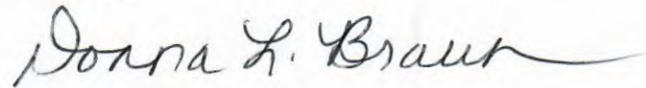


**LATE COMMUNICATION**

#1.  
Mayor

**Re: Approval of the Settlement Agreement with  
North Tonawanda City Schools or Water Bill**

Sincerely,

A handwritten signature in cursive script that reads "Donna L. Braun". The signature is written in black ink and has a long, sweeping tail that extends to the right.

**Donna L. Braun  
City Clerk-Treasurer**

04-16-2024

CITY OF NORTH TONAWANDA

*Late Comm. #1*

*Office of the Mayor*

APR 16 2024

AUSTIN J. TYLEC

April 12, 2024

North Tonawanda Common Council  
216 Payne Ave (City Hall)  
North Tonawanda, NY 14120

**Re: Settlement Agreement with North Tonawanda City Schools for Water Bill**

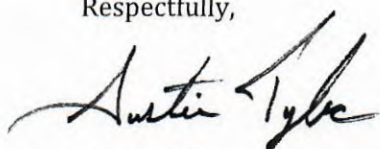
Dear Honorable Body,

Based on a recent discussion at an executive session between the Common Council, Mayor, and City Attorney; the North Tonawanda School District and City of North Tonawanda have come to the following attached terms regarding a water bill dispute from an unread meter at a School District building.

Upon review and approval I will sign the attached agreement.

Thank you for your attention to this matter.

Respectfully,



Austin Tylec  
Mayor

2024 APR 15 AM 11:46  
NORTH TONAWANDA NY

RECEIVED  
CITY CLERK'S OFFICE

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement (the "Agreement") is made and entered into on April 3, 2024, by and between the CITY OF NORTH TONAWANDA (the "City"), a municipal corporation located at 216 Payne Avenue, North Tonawanda, NY 14120, and the NORTH TONAWANDA CITY SCHOOL DISTRICT, a school district located at 176 Walck Road, North Tonawanda, NY 14120 (the "School District") (collectively, the "Parties").

**WHEREAS**, the City, through the North Tonawanda Water Administration (the "Water Administration"), supplies water to residents and entities located within the City, including the School District;

**WHEREAS**, the City maintains that it discovered in 2023 that the School District had two water meters (Water Meter Nos. 94835387 and 5191400107004) that were not registered with the Water Administration (the "Meters") and that the Meters had used a total of thirty six million ninety nine thousand five hundred gallons (36,099,500) gallons of water that was not billed by the City to the School District or paid for by the School District (the "Claimed Water Usage"); and

**WHEREAS**, a dispute has arisen between the Parties as to, among other things, whether the City knew, or should have known, about the Meters and the Claimed Water Usage; the amount and extent of the Claimed Water Usage; the applicable rates for the Water Usage; and the School District's legal obligation to pay for the Claimed Water Usage (the "Dispute");

**WHEREAS**, the City has determined that the amount owed for the Claimed Water Usage based on the then-prevailing rates when the water was supplied is in the sum of \$252,000 (the "Disputed Amount");



**WHEREAS**, the Parties, through their counsel, have engaged in lengthy settlement discussions in an effort to resolve the Dispute; and

**WHEREAS**, in the interest of avoiding the time, cost and inconvenience of litigation over the Dispute, the outcome of which would be uncertain, the Parties have mutually agreed to fully and finally settle the Dispute by the School District's payment to the City of the sum of \$126,000, representing one-half (50%) of the Disputed Amount, and such other terms as described herein.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. To fully resolve the Dispute, the Parties agree that the School District will pay the City 50% of the Disputed Amount, or the sum of \$126,000 (the "Settlement Amount"), on or before May 3, 2024, in lawful U.S. funds.

2. In consideration of the School District's execution of this Agreement and its payment of the Settlement Amount, the City hereby fully, forever, irrevocably and unconditionally releases the School District, and its employees, agents and representatives, from and against any and all claims, charges, causes of action, suits, debts, agreements, liabilities, and expenses (including attorney's fees and costs), of every kind and nature, known or unknown, occurring prior to the effective date of this Agreement, arising out of or in any way relating to the Meters, the Claimed Water Usage, the Dispute, or amounts allegedly owed, or claimed to be owed, by the School District for water service/supply pertaining to the Meters.

3. Upon reasonable request and/or notice, the School District agrees to provide access to the Meters by the City for purposes of inspecting them and/or ascertaining water

meter readings and usage. Moreover, in the event that the City switches over to “smart” water meters in the future for its users that can be read remotely (which it has stated it intends to do), the School District agrees that it will consider purchasing and installing such meters as part of a future capital project provided that it is financially feasible to do so within its planned budget.

4. The Parties each warrant and represent that the individual executing this Agreement is fully authorized to do so and, further, that such individual is fully authorized to bind the party on whose behalf he or she is executing this Agreement to the terms set forth herein, including the Settlement Amount set forth in paragraph 1 and the release of claims set forth in paragraph 2.

5. The Parties acknowledge and agree that this Agreement has been negotiated by the Parties and their respective counsel, and that they enter into this Agreement freely, voluntarily and with the advice of their respective counsel. The language used in this Agreement is that of both Parties and shall not provide the basis for a construction of language that is adverse to one party because that party or legal counsel for that party may have drafted that language initially.

6. This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns.

7. This Agreement shall be governed by the substantive laws of New York and may be amended or modified only by a signed, written agreement executed by all of the Parties.

8. This Agreement supersedes any and all prior oral and/or written agreements and understandings between the Parties, and sets forth the entire agreement between the Parties.



9. If any provision of this Agreement is adjudged to be invalid or illegal for any reason, such invalidity shall not affect any other clause of this Agreement, and such clauses shall remain in full force and effect.

10. This Agreement may be executed in counterparts with all of the signed pages constituting an original. A facsimile copy shall be deemed an original.

[The remainder of this page is intentionally blank]

**IN WITNESS WHEREFORE**, the parties hereto have caused this Settlement Agreement to be executed on the date shown by each of their signatures below.

**CITY OF NORTH TONAWANDA**

**NORTH TONAWANDA CITY  
SCHOOL DISTRICT**

\_\_\_\_\_  
By: Austin J. Tylec, Mayor

\_\_\_\_\_  
By: Matthew Kennedy, President  
North Tonawanda City School Board

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF NIAGARA    )

On this \_\_\_\_ day of April, 2024 before me personally came AUSTIN J. TYLEC, to me personally known, who, being by me duly sworn, did depose and say that he is the Mayor of the City of North Tonawanda, NY, the municipal corporation described in and which executed this agreement; that he knows the seal of said corporation; that the seal affixed hereto is such corporate seal; that it was so affixed by order of the Common Council of the City of North Tonawanda, NY and that he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF NIAGARA    )

On this \_\_\_\_ day of April, 2024 before me personally came MATTHEW KENNEDY, president of North Tonawanda City School Board to me personally known, who, being by me duly sworn, did depose and say that his business office is located at 176 Walck Road, North Tonawanda, NY 14120; that he is the president of the North Tonawanda City School Board which executed this agreement on behalf of the North Tonawanda City School District; and that by resolution of the North Tonawanda City School Board he has authority to sign his name thereto.

\_\_\_\_\_  
Notary Public