

Select Board Meeting

Monday, October 19, 2020 7:00 PM

Virtual Meeting Broadcast on Comcast Channel 22 Verizon Channel 45

I. Call to Order – 7:00 P.M.

II. Opening Ceremonies

A. Moment of Silence/Pledge of Allegiance

III. Communications/Announcements/Liaison Reports

IV. Public Hearings

A. National Grid and Verizon New England Pole Petition – (10 minutes)

Board to discuss and consider voting to approve a petition from National Grid and Verizon New England for National Grid to locate poles, wires and fixtures, including the necessary sustaining and protecting fixtures, along and across Salem Street beginning at a point approximately 200 feet southeast of the centerline of the intersection of Prospect Road and continuing approximately 20 feet in a northeast direction.

V. Regular Business

A. Town Governance Study Committee Update – (15 minutes)

Town Governance Study Committee Chair and Town Clerk to provide an update to the Board.

B. West Elementary and Shawsheen Preschool Building Project Update – (15 minutes)

West Elementary School Building Committee Chair to provide an update to the Board.

C. Good Energy Agreement – (5 minutes)

Board to vote to approve and sign the agreement with Good Energy for Community Choice Aggregation.

VI. Consent Agenda

A. Appointments by the Town Manager

Board to vote that the following appointments by the Town Manager be approved.

Department	Name	Position	Rate/Term	Date of Hire
Cultural Council	Peter Fenzel	Member	Term Expires 6/30/2023	10/19/2020
Economic Development Council	Brian Carbone	Member	Term Expires 6/23/2023	10/19/2020
Community Services – Youth Services	Alison McCaron	Seasonal	\$12.75/hr	10/26/2020
Town Clerk	Noah Barehmi	Pollworker	\$9.25/hr	10/01/2020

RECEIVED
TOWN CLERK'S OFFICE
2020 OCT 15 PM 1:34
TOWN OF ANDOVER, MASS.

Town Clerk	Patricia Dell-Ross	Pollworker	\$9.25/hr	10/01/2020
Town Clerk	Robert McLellan IV	Pollworker	\$9.25/hr	10/01/2020
Town Clerk	Susan McLellan	Pollworker	\$9.25/hr	10/01/2020
Town Clerk	Sarah Wittig Galgano	Pollworker	\$9.25/hr	10/01/2020
Town Clerk	Asha Nadipuram	Pollworker	\$9.25/hr	10/01/2020
Town Clerk	Courtney Duffy	Pollworker	\$9.25/hr	10/01/2020
Town Clerk	Jason Stellakis	Pollworker	\$9.25/hr	10/01/2020
Town Clerk	Steven Rosenfeld	Pollworker	\$9.25/hr	10/01/2020
Town Clerk	Paul Mercandetti	Pollworker	\$9.25/hr	10/01/2020
Town Clerk	Claire Dolan	Pollworker	\$9.25/hr	10/01/2020
Town Clerk	William McCarthy	Pollworker	\$9.25/hr	10/01/2020
Town Clerk	Sheila Wescott	Pollworker	\$9.25/hr	10/02/2020
Town Clerk	Tanner O'Sullivan	Pollworker	\$9.25/hr	10/02/2020
Town Clerk	John Saba	Pollworker	\$9.25/hr	10/02/2020
Town Clerk	Martin Horkan	Pollworker	\$9.25/hr	10/02/2020
Town Clerk	Lenard Zohn	Pollworker	\$9.25/hr	10/02/2020
Town Clerk	Catherine Donovan	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Amanda Gasse	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Liam Donovan	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Susan Fried	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Vicki Keene	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Grace Livingston	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Pam Newman	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Jacqueline Vieira	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Kristen Ahearn	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Elizabeth Anderson	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Liz Bardetti	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Amy Belscher	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	David Berman	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Thidarat Brooks	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	John McCarthy	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Alice Ren	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Adam Isbitsky	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Tobias Rao	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Emily Iarocci	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Jennifer Hoenig	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Anne Waddoups	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Mary Long	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Julianne Stein	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Rob Cook	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Danielle Crompton	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Alexander Iannicelli	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Betsy Couture	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Tim Carter	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Lori Mattheiss	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Brewster LaMacchia	Pollworker	\$9.25/hr	10/03/2020

Town Clerk	Maryse Tremblay	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Steven Knapp	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Constance Prochniak	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Rajiv Chopra	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Karen DiCenzo	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Liana Caffrey	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Nisreen Dahod	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Jennifer Glines	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Melissa Danisch	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Ameera Mazraany	Pollworker	\$9.25/hr	10/03/2020
Town Clerk	Amy Holland	Pollworker	\$9.25/hr	10/06/2020
Town Clerk	James Dunne	Pollworker	\$9.25/hr	10/06/2020
Town Clerk	Gal Kramer	Pollworker	\$9.25/hr	10/06/2020

VII. Meeting Minutes

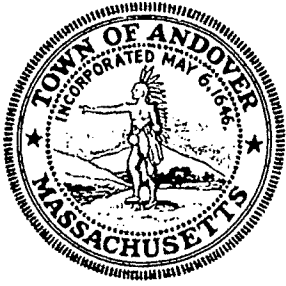
Board to vote to approve minutes from the following meetings:

1. September 28, 2020

VIII. Adjourn

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Select Board will be conducted via remote participation to the greatest extent possible. For this meeting, members of the public who wish to watch the meeting may do so in the following manner: Andover TV COMCAST CHANNEL 22 AND VERIZON CHANNEL 45. Members of the public who wish to ask a question on particular agenda items during the regular meeting can do so by calling 311 from their landline or cell phone within the geographical boundaries of Andover or by calling 978-623-8311 from anywhere or by emailing manager@andoverma.gov. Residents are encouraged to email their questions ahead of the meeting, however, staff will be available to present the Board with questions received during the meeting. Please include your name and address with your question.

Every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means. In the event that we are unable to do so, despite best efforts, we will post on the Town's website an audio or video recording, transcript, or other comprehensive record of the proceedings as soon as possible after the meeting.



TOWN OF ANDOVER

Town Clerk's Office

36 Bartlet Street
Andover, MA 01810
978-623-8230
townclerk@andoverma.gov

NOTICE

You are hereby notified that a Virtual Public Hearing will be held by the Andover Select Board, on Monday, October 19, 2020 at 7 p.m.

This hearing is being held on the petition of National Grid and Verizon New England requesting permission to locate poles, wires and fixtures, including the necessary sustaining and protecting fixtures, along and across the following public way:

#28495205 - Salem Street. National Grid to install (1) JO pole on Salem Street beginning at a point approximately 200 feet southeast of the centerline of the intersection of Prospect Road and continuing approximately 20 feet in a northeast direction. National Grid to install (1) new pole #2043-84 with anchor to support pole line across the street.

Also for permission to lay and maintain underground laterals, cables, and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each of said petitioners may desire for distributing purposes.

Plan(s) of the proposed work can be found in the Meeting Packet on the Select Board page on the Town of Andover website, www.andoverma.gov.

Questions regarding the proposed work can be emailed to Michael Lindstrom, Deputy Town Manager, at Michael.Lindstrom@andoverma.us by Thursday, October 15, 2020.

By order of the
Board of Selectmen

Austin P. Simko
Town Clerk

Plan No: 28495205
October 19, 2020

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Select Board will be conducted via remote participation to the greatest extent possible. For this meeting, members of the public who wish to watch the meeting may do so in the following manner: Andover TV COMCAST CHANNEL 22 AND VERIZON CHANNEL 45. Members of the public who wish to ask a question on particular agenda items during the meeting can do so by calling 311 from their landline or cell phone within the geographical boundaries of Andover or by calling 978-623-8311 from anywhere or by emailing manager@andoverma.gov. Residents are encouraged to email their questions ahead of the meeting, however, staff will be available to present the Board with questions received during the meeting. Please include your name and address with your question.

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MUNICIPAL AGGREGATION SERVICES AGREEMENT

This Municipal Aggregation Services Agreement ("Agreement") is made and entered into and effective on this 7th day of **October**, 2020 ("Effective Date") by and between the **Town of Andover** ("Municipality"), a Massachusetts municipal corporation, with offices located at 36 Bartlet Street, Andover, MA 01810, acting by and through its Town Manager, its duly authorized representative, and **Good Energy, L.P.** ("Service Provider"), located at 232 Madison Avenue, Third Floor, New York, N.Y. 10016, acting by and through its General Partner, its duly authorized representative.

Recitals

WHEREAS, Municipality is seeking to become a "Municipal Aggregator" which provides electric power services for the Municipality's residential and non-residential customers within the Municipality's geographic boundaries; and

WHEREAS, Municipality desires to engage Service Provider to perform professional consulting services for Municipality focusing primarily on the creation, authorization, implementation and management of its municipal aggregation plan (the "Program"), as defined by, and in compliance with, all applicable provisions of Section 134 of Chapter 164(a) of the General Laws of Massachusetts, as amended, and other applicable statutes, regulations and precedent; and

WHEREAS, Services Provider desires to perform the Services as hereinafter defined and desires to be so engaged

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and approved, the parties, intending to be legally bound, agree as follows:

Provisions

I. Performance of the Services. At the Municipality's discretion, Service Provider shall perform each of the following activities and services (collectively, the "Services") with reasonable care and in accordance with the best practices established for electrical aggregation program consulting services.

A. Assist the Municipality in the preparation of a community electricity aggregation plan (the "Plan") in consultation with the Municipality, including the following issues, as applicable:

- Overview of process and consequences of aggregation.
- Classes of customers that may participate.
- Program organizational structure.
- Program operations.
- Program funding.
- Rate setting and cost allocation among participants.
- Entering and terminating agreements.
- Rights and responsibilities of program participants.
- Extension or termination of program.
- Renewable energy content and sourcing

- B. Assist the Municipality with presenting the Plan to the community for comments, revising the Plan as needed, and presenting the Plan and the comments received to the Select Board for review and/or approval;
- C. Lead and assist with all required consultations and filings with the Massachusetts Department of Energy Resources (“DOER”) and the Massachusetts Department of Public Utilities (“DPU”) in regard to the Plan;
- D. Provide Municipality with information on electric power pricing, market trends and any other relevant information to support the Service Provider’s recommendation for timing of Request for Bids (“RFB”) for electric service. Prepare bid specifications and procure competitive bids from licensed, competitive suppliers for electric service. Assist in analysis of bids to determine most advantageous proposal based on price and other factors, with final decision of bid date and final selection of a competitive supplier(s) being decided by the Municipality;
- E. Develop the contract terms and conditions for the Electric Service Agreement (“ESA”) between Municipality and the recommended successful competitive supplier(s) and any required customer notifications consistent with the approved Plan or further regulatory requirements. Assist with negotiations of an ESA with the selected licensed competitive suppliers, to the extent permitted by law.
- F. Assist the Municipality in the preparation, launch and on-going management of a community electricity aggregation program, consistent with its Plan as approved by the DPU;
- G. Assist the Municipality in the operation of its municipal aggregation program, including monitoring the energy service supplier’s performance in: maintaining accurate customer lists, including lists of eligible customers not participating in the program; conducting regular sweeps to offer program services to new or eligible customers; preparing and mailing of opt-out notices; and enrollment of new customers.
- H. Monitor and report on changes to applicable regulatory or statutory requirements for municipal aggregation programs and assist the Municipality in managing and amending, as necessary, the Municipality’s aggregation plan and in the preparation of any reports to, or responses to information requests from, the DPU or DOER.
- I. In the event any dispute arises under the ESA, the Service Provider shall assist the Municipality in assessing the dispute and responding to any claims consistent with the requirements of the ESA, including negotiating an amendment to the ESA, if warranted. If the Municipality and Competitive Supplier are unable to resolve the matter and initiate formal dispute resolution provisions or seek other legal remedies, Service Provider will provide technical assistance to the Municipality. Municipality acknowledges that the Service Provider is not a party to the ESA and that it will be the responsibility of the Municipality to retain independent legal representation in the event of a formal dispute or litigation.
- J. Assist Municipality, along with Service Provider’s expert partners such as Sustainable Energy Advantage, with development and implementation of strategies or programs to support the development of new clean energy resources which may include, but is not limited to, issuing bids for Renewable Energy Credits, negotiating contracts with renewable energy brokers or developers, or developing contract terms

and conditions for investments in renewable energy projects with renewable energy brokers and developers. Such assistance shall include identification of any regulatory requirements and preparation of any related regulatory filings or submissions.

K. Assist Municipality with the development of an opt-up or green-up program to educate consumers and encourage program participants to elect optional products to support the development of new clean energy resources, and work with Municipality and expert partners to develop new, innovative green-up products.

L. Manage a comprehensive marketing, education and public outreach program for operating the aggregation plan, at no cost to, and with approval of, the Municipality. Information to be conveyed includes revisions to program provisions and prices, responses to frequently asked questions, program goals and performance, rights and procedures for program participants, contact information for customer inquiries and details regarding the Program's electric supply and renewable attributes.

M. Obtain from energy supplier and provide to Municipality once a quarter, or as otherwise agreed to with the Municipality, reports on account level usage data including:

1. The total usage (kWh) in each available rate offered by the aggregation;
2. The total number of accounts in each rate offered by the aggregation;
3. The total number of opt-outs and opt-ins;
4. Costs savings achieved compared to known LDC rates;
6. Applicable summary information supporting the development of MA Class I RECs: and
7. Other criteria the Municipality requests as relevant.

Such reports may be provided through a portal accessible to Municipal officials.

N. Give prompt notice to Municipality should the Service Provider acquire knowledge of any fault or deficit in the Program or any nonconformance with the Electric Service Agreement.

O. Remit to Municipality after the termination of this Agreement, all files and documents pertaining to the project that have been created, obtained or produced including, but not limited to, permits, licenses, applications, codes, drawings, site plans, photographs and similar materials.

P. Comply with all statutes, ordinances, laws, rules and regulations, which may be applicable to the services provided hereunder.

II. Obligations of Municipality.

Municipality shall:

- A. Obtain, with the cooperation and assistance of Service Provider, all required authorizations: (i) to amend, as necessary, its aggregation plan pursuant to M.G.L. c. 164, section 134; (ii) to enter into this Municipal Aggregation Services Agreement; and (iii) to enter into an Electric Service Agreement(s) with a competitive supplier(s).
- B. Use reasonable efforts to secure release of data applicable to the Program held by others, including but not limited to residential and non-residential customer account and load information.
- C. Give prompt notice to the Service Provider should Municipality acquire knowledge of any material fault or material deficit in the Program or any nonconformance with the Electric Service Agreement, provided that this provision does not impose upon Municipality any affirmative duty to inquire of any such fault or deficit, and provided further that the failure of Municipality to provide such notice shall not relieve Service Provider of its obligations under this Agreement.
- D. Reasonably cooperate in the development and implementation of the Plan and all required regulatory consultations, filings and proceedings.
- E. Reasonably assist the Service Provider by placing at its disposal all public information necessary for performance of the services for the project, upon reasonable request by Service Provider.
- F. Nothing herein shall be construed to require the Municipality to approve an Electric Service Agreement with a competitive supplier.

III. Term and Termination. The Agreement shall commence on the Effective Date and shall continue through the full term, or any extension or early termination, of any Electric Service Agreement(s) between the Municipality and a competitive supplier currently in effect or entered into during the term of this Agreement, or as otherwise mutually agreed to by Municipality and the Service Provider. Municipality may terminate this Agreement at any time by giving Service Provider thirty (30) days advance written notice. In the event this Agreement is terminated by Municipality prior to expiration of the current Electric Service Agreement(s), except for termination due to a material default of Service Provider, Service Provider shall be paid the fee included for Service Provider in the Electric Service Agreement for the volume of electricity purchased for the Program by the current competitive supplier(s) from the date of the termination of this Agreement through the next meter read date following the expiration of the current Electric Service Agreement(s), including fees related to volumes of electricity purchased during the term of the Electric Service Agreement but billed and paid after the expiration of the Electric Service Agreement, provided that nothing in this Agreement prevents Municipality from terminating, without penalty or liability under this Agreement, any Electric Service Agreement in accordance with the terms of such agreement or as allowed by law.

IV. Payment. Subject to the Municipality's termination rights described in Section III, Municipality agrees that Service Provider's fees will be paid by the selected competitive supplier per kWh (volumetrically) for electricity purchased for the duration of the Electric Service Agreement, which fee shall be \$0.001 per kWh. In the event the Municipality elects not to proceed with the Program, the Service Provider shall not receive a fee.

V. Relationship of the Parties. The parties acknowledge and agree that Service Provider is an independent contractor and is not an agent or employee of Municipality. Neither the Service Provider nor any of its officers, agents, employees, representatives or subcontractors shall be considered an employee, direct or indirect, of the Municipality within the meaning of any federal, state or local law or regulation, including but not limited to, laws or regulations covering unemployment insurance, workers compensation, industrial accidents, employee rights and benefits, wages and taxes. Nothing in this Agreement shall be construed to create a relationship between Service Provider and Municipality of a partnership, association, or joint venture.

VI. Indemnification.

- A. Professional Liability. Relative to any and all claims, losses, damages, liability and cost, the Service Provider agrees to indemnify, defend and save Municipality, its officers, officials, and employees harmless from and against any and all suits, actions or claims for property losses, damages or personal injury claimed to arise from a negligent act, error or omission by the Service Provider or its employees.
- B. Non-Professional Liability (General Liability). To the fullest extent permitted by law, the Service Provider shall indemnify, defend and hold harmless the Municipality, and its officers, officials, employees or any combination thereof, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of the acts or omissions of the Service Provider, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself), including loss of use resulting there from, but only to the extent caused in whole or in part by the acts or omissions of the Service Provider, its agents, or anyone directly employed by them or anyone for whose acts they may be responsible, regardless of whether or not such claim damage, loss or expense is caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.
- C. The indemnification provisions above are in addition to, and not in limitation of, any other rights and remedies available to the Municipality under this Agreement, at law, and in equity.

VII. Insurance.

- A. The Service Provider shall secure and maintain, at his/her/its own expense, errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim/annual aggregate to protect itself from any claim arising out of the performance of professional services and caused by negligent acts or omissions for which the Service Provider may be legally responsible. The Service Provider shall maintain said coverage for the entire Agreement period and for a minimum of one year after completion of the work under the Agreement or the expiration of the Agreement, whichever is later.
- B. In addition to errors and omissions insurance, the Service Provider shall also secure and maintain, at its own expense, insurance as set forth in the Certificate of Liability Insurance of Good Energy. The Town of Andover shall be named as an additional insured.
- C. All of the above referenced insurance shall be maintained in full force and effect during the life of this Agreement, and for one year beyond where specified.

- D. Service Provider agrees to require any consultant or sub-consultant providing services hereunder to maintain insurance of the type and amounts provided in this section.

VIII. Right to Audit.

- A. Service Provider represents that the individuals employed by the Service Provider in any capacity, including, but not limited to, employees, subcontractors and independent contractors, are authorized to work in the United States. The Service Provider represents and warrants that it has completed the I-9 verification process for all individuals the Service Provider has performing services for Municipality. Municipality maintains the right to audit the Form I-9s for all individuals the Service Provider has performing services for Municipality every six (6) months. Municipality will provide the Service Provider with five (5) days advanced written notice of its intent to perform a Form I-9 audit. In response to Municipality's audit request, the Service Provider shall provide copies of all Form I-9s and any supporting documentation for all individuals who the Service Provider had performing services for Municipality at any time subsequent to the date upon which Municipality gave notice of the preceding Form I-9 audit. Notwithstanding the foregoing, neither the performance nor lack of performance of any audit by the Municipality, nor any failure of the Municipality to share the results of any such audit with Service Provider, shall relieve Service Provider of its obligations under this provision.
- B. The Service Provider agrees to indemnify, defend and hold harmless Municipality in accordance with Section VI of the Agreement for any issue arising out of the Service Provider's hiring or retention of any individual who is not authorized to work in the United States.
- C. Service Provider agrees to require any consultant or sub-consultant providing services hereunder to represent and warrant that any of its employees, subcontractors, agents and independent contractors are authorized to work in the United States and that it has completed the I-9 verification process for all individuals performing services hereunder. In addition, Service Provider shall cause any consultant or sub-consultant to indemnify, defend and hold harmless Municipality in accordance with Section VI of the Agreement for any issue arising out of such consultant's or sub-consultant's hiring or retention of any individual who is not authorized to work in the United States.

IX. Taxes and Certifications.

- A. Service Provider is subject to and responsible for all applicable federal, state, and local taxes, and certifies, under pain and penalties of perjury, that it has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support in accordance with M.G.L. c. 62C, sec. 49A(B).
- B. Municipality represents that it is a tax-exempt entity and evidence of this tax-exempt status shall be provided to Service Provider upon written request.
- C. Service Provider has the following federal identification number for income tax purposes: 43-2003973.
- D. Service Provider certifies that it is not debarred from entering into a public contract in the Commonwealth of Massachusetts pursuant to M.G.L. c. 29, sec.29F.

- X. Assignment.** Neither party may assign this Agreement without obtaining express, written consent from the other party prior to assignment, which consent shall not be unreasonably withheld.
- XI. Entire Agreement / Amendment.** This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the parties. It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by the duly authorized representatives of both parties in accordance with the laws of the Commonwealth of Massachusetts.
- XII. Discrimination.** To the extent the following applies, Service Provider shall reasonably comply with all federal, state and local laws, rules and regulations applicable to the work including without limitation the requirements of M.G.L. c. 151B, Title VII of the Civil Rights Act of 1964, Title 11 of the American With Disabilities Act of 1990, and any and all rules, waivers, regulatory guidance and regulations promulgated by the Department of Public Utilities.
- XIII. Confidential and Proprietary Information.**
- A. Notwithstanding anything to the contrary set forth herein, the Parties are not required to disclose information which they reasonably deem to be proprietary or confidential in nature, including trade secrets, pursuant any applicable statute or regulation including M.G.L. c. 25, sec. 5D and M.G.L. c. 30A. The Parties agree that, except as otherwise provided by law, and subject to the last sentence of this paragraph, any document disclosed by a Party and conspicuously marked on the face of such document as proprietary and confidential shall only be disclosed to officials, employees, representatives, and agents of either Party. Notwithstanding the foregoing, the good faith efforts of the Service Provider or the Municipality to comply with the state open meeting law and public records law, or with a decision or order of a court or governmental entity with jurisdiction over the Municipality, shall not be a violation of this Section.
- B. **Ownership of Data and Documents.** All data and information, regardless of its format, developed or obtained under this Agreement ("Data"), other than the Service Provider's confidential proprietary information, will remain the sole property of the Municipality. The Service Provider must promptly deliver all Data to the Municipality at the Municipality's request. The Service Provider is responsible for the care and protection of the Data until that delivery. The Service Provider may retain one copy of the Data for the Service Provider's records, subject to the Service Provider's continued compliance with the provisions of this Agreement.
- C. **Limitations on Customer Information.** Both Parties acknowledge and agree that the customer information is subject to, and must be maintained in compliance with, the limitations on disclosure of the customer information pursuant to applicable laws and regulations. Municipality and Service Provider agree that customer-specific information provided to the Municipality in accordance with the Program and any agreements with the applicable LDC shall be treated as confidential to the extent required by law, including M.G.L. c. 93H, and any applicable LDC agreement or tariff. To protect the confidentiality of customer information:
1. Service Provider access to customer information is limited to those authorized representatives or duly licensed consultants of Service Provider, or any authorized third party, who have a legal need to know the information for purposes of this Agreement.

2. Service Provider warrants that it will not disclose, use, sell, or provide Customer Information to any person, firm or entity for any purpose outside of the aggregation program.
3. Service Provider and Municipality acknowledge and agree that customer information remains the property of the Municipality and that material breaches of confidentiality will constitute a default of this Agreement.

D. **Proprietary Rights, Survival.** The obligations under this Article XIII shall survive the conclusion or termination of this Agreement for two (2) years.

XIV. Governing Law/Venue. Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whether between the parties, or of any of the parties' employees, agents or affiliated businesses, will be resolved under the laws of the Commonwealth of Massachusetts, in any court of competent jurisdiction within the Commonwealth of Massachusetts. Service Provider agrees to accept service of process by certified mail at the address provided herein. In the alternative, by agreement of the parties, any such controversy or claim may be submitted for arbitration within the Commonwealth of Massachusetts pursuant to the applicable rules of the American Arbitration Association.

XV. Severability. If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and the parties shall in good faith negotiate to replace such provision by a valid, mutually agreeable and enforceable provision which so far as possible, achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.

XVI. Paragraph Headings. Paragraph headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.

XVII. Compliance with Laws. Service Provider shall comply with all applicable laws and regulations in the performance of the Services.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

TOWN OF ANDOVER

By its Select Board

Ann W. Gilbert, Chair

Daniel A. Koh

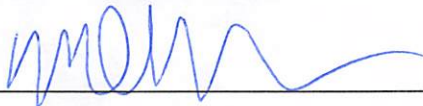
Christian C. Huntress

Laura M. Gregory

Alexander J. Vispoli

GOOD ENERGY, L.P.

By: **Good Offices Technology Partners, LLC, its General Partner**

BY:  _____, duly authorized

PRINTED NAME OF SIGNATORY: Maximilian Hoover

TITLE OF SIGNATORY: Manager

Motion for Good Energy Agreement

I move that the Board vote to approve and sign an agreement with Good Energy L.P. for Municipal Aggregation Services.