$0.151	NA

2.09 OPTION A

FIM #1: LED Street Lighting Upgrades

Overview

The energy savings generated by this FIM will be realized by replacing the existing exterior light fixtures across the Town with new LED fixtures and Retrofits. Pre-retrofit conditions were determined based on a detailed lighting survey of the street lights. Post-retrofit measurements will consist of full counts of all new lighting installed and verification of utility bill accuracy reflecting LED upgrades for each fixture type. Post-retrofit energy savings will be revised based on updating the detailed lighting surveys with the final quantities and kW of new lighting installed.

1. Pre-Retrofit measurements
 - a. Quantities of existing fixtures identified for replacement.
2. Post-Retrofit measurements
 - a. Quantities and wattages of new lighting installed count of each fixture type.
 - b. Verification of utility bill accuracy reflecting LED upgrades for each fixture type.
3. Stipulated
 - a. Annual Operating hours of 4,170 as per National Grid Tariff.
 - b. Wattage of existing and newly installed fixtures/lamps.
4. Savings Calculations
 - a. Data from post-retrofit wattages will be used to repopulate the energy calculation sheets to verify savings.

MEASUREMENT & VERIFICATION SERVICES

Danforth will provide the M&V Services set forth below in connection with the Assured Performance Guarantee.

1. During the Installation Period, a Danforth Performance Assurance Specialist will track Measured Project Benefits. Danforth will report the Measured Project Benefits achieved during the Installation Period, as well as any Non-Measured Project Benefits applicable to the Installation Period, to Customer within 60 days of the commencement of the Guarantee Term.
2. Immediately after installation, Danforth will review the utility bills to ensure the customer is being billed correctly in accordance with the equipment buyout and adjusted wattages.
3. Within 60 days of each anniversary of the commencement of the Guarantee Term, Danforth will provide Customer with an annual report containing:
 - A. an executive overview of the project's performance and Project Benefits achieved to date;
 - B. a summary analysis of the Measured Project Benefits accounting; and
 - C. a detailed analysis of the Measured Project Benefits calculations.

Schedule 3

CONTRACTUAL OBLIGATIONS OF CLIENT

3.01 CONTRACTUAL OBLIGATIONS OF CLIENT

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

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

- 3.01.010 Providing all records relating to energy and/or water usage and related maintenance of the premises and relevant equipment requested by Danforth;
 - 3.01.011 Providing and installing utility sub-meters on all new construction and/or additions built during the Guarantee Term as recommended by Danforth or, alternatively, paying Danforth's applicable fees for calculating necessary adjustments to the Assured Performance Guarantee as a result of the new construction;
 - 3.01.012 Providing and maintaining a dedicated telephone line and/or TCP/IP remote connection to facilitate remote monitoring of relevant equipment;
 - 3.01.013 Promptly notifying Danforth of any change in use or condition described in 2.06 of Schedule 2, or any other matter that may impact the Assured Performance Guarantee;
 - 3.01.014 Taking all actions reasonably necessary to achieve the Non-Measured Project Benefits.
- 3.02 In addition to the foregoing, Customer is responsible for the items set forth below in connection with utility meter projects:
- 3.02.01 **ADDITIONAL CUSTOMER OBLIGATIONS**
Isolating the utility system to allow for meter/valve change out, including identification of all shut-off valves;
 - 3.02.02 Scheduling shutdowns, downtimes, and relocation of new commercial vaults;
 - 3.02.03 Traffic safety during installation (outside of street lighting upgrade scope of work being performed);
 - 3.02.04 Ongoing care and maintenance of the utility system, including all meters, AMR equipment and systems, meter boxes, and meter vaults at or above manufacturers' specifications and recommendations.

Schedule 4

PRICE AND PAYMENT TERMS

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

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

On amounts not paid within 30 days of invoice date (90 days for mobilization invoice), Customer shall pay interest from the invoice date until payment is received at the lesser of 12% per annum or the maximum rate allowed by law. Customer shall reimburse Danforth for Danforth’s costs and expenses (including reasonable attorneys’ and witnesses’ fees) incurred for collection under this agreement.

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

- 4.03 Work. The price to be paid by Customer for the Work shall be \$674,465. Payments (including payment for materials delivered to Danforth and work performed on and off-site) shall be made to Danforth as follows:
- 4.04 Timely Payments. Customer agrees to pay DANFORTH the mobilization fee as set forth Table 4.01 below and monthly invoices submitted by DANFORTH for work properly performed in accordance with the Agreement. The amount due to DANFORTH will be based on a payment schedule of values that will be submitted to Customer for approval that has been approved by Customer in writing.

Table 4.01 – FIM Work Payment Schedule

Project Phase	Payments (\$)	Payment Due
Mobilization (15%)	\$101,170	Net 90 Days from Contract Signing
Month 1	TBD	Net 30 Days from Invoice
Month 2	TBD	Net 30 Days from Invoice
Month 3	TBD	Net 30 Days from Invoice
Month 4	TBD	Net 30 Days from Invoice
Month 5	TBD	Net 30 Days from Invoice
Project Total:	\$674,465	

4.05 M&V Services Term. The Term of the M&V Agreement shall be 12 months and shall commence on the effective Guarantee Date.

Automatic Renewal: The M&V Agreement shall automatically renew for successive Annual Periods beginning on the anniversary date of the effective Guarantee Date. Either party may amend the M&V Agreement at the end of the initial term or at the end of a renewal term by giving the other party at least sixty (60) days prior written notice of such amendments subject to mutual agreement of the parties. Each renewal shall be and remain subject to the terms and conditions of this Agreement. The performance guarantee is dependent upon and is subject to the express condition that the Customer enters into and maintains an M&V Agreement during the entire term of the Performance Guarantee Period.

Attachment 1
CERTIFICATE OF SUBSTANTIAL COMPLETION

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

Town of Lysander ("Customer")
8220 Loop Road
Baldwinsville, NY 13027

PROJECT: CUSTOMER Energy Performance Contract dated _____ between Danforth and Customer

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

- a. The work set forth in the Performance Contract is substantially complete.
- b. Customer has received the manuals, warranty information, and training required under the Performance Contract.
- c. The following punch list items must be completed by Danforth (check as applicable):
 - punch list attached
 - punch list complete
- d. Upon completion of the punch list items, or if such punch list items are complete, Danforth and Customer shall sign the Certificate of Final Completion attached hereto.

Dated:

TOWN OF LYSANDER

DANFORTH

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Attachment 2
CERTIFICATE OF FINAL COMPLETION

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

Town of Lysander ("Customer")
8220 Loop Road
Baldwinsville, NY 13027

PROJECT: CUSTOMER Energy Performance Contract dated _____ between Danforth and Customer

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

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

Dated:

TOWN OF LYSANDER

DANFORTH

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Addendum 1
PER UNIT PRICING BREAKOUTS

Quantities listed below may be subject to change. Per unit pricing for items below are to be used for adds and deletes to the project. New pole installation pricing is based on Summer installation period from May 1st to November 30th. Pricing below is inclusive of hand-holes.

Description	Mounting	Quantity	Price Ea.
LM Roadway 100	Cobrahead	173	\$ 327.76
LM Roadway 150	Cobrahead	10	\$ 364.87
LM Roadway 250	Cobrahead	6	\$ 498.72
LM Roadway 400	Cobrahead	4	\$ 836.67
LM Edison 100	Post Top	7	\$ 630.80
LM Traditional 100	Post Top	149	\$ 630.80
LM Traditional 150	Post Top	1	\$ 630.80
LM Williamsville 100	Post Top	11	\$ 630.80
LM Shoebox 150	Direct Arm	227	\$ 978.92
LM Shoebox 250	Direct Arm	4	\$ 978.92
New Alum Pole, Base	Shoebox	16	\$4,779.26
New Fiberglass Pole	Post Top	19	\$4,468.12