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**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE TOWN OF ANDOVER
AND
GUARDIAN ENERGY MANAGEMENT SOLUTIONS**

Re: National Grid OBR Projects for the Town of Andover

This MEMORANDUM OF UNDERSTANDING ("Agreement") serves as an agreement between **Guardian Energy Management Solutions**, a licensed and insured energy systems and efficiency contractor with an address of 420 Northboro Road Central, Marlborough, MA 01752 ("Contractor") and the Town of Andover, a municipal corporation, located at 36 Bartlet Street, Andover MA 01810 ("Town"). Whereas, the Town wishes to grant access for energy improvement projects to Town buildings to be performed by Contractor and funded by National Grid' On-Bill Repayment ("OBR") credits from the Town for the purposes set forth herein. Therefore, the parties agree as follows:

1. Town Obligations

- a. The Town shall provide National Grid with the necessary authorization and documentation to utilize Town OBR credits and National Grid incentives for two projects as follows:
 - i. Installation of a new chiller at the Memorial Hall Library located at 2 North Main Street, Andover MA 01810, as fully described in Attachment "A" hereto, and valued at up to \$379,762.00 in OBR credit funds and incentives; and
 - ii. Installation of new light emitting diode ("LED Lighting") at the Town's Community Safety Center at the Town's Public Safety Center located at 32 North Main Street, Andover MA, 01810 as fully described in Attachment "B" hereto and valued at up to \$89,411 in OBR credit funds and incentives
- b. The Town shall comply with any and all other reporting and approval requirements necessary to secure payment from National Grid to Contractor upon satisfactory completion of the project without undue delay and shall not unreasonably withhold approval, consistent with "Conditions & Requirements" set forth below.
- c. The Town shall also provide access to the premises necessary to complete such projects during reasonable hours mutually agreed upon by the parties.

2. Contractor Obligations:

- a. Contractor shall obtain approval from the Town prior to submitting invoices to National Grid for final payment;
- b. Contractor shall perform work in compliance with the conditions and requirements set forth below.

3. Conditions & Requirements

- a. Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor.
- b. Contractor shall perform the work described in Exhibits "A" and "B" governed by the provisions of applicable federal, state and local laws and regulations, including but not limited to minimum wage, non-discrimination, and conflict of interest laws. If the Contractor performs the work described in

Attachments "A" and "B" in violation of any applicable law or regulation, the Contractor shall bear all costs arising therefrom.

- c. While the work contemplated by this MOA is funded by National Grid, Contractor shall provide certification of tax compliance, as required by General Laws Chapter 62C, 49A.
- d. Both the Town and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Agreement 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 Agreement; and by executing the Agreement 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.
- e. The Contractor will carry out projects described in Attachments "A" and "B" in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151B (Law Against Discrimination) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law.
- t. Contractor shall not assign the work to be completed to another entity without written authorization from both National Grid and the Town.
- g. Contractor shall provide and name the Town as beneficiary of any and all warranties accompanying the products and improvements associated with the projects described in Attachments "A" and "B."

4. Insurance & Indemnification

- a. Contractor shall obtain and maintain the following insurance naming the Town as additional insured at no cost to the Town in the following amounts to be evidenced by appropriate certificates of insurance:
 - i. Workers Compensation Insurance of the scope and amount required by the laws of the Commonwealth of Massachusetts;
 - ii. Broad Form commercial general liability insurance with limits of at least \$1 Million per occurrence and \$2 Million aggregate, or such higher amount as the Town may require, and which shall cover bodily injury, death, or property damage arising out of the work.
 - iii. Automobile Liability Insurance, including coverage for owned, hired or borrowed vehicles with limits of at least \$1 Million each person/each occurrence or a combined single limit of \$1 Million.
 - iv. Professional liability insurance covering errors, omissions and acts of the Contractor or of any person or business entity for whose performance the Contractor is legally liable arising out of the performance of the Agreement and projects. The total amount of such insurance shall at a minimum equal one million dollars or such larger amounts as the Town may require for the applicable period of limitations. The Contractor shall obtain such insurance

coverage at its own expense and provide certificates of insurance to the Town prior to the execution of the Agreement

- b. The Contractor shall indemnify, defend, and save harmless the Town, the Town's officers, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees) incurred by, brought or recovered against them that may arise in whole or in part out of or in connection with the projects being performed or to be performed, and out of any negligent 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, regardless of whether or not it is caused in part by any party indemnified hereunder. The existence of insurance shall in no way limit the scope of the Contractor's indemnification under this agreement. The duty to defend shall immediately accrue and be owing upon the utterance of such a claim by any person or entity regardless of merit and shall not be dependent upon a finding of negligence or any other finding of fact at trial. The duty to defend shall be absolute and will include and shall not be defeated or in any way undermined by the utterance of claims not covered by this Agreement.

5. Waiver and Amendment

- a. Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Agreement may be made only by written amendment executed by all signatories to the original Agreement, prior to the effective date of the amendment.
- b. To the extent allowed by law, any conditions, duties, and obligations contained in this Agreement may be waived only by written Agreement by both parties.

6. Forum and Choice of Law

This Agreement shall be governed by and be construed in accordance with the laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

7. Notices

Any notice permitted or required under the provisions of this Agreement to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. For purposes of this Agreement, the following individuals shall serve as points of contact, including delivery of reports, for both Contractor and the Town:

Guardian Energy Management

Domenic Armano
President
Guardian Energy Management Solutions
420 Northboro Road Central
Marlborough, MA 01752
Darmano@guardian-energy.com

Town of Andover

Janet Nicosia
Director of Facilities,
Town of Andover
36 Bartlet Street, Andover, MA 01810
978-623-8320
janet.nicosia@andoverma.us

ACCEPTED AND AGREED TO BY:

Guardian Energy Management

BY: 

Printed Name: Domenic Armano

Title: President

Date: 7/15/2024

Town of Andover


By: 

Printed Name: Andrew P. Flanagan

Title: Town Manager

Date: 07/19/2024

APPROVED AS TO FORM:



Douglas W. Heim
Town Counsel

7.19.24
Date