

**TOWN OF ANDOVER, MASSACHUSETTS**

**AGREEMENT**

This AGREEMENT made this 21<sup>st</sup> day of November, 2022 by and between the TOWN OF ANDOVER, a municipal corporation duly organized under the laws of Massachusetts and having a usual place of business at 36 Bartlet Street, Andover, Massachusetts 01810, hereinafter referred to as the "Town", and **Guardian Energy Management Solutions LLC** [a Massachusetts Corporation] having a usual place of business at 420 Northboro Road, Marlborough, Massachusetts 01752, hereinafter referred to as the "CONTRACTOR".

**SCOPE OF WORK:** The CONTRACTOR shall perform all work and furnish all services necessary to provide the TOWN with an energy conservation project pursuant to c. 25a, § 14 **Weatherization Upgrades at South ES, West MS, and Sanborn ES** as described in attached Scope of Work, in accordance with M.G.L. c. 25A (the "Project"). The CONTRACTOR shall perform all work in accordance with the specifications provided by Guardian and approved by the TOWN contained herein.

**WITNESSETH:**

WHEREAS, the CONTRACTOR submitted a Proposal pursuant to G.L.c. 25a, § 14 to perform the work required to complete the Project; and

WHEREAS, the TOWN has decided to award the contract therefor to the CONTRACTOR. NOW, THEREFORE, the TOWN and the CONTRACTOR agree as follows:

1. **CONTRACT DOCUMENTS.** The Contract Documents consist of:

- This Agreement
- The CONTRACTOR's Proposal for the project
- 100% Performance Bond for \$94,494.00 (to be provided by the CONTRACTOR)
- 100% Payment Bond for \$94,494.00 (to be provided by the CONTRACTOR)
- Certification of Insurance (to be provided by the CONTRACTOR)
- Schedule(s) of Prevailing Wage
- Certifications required by law for Public Construction Projects
- Non Collusion/Tax Attestation form
- Certification of Corporate Authority if CONTRACTOR is a Corporation
- Statement of contract payments by the Town and utility incentives

The Contract Documents constitute the entire Agreement between the parties concerning the work, and all are as fully a part of this Agreement as if attached hereto.

2. **THE WORK.** The Work consists of energy efficiency upgrades, as more fully described in the Contract Documents as defined above.

3. **TERM OF CONTRACT.** This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before January 31, 2023, unless extended and subject to the availability and appropriation of funds as certified by the Town Accountant. The time limits stated in the Contract documents are of the essence of the Contract.

4. **GENERAL TERMS AND CONDITIONS.**

4.1. Commencement and Completion of Work

- A. The proposed duration of the project refers to reaching Completion by the date specified.
- B. Definition of Term: The Term "Completion" shall mean the date certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner may occupy the project, or designated portion(s) thereof, for the use for which it is intended.
- C. Time as Essential Condition: It is understood and agreed that the commencement of and completion of the work are essential conditions of this Agreement. It is further agreed that time is of the essence for each and every portion of the Contract Documents wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract Documents any additional time is allowed for the completion of any work, the new time fixed by such extension shall be of the essence of this Agreement. It is understood and agreed that the times for the completion of the work are reasonable, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.
- D. Progress and Completion: CONTRACTOR shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure Completion within the stipulated term of contract.

#### 4.2. Performance of the Work

- A. **Direction of the Work:** The CONTRACTOR shall designate a superintendent to direct the Work, using best skills, practices and attention which shall not be less than such state of skill and attention generally rendered by the contracting profession for projects similar to the Project in scope, completion time, difficulty and location. The CONTRACTOR shall maintain adequate supervisory personnel at the project site during the performance of the Work. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, timely receipt of materials and for coordinating all portions of the Work under this Agreement.
- B. **Responsibility for the Work:** (1) The CONTRACTOR shall be responsible to the TOWN for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the CONTRACTOR. This obligation shall also extend to the presence on the Site of suppliers of materials or equipment, their employees, Contractors, and agents engaged in the work. The CONTRACTOR shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the TOWN in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the CONTRACTOR.
- C. **Project Superintendent:** The superintendent shall represent the CONTRACTOR and all communications given to the superintendent shall be as binding as if given to the CONTRACTOR. Important communications shall be confirmed in writing upon oral request. Other communications shall be so confirmed on written request in each case.

- D. Progress Schedule: The CONTRACTOR, immediately after being awarded the Contract, shall prepare and submit for the Town's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The work shall be completed by June 30, 2022.
- E. If, during the progress of the work, the contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the contract documents either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.
- F. (a) The Town may order the general contractor in writing to suspend, delay, or interrupt all or any part of the work for such

period of time as it may determine to be appropriate for the convenience of the awarding authority; provided however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the awarding authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the general contractor on such increase; and provided further, that the Town shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.

(b) The Contractor must submit the amount of a claim under provision (a) to the Town in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract and, except for costs due to a suspension order, the Town shall not approve any costs in the claim incurred more than twenty days before the Contractor notified the Town in writing of the act or failure to act involved in the claim.

- G. Quality of the Work: The CONTRACTOR shall perform the work in a good, workmanlike manner. The CONTRACTOR hereby guarantees that the entire work constructed by him under the Agreement will meet fully all requirements thereof as to quality of workmanship and materials. The CONTRACTOR shall clean the work area and restore it to its original condition upon completion of the work. The CONTRACTOR hereby agrees to make at his own expense any repairs or replacements made necessary by defects in materials or workmanship supplied to him that become evident within one (1) year after the date of

the final payment, and to restore to full compliance with the requirements set forth herein any part of the work constructed hereunder, which during said one (1) year period is found to be deficient with respect to any provisions of the Contract Documents. The CONTRACTOR also agrees to hold the Town harmless from claims of any kind arising from damage due to said defects. The CONTRACTOR shall make all repairs and replacements promptly upon receipt of written orders for same from the Town. If the CONTRACTOR fails to make the repairs and replacements within 60 days, the Town may do the work and the CONTRACTOR shall be liable to the Town for the cost thereof.

- H. Warranty: The CONTRACTOR guarantees to Owner that all materials incorporated into the work will be new unless otherwise specified or agreed. Prior to final payment, the CONTRACTOR shall deliver to the Owner all manufacturers' warranties, together with such endorsements or assignments as are necessary to ensure to the Owner the full rights and benefits of such warranties.

4.3 Site Information Not Guaranteed; CONTRACTOR's Investigation All information given to the CONTRACTOR in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the Town. All such information is furnished only for the information and convenience of the CONTRACTOR and is not guaranteed. CONTRACTOR shall give the Town written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the resolution thereof by the Town or CONTRACTOR is acceptable to both the Town and CONTRACTOR.

**5. COMPENSATION**

- A. The TOWN shall pay the CONTRACTOR as full compensation for the performance of the work outlined in Attachment A, totaling \$94,494.00.
  
- B. The acceptance by the CONTRACTOR of final payment for items and/or services provided shall be deemed a release of the TOWN, except warranties and guarantees by the CONTRACTOR stated in 4E and F.
  
- C. Neither the TOWN's review, approval or acceptance of, nor payment for any of the items and/or services provided shall be construed to operate as a waiver of any rights of the TOWN under the Agreement or any cause of action arising out of the performance of the Agreement.

**6. PAYMENT OF COMPENSATION.** The TOWN shall make payments within thirty (30) days after its receipt of Invoice.

- A. The project shall be invoiced on a monthly basis based on a percentage of tasks completed. All invoices should include a narrative describing services accomplished, and a progress report showing the percentage completed of each phase of the required services.
  
- B Changes in the work: no changes in the work covered by the approved Contract Documents shall be made without prior written approval of the TOWN.
  
- c. Final payment, effect: The acceptance of final payment by the CONTRACTOR shall constitute a waiver of all claims by the CONTRACTOR arising under the agreement.

**7. SUBJECT TO APPROPRIATION.** Notwithstanding anything in the Contract documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant.

8. **LIABILITY OF THE TOWN.** The TOWN's liability hereunder shall be to make all payments when they shall become due, and the TOWN shall be under no further obligation or liability. Nothing in this Agreement shall be construed to render the TOWN or any elected or appointed official or employee of the TOWN, or their successors in office, personally liable for any obligation under this Agreement.
  
9. **INDEPENDENT CONTRACTOR.** The CONTRACTOR acknowledges and agrees that it is acting as an independent CONTRACTOR for all work and services rendered pursuant to this Agreement, and shall not be considered an employee or agent of the TOWN for any purpose.
  
10. **INDEMNIFICATION.**
  - 10.1 The Contractor shall indemnify, defend and save harmless the Town, its officers, agents and employees from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, recoveries and judgments of every nature and description (including reasonable attorneys' fees) brought or recovered against them that may arise in whole or in part out of or in connection with the work being performed or to be performed, or out of any act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable unless such claims arise solely out of the acts or omissions of the Town. The Contractor further agrees to reimburse the Town for damage to the Town's property caused by Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including damages caused by his, its or their use of faulty, defective or

unsuitable material or equipment, unless the damage is caused by the Town's negligence or willful misconduct. The existence of insurance shall in no way limit the scope of the Contractor's indemnification under this Contract.

10.2 The intent of the Specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract.

11. **INSURANCE.**

A. The CONTRACTOR shall obtain and maintain in full force and effect, with respect to the operations and completed operations of this Contract, during the term of this Agreement, the insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts, and acceptable to the TOWN, as set forth below:

<u>General Liability</u>	\$1,000,000 per person
Bodily Injury Liability	\$2,000,000 per occurrence
Property Damage Liability	\$1,000,000 per occurrence
(or combined single limit)	\$2,000,000 aggregate
Products and Completed Operations	\$1,000,000 aggregate

<u>Automobile Liability</u>	
Bodily Injury Liability	\$1,000,000 per person
Property Damage Liability	\$2,000,000 aggregate
(or combined single limit)	\$ 500,000 per occurrence
(or combined single limit)	\$1,000,000 per occurrence

Workers' Compensation Insurance

Coverage for all employees in accordance with Massachusetts General laws

Professional Liability Insurance

Minimum Coverage \$1,000,000 per occurrence

Excess Liability (Umbrella) \$1,000,000

Excess Liability (Umbrella) \$1,000,000

(Subcontractor)

- B. All policies shall identify the TOWN as an additional insured (except Workers' Compensation) shall provide a waiver of subrogation in favor of the Town and shall provide that the TOWN shall receive written notification at least 30 days prior to the effective date of any amendment or cancellation. Certificates evidencing all such coverages shall be provided to the TOWN prior to the commencement of the work. Each such certificate shall specifically refer to this Agreement and shall state that such insurance is as required by this Agreement. Failure to provide or to continue in force such insurance shall be deemed a material breach of this Agreement and shall be grounds for immediate termination. Completed operations coverage is to be maintained for a period of three years after final payment.

All policies shall be primary and non-contributory with respect to any other insurance available to additional insureds.

- 12. PREVAILING WAGE:** CONTRACTOR will be required to use Prevailing Wages for all work. Verification of such will be required per Commonwealth of Massachusetts requirements.

13. **BONDING REQUIREMENT:** The CONTRACTOR will be required to submit a 100% Performance Bond and 100% Payment Bond of the estimated value of the projects requiring bonding, with their contract documents in the forms attached. Attachment A. Proof of these will need to be submitted before onsite work begins.

14. **ASSIGNMENT:** The CONTRACTOR shall not assign, sublet or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the TOWN, and shall not assign any of the moneys payable under this Agreement, except by and with the written consent of the TOWN.

15. **TERMINATION:**

A. Termination for Cause. If at any time during the term of this Agreement the TOWN determines that the CONTRACTOR has breached the terms of this Agreement by negligently or incompetently performing the work, or any part thereof, or by failing to perform the work in a timely fashion, or by failing to perform the work to the satisfaction of the TOWN, or by not complying with the direction of the TOWN or its agents, or by otherwise failing to perform this Agreement in accordance with all of its terms and provisions, the TOWN shall notify the CONTRACTOR in writing stating therein the nature of the alleged breach and directing the CONTRACTOR to cure such breach within ten (10) days. The CONTRACTOR specifically agrees that it shall indemnify and hold the TOWN harmless from any loss, damage, cost, charge, expense or claim arising out of or resulting from such breach regardless of its knowledge or authorization of the actions resulting in the breach. If the CONTRACTOR fails to cure said breach within ten (10) days, the TOWN may, at its election at any time after the expiration of said ten (10) days, terminate this

Agreement by giving written notice thereof to the CONTRACTOR specifying the effective date of the termination. Upon receipt of said notice, the CONTRACTOR shall cease to incur additional expenses in connection with this Agreement. Upon the date specified in said notice, this Agreement shall terminate. Such termination shall not prejudice or waive any rights or action which the TOWN may have against the CONTRACTOR up to the date of such termination, and the CONTRACTOR shall be liable to the TOWN for any amount which it may be required to pay in excess of the compensation provided herein in order to complete the work specified herein in a timely manner. Upon such termination, the CONTRACTOR shall be entitled to compensation for all satisfactory work completed prior to the termination date.

B. Termination for Convenience. The TOWN may terminate this Agreement at any time for convenience by providing the CONTRACTOR written notice specifying therein the termination date which shall not be sooner than ten days from the issuance of said notice. Upon receipt of said notice, the CONTRACTOR shall cease to incur additional expenses in connection with this Agreement. Upon such termination, the CONTRACTOR shall be entitled to compensation for all satisfactory work completed prior to the termination date, as determined by the TOWN, such payment not to exceed the fair value of the services provided hereunder.

16. **INSPECTION AND REPORTS:** The TOWN shall have the right at any time to inspect the work of the CONTRACTOR. Whenever requested, CONTRACTOR shall immediately furnish to the TOWN full and complete written reports of his operation under this Contract in such detail and with such information as the TOWN may request.

17. **ROYALTIES AND PATENTS:** The CONTRACTOR shall pay all applicable royalties and license fees. In addition, the CONTRACTOR hereby represents that it is duly authorized to use any process or other intellectual property rights held by third parties in the performance of this Agreement, it shall defend all suits or claims for infringement of any patent or other intellectual property rights and shall indemnify and hold the TOWN harmless from loss on account thereof.
18. **SUCCESSOR AND ASSIGNS:** This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the TOWN nor the CONTRACTOR shall assign or transfer any interest in the Agreement without the written consent of the other.
19. **COMPLIANCE WITH LAWS:** The CONTRACTOR shall comply with all Federal, State and local laws, rules, regulations and orders applicable to the work provided pursuant to this Agreement, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such work.
20. **NOTICE:** Any and all notices, or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the addresses set forth on Page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.

- 21. SEVERABILITY:** If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.
- 22. CONFLICT OF INTEREST:** Both the Town and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract; and by executing the Contract documents the Contractor certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.
- 23. CONDITION OF ENFORCEABILITY AGAINST THE TOWN:** This Contract is only binding upon, and enforceable against, the Town if: (1) the Contract is signed by the Town Manager or its designee; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds; and (3) endorsed with approval by the Town Counsel as to form.
- 24. LIABILITY OF PUBLIC OFFICIALS:** To the full extent permitted by law, no official, employee, agent or representative of the Town shall be individually or personally liable on any obligation of the Town under this Contract.
- 25. RECORD-KEEPING AND RETENTION, INSPECTION OF RECORDS:** The Contractor shall maintain records, books, files and other data as specified in this Contract and in such detail as shall properly substantiate claims for payment under this Contract, for a minimum retention period of six (6) years beginning on the first day after the final payment under this Contract.

26. **RISK OF LOSS:** The Contractor shall bear the risk of loss for any Contractor materials used for this Contract and for all deliveries, personal or other data of the Town which is in the possession of the Contractor or used by the Contractor in the performance of this Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Town, which such acceptance shall not be unreasonably withheld by Town.
27. **AUDIT, INSPECTION, AND RECORDKEEPING:** Upon written request provided at least fourteen (14) days prior to the requested inspection, Contractor will for the purpose of audit, examination, and/or to make available excerpts or transcript all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement at a mutually convenient location.
28. **WAIVER AND AMENDMENT:** Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Contract may be made only by written amendment executed by all signatories to the original Contract, prior to the effective date of the amendment.

To the extent allowed by law, any conditions, duties, and obligations contained in this Contract may be waived only by written agreement by both parties.

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

29. **BINDING ON SUCCESSORS:** This Contract shall be binding upon the Contractor, its assigns, transferees, and/or successors in interest (and where not corporate, the heirs and estate of the Contractor).

**30. CONTRACTOR CERTIFICATIONS:**

- A.** By signing this Contract the Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract, that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability, and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.
- B.** By signing this Contract the Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulations including, Executive Order 147, M.G.L. ch. 29, § 29F, M.G.L. ch. 30, § 39R, M.G.L. ch. 149, § 27C, M.G.L. ch. 149, § 44C, M.G.L. ch. 149, § 148B and M.G.L. ch. 152, § 25C

**31.** If requested by the Town, the Contractor shall, before the first application, submit to the Town schedule of values of the various parts of the work, including quantities aggregating the total sum of the Contract, divided so as to facilitate payments to Subcontractors, made out in such form as the Town and the Contractor may agree upon, and, if required, supported by such evidence as to its correctness. This schedule, when approved by the Town, shall be used as a basis for payment, unless it is found to be in error. If applying for payments, the Contractor shall submit a statement based upon this schedule.

**32. FINAL PAYMENT:** Final Payment under this Contract shall be processed in accordance with the procedures set forth in M.G.L. c. 30, § 39K. The acceptance by the Contractor of the last payment due under this Contract or the Contractor's execution of the Final Certificate of Completion, shall operate as a release to the Town from all claims and liability related to this Contract.

**33. LIENS:** Neither the Final Payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Town a complete release of all liens arising out of the Contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that as far as it has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed. The Contractor shall comply with all statutory provisions of the General Laws of the Commonwealth of Massachusetts with regard to liens, Chapter 254 and 149 as amended (as a minimum requirement).

**34. CLAIMS BY CONTRACTOR AND LIABILITY OF TOWN:** All claims by the Contractor against the Town shall, unless otherwise provided by law, be initiated by a written claim submitted to the Town no later than thirty (30) calendar days after the event or the first appearance of the circumstances causing the claim. The claim shall set forth in detail all known facts and circumstances supporting the claim. The Contractor shall continue its performance under this contract regardless of the submission or existence of any claims.


The limit of liability of the Town for breach of this Agreement is limited to the compensation provided herein for work actually performed, and shall in no event include liability for delays or for incidental, special or consequential damages or lost profits or for damages or loss from causes beyond the Town's reasonable control.

**35. GOVERNING LAW:** This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the CONTRACTOR submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

**36. ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

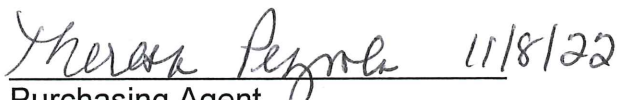
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

By its TOWN MANAGER

  
Andrew Flanagan 11/21/22

CONTRACTOR

  
Signature

  
Theresa Payne 11/8/22  
Purchasing Agent

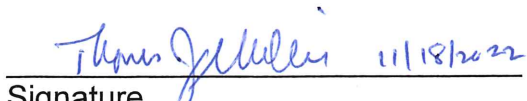
  
Janet Nivasio  
Department Head


Accountant

I certify that an appropriation is available in the amount of this Contract

APPROVED AS TO FORM

Town Counsel

  
Thomas J. Miller 11/18/22  
Signature

  
Signature

FY23 Green Comm Grant  
528723-5700  
#94494



**MANAGER CERTIFICATE**

**Limited Liability Company**

The undersigned certifies that s/he is the manager of Guardian Energy Mgmt Soln LLC under a Certificate of Formation and recorded with the Commonwealth of Massachusetts (the "Manager") and further certifies that the following actions have been duly authorized and directed by 100% of the members under the GEMS LLC as follows:

1. That s/he is authorized, empowered and directed,, acting singly, to execute a contract with TOWN OF ANDOVER. The execution of this contract shall be conclusive evidence of such approval.

2. That s/he is further authorized, empowered and directed, acting singly, to take such other actions and to execute and to deliver such further documents as, in his/her sole discretion, s/he shall deem necessary or appropriate to effectuate the transaction described above, with the signature of said Manager appearing upon such documents to be conclusive evidence that the execution of each such document is within the powers of the Manager and the purposes of the Manager, that it has been authorized and directed by all necessary action of the members of GEMS LLC, and that it is binding.

The undersigned further certifies that the GEMS LLC has not been altered, amended or rescinded since its date of establishment; that it continues in full force and effect; and that the foregoing statements are true and correct, all as of the date hereof.

Witness the execution hereof under seal of this 19 day of October, 2022.

By: [Signature]  
Manager

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 19<sup>th</sup> day of October, 2022, before me, the undersigned notary public, personally appeared Don Armeno, Manager as aforesaid and proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purpose.



Nicole Tempesta  
NOTARY PUBLIC  
Commonwealth of  
Massachusetts  
My Commission Expires  
11/17/2028

[Signature]  
Notary Public  
My Commission Expires:



**CERTIFICATION OF GOOD FAITH & NON-COLLUSION**

The undersigned certifies under pains and penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

**CERTIFICATE OF STATE TAX COMPLIANCE**

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.



Signature of authorized individual submitting bid/proposal

Dominic k Armiano

Printed Name

Guardian Energy Management Solutions

Name of Business (if applicable)

46-3458309

Social Security or Federal Tax Identification Number



## AFFIDAVIT OF OSHA COMPLIANCE

The undersigned agrees that if he is selected as the contractor, he will comply with the provisions of M.G.L. Chapter 30, Section 39S.

The undersigned certifies, under penalties of perjury, that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

Date 10.19.22

GEMS

(Name of Bidder)

By [Signature]

(Name of person Signing Bid and Title)

Signature is required

420 Northboro Rd Central

(Business Address)

Marlboro, MA

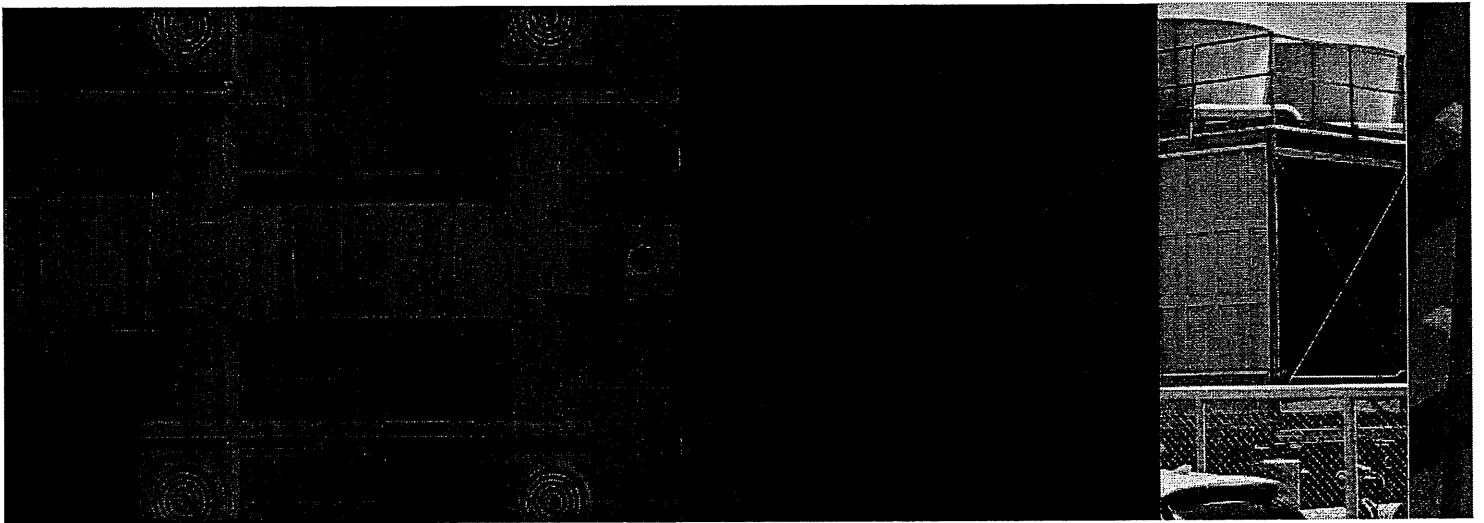
(City and State)

508-597-1333

(Telephone Number)



**TOWN OF ANDOVER  
ENERGY EFFICIENCY SERVICES**



**West MS, Sanborn & South ES Weatherization**

**10.05.2022**



**SANBORN ES PROJECT SUMMARY**

Air leakage is defined as, “the uncontrolled migration of conditioned air through the building envelope”. Caused by pressure differences due to wind, chimney (or stack) effect and mechanical systems it has been shown to represent the single largest source of heat loss or gain through the building envelopes of nearly all types of buildings.

**PROJECT FINANCIAL SUMMARY**

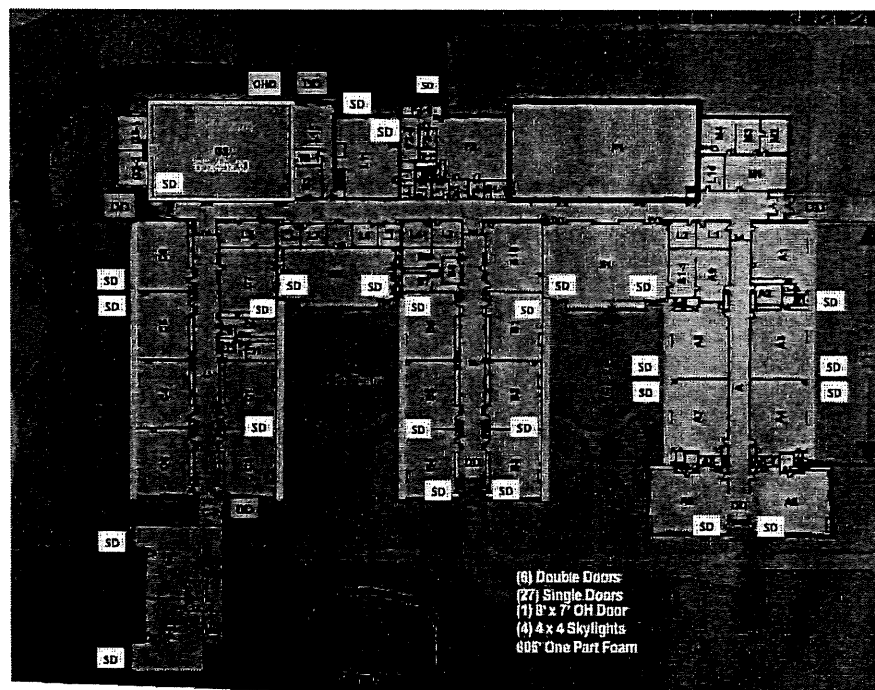
Measure Description	Estimated Annual Savings <sup>1</sup>			Installed Cost	Estimated Incentive	Net Cost
	kWh Saved	Therms Saved	Annual Savings			
Weatherization Upgrade	1,862	1,664	\$2,117	\$42,268	\$4,321	\$37,947

<sup>1</sup> Savings calculations are based on \$1.10 per therm and \$0.154 per kwh

**STATEMENT OF WORK**

Based on the site walk conducted by our team, Guardian Energy Management Solutions, LLC proposes to furnish and install as follows:

Location	Measure	# / SF
All Levels	Ext doors weather stripped and sealed	39 Doors
Skylights, Roof	sealed at perimeter with caulk, 1 line	4 Windows
All Levels	Over-head door to be sealed on 4 sides	1 OH Door
Classrooms	Roof/Wall Joint sealed with 1 part foam	605 feet
Gym	Roof/Wall Joint sealed with 2 part foam	290 feet







**WEST MIDDLE PROJECT SUMMARY**

Air leakage is defined as, “the uncontrolled migration of conditioned air through the building envelope”. Caused by pressure differences due to wind, chimney (or stack) effect and mechanical systems it has been shown to represent the single largest source of heat loss or gain through the building envelopes of nearly all types of buildings.

**PROJECT FINANCIAL SUMMARY**

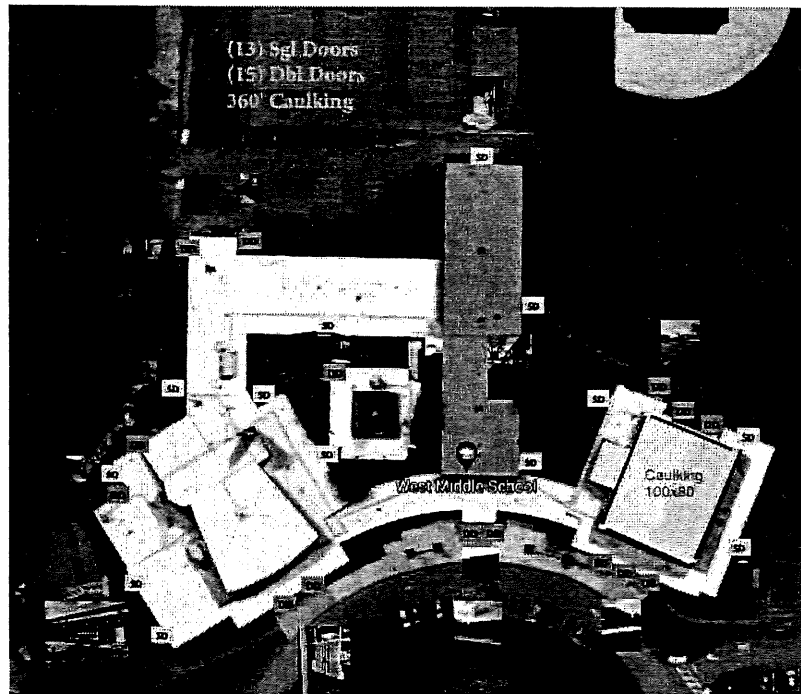
Measure Description	Estimated Annual Savings <sup>†</sup>			Installed Cost	Estimated Incentive	Net Cost
	kWh Saved	Therms Saved	Annual Savings			
Weatherization Upgrade	2,073	1,328	\$1,705	\$25,851	\$6,400	\$19,451

<sup>†</sup> Savings calculations are based on \$1.00 per therm and \$0.182per kwh

**STATEMENT OF WORK**

Based on the site walk conducted by our team, Guardian Energy Management Solutions, LLC proposes to furnish and install as follows:

Location	Measure	# / SF
All Levels	Ext doors weather stripped and sealed	45 Doors
All Levels	Roof Wall Joint Sealing with caulk	360"

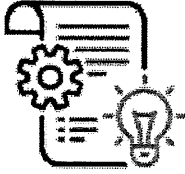




### CUSTOMER REQUIREMENTS

- Customer will provide the most **current Prevailing Wage Rate** sheet to Guardian at the time the order is placed, with updated rates as required.
- Customer will provide Guardian with **ST-2 and ST-5C tax exemption documentation** at the time the order is placed.
- Customer will provide a point of contact and unimpeded access to the work site, as well as unobstructed access to all fixtures on the scheduled day(s) of installation. Customer delays related to the installation of the project may result in additional costs being addressed via a change order. A Guardian Project Manager will discuss scheduling and provide updates on an ongoing basis.
- Work to perform the project shall occur within typical working hours (6:00 a.m. - 6:00 p.m. Monday through Friday) in full-day continuous periods. Requests for labor to be performed outside of these hours should be made in advance so that Guardian may reprice the work accordingly or issue a change order.

HOW ELSE MAY WE SERVE YOU?



**ENGINEERING**

Energy Audits  
Steam System Evaluations  
Compressed Air Surveys



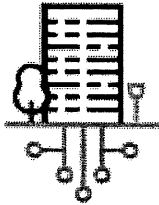
**MECHANICAL**

Boilers  
Chillers  
Air Handlers  
Cooling Towers  
Pumps



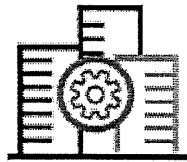
**ELECTRICAL**

Lighting Retrofits  
Back-up Generators  
EV Charging Stations  
VFDs  
Battery Storage



**CONTROLS  
& ANALYTICS**

IOT Systems  
BMS Installations  
Retrocommissioning  
Analytics Services



**BUILDING  
MAINTENANCE  
SERVICES**

Boiler Tune Ups  
DX Equipment Coil Cleaning  
Air Handling Units  
Cooling Tower Fill Cleaning  
Electrical Safety Inspections  
Chiller Startups & Shutdowns



**PROFESSIONAL  
SERVICES**

Demand Response  
Energy Procurement  
Project Funding Options



## ORDER FORM ACCEPTANCE

**Payment Terms & Schedule:** All invoices are payable Net 30. Outstanding balances are subject to a 1.5% late fee per month. All pricing is valid for **30 days** from the date of this proposal.

**Total Project Cost: \$42,268**

**Invoice #1: \$37,947-** Guardian will submit an invoice for this amount upon substantial completion of the project.

**Incentive: \$4,321** – The approved utility incentives will be paid to Guardian upon project completion.

\*Project Pricing & Utility Incentives: Guardian has made its best attempt to provide the most accurate financial information or your review and approval. Please note that utility incentives may be estimates, and may change the final amount due, as well as impact other information provided in this proposal if they change in any way. As part of the project scope, Guardian will submit the necessary utility applications on your behalf. A letter from the utility will be sent to you to confirm the approved incentive amount. Should this amount not match the estimated totals shown, Guardian will revise the financial details and payment schedule to reflect the actual approved incentive amount.

By signing below, you are agreeing to contract with Guardian Energy Management Solutions on this project. You have reviewed and agree to Guardian's Standard Terms and Conditions. Any changes to pricing or scope of work must be made in writing and agreed to by both parties.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Customer Billing Information:** Please provide your billing contact information below. All invoices will be emailed to the contact listed below.

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Billing Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

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



## ORDER FORM ACCEPTANCE

**Payment Terms & Schedule:** All invoices are payable Net 30. Outstanding balances are subject to a 1.5% late fee per month. All pricing is valid for **30 days** from the date of this proposal.

**Total Project Cost: \$41,758**

**Invoice #1: \$37,096-** Guardian will submit an invoice for this amount upon substantial completion of the project.

**Incentive: \$4,662** – The approved utility incentives will be paid to Guardian upon project completion.

\*Project Pricing & Utility Incentives: Guardian has made its best attempt to provide the most accurate financial information or your review and approval. Please note that utility incentives may be estimates, and may change the final amount due, as well as impact other information provided in this proposal if they change in any way. As part of the project scope, Guardian will submit the necessary utility applications on your behalf. A letter from the utility will be sent to you to confirm the approved incentive amount. Should this amount not match the estimated totals shown, Guardian will revise the financial details and payment schedule to reflect the actual approved incentive amount.

By signing below, you are agreeing to contract with Guardian Energy Management Solutions on this project. You have reviewed and agree to Guardian's Standard Terms and Conditions. Any changes to pricing or scope of work must be made in writing and agreed to by both parties.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Customer Billing Information:** Please provide your billing contact information below. All invoices will be emailed to the contact listed below.

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Billing Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

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



## ORDER FORM ACCEPTANCE

**Payment Terms & Schedule:** All invoices are payable Net 30. Outstanding balances are subject to a 1.5% late fee per month. All pricing is valid for **30 days** from the date of this proposal.

**Total Project Cost: \$25,851**

**Invoice #1: \$19,451-** Guardian will submit an invoice for this amount upon substantial completion of the project.

**Incentive: \$6,400** – The approved utility incentives will be paid to Guardian upon project completion.

\*Project Pricing & Utility Incentives: Guardian has made its best attempt to provide the most accurate financial information or your review and approval. Please note that utility incentives may be estimates, and may change the final amount due, as well as impact other information provided in this proposal if they change in any way. As part of the project scope, Guardian will submit the necessary utility applications on your behalf. A letter from the utility will be sent to you to confirm the approved incentive amount. Should this amount not match the estimated totals shown, Guardian will revise the financial details and payment schedule to reflect the actual approved incentive amount.

By signing below, you are agreeing to contract with Guardian Energy Management Solutions on this project. You have reviewed and agree to Guardian's Standard Terms and Conditions. Any changes to pricing or scope of work must be made in writing and agreed to by both parties.

_____	_____
Printed Name	Title
_____	_____
Signature	Date

**Customer Billing Information:** Please provide your billing contact information below. All invoices will be emailed to the contact listed below.

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Billing Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

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

