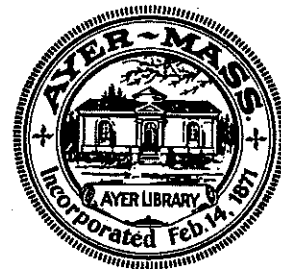


RECEIVED
TOWN CLERK
TOWN OF AYER

2016 DEC 16 AM 11:43

Town of Ayer
Board of Selectmen
Ayer Town Hall – 1st Floor Meeting Room
Ayer, MA 01432



Tuesday December 20, 2016
Open Session Meeting Agenda

- 7:00 PM Call To Order
Pledge of Allegiance; Review and Approve Agenda; Review of Warrant(s); Announcements
- 7:05 PM* Public Input
Superintendent Mark Wetzel, Department of Public Works
1. Street Light Purchase from National Grid
- 7:15 PM Town Administrator's Report
1. Administrative Update
2. Indemnification Agreement – Depot Square
3. 66 Westford Road Enforcement Update
4. Procurement Threshold Authorization Change
- 7:30 PM New Business/Selectmen's Questions
- 7:35 PM Approval of Meeting Minutes
December 6, 2016
- Adjournment

**Agenda times are for planning purposes only and do not necessarily constitute exact times*

AGREEMENT OF SALE

This Agreement of Sale ("Agreement"), is made as of this ____ day of January, 2017 by and between Massachusetts Electric Company d/b/a National Grid, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, having its principal place of business at 40 Sylvan Road, Waltham, Massachusetts 02451 (hereinafter referred to as the "Seller" or the "Company") and the Town of Ayer, a municipality organized and existing under the laws of the Commonwealth of Massachusetts, having its principal place of business at Ayer Town Hall, 1 Main Street, Ayer, Massachusetts 01432 (hereinafter referred to as the "Buyer"). The Seller and the Buyer may hereinafter be referred to individually as a "Party", and, collectively, as the "Parties".

WHEREAS, the Seller presently provides street lighting services to the Buyer pursuant to multiple Massachusetts Electric Company tariffs approved by the Massachusetts Department of Public Utilities ("MDPU"); and

WHEREAS, the Buyer has exercised its rights under section 34A of Chapter 164 of the Massachusetts General Laws ("Section 34A") and has requested that the Company sell to the Buyer certain of the Company's existing outdoor street and/or area lighting and associated equipment located within the boundary limits of the Town of Ayer as shown and described on Exhibit A attached hereto and made a part hereof (each, individually, a "Facility" and, collectively, the "Facilities"); and

WHEREAS, the Seller, pursuant to Section 34A, has agreed to transfer the Facilities to the Buyer, subject to the terms and conditions of this Agreement; and

WHEREAS, such sale shall be made on an "as is, where is" basis and pursuant to the Massachusetts Electric Company, Street and Area Lighting – Customer Owned Equipment S-5, Retail Delivery Service Tariff ("S-5 Tariff") approved by the MDPU.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Seller and Buyer agree to the following terms and conditions:

I. BASIC UNDERSTANDINGS

1. The Seller agrees to sell, and Buyer agrees to purchase, the Facilities, subject to the terms and conditions of this Agreement, the S-5 Tariff and Section 34A, on an "as is, where is" basis.
2. Upon Closing (as defined below), the Seller will convey to the Buyer all of its rights, title and interests in such Facilities; provided, however, that the Seller is not making any representations or warranties to the Buyer regarding the same.

3. The Buyer maintains sole responsibility for ensuring that the list of Facilities in Exhibit A is accurate and complete as of the Closing Date. After the Closing Date, the purchase of any outdoor street or area lights and associated equipment not included in Exhibit A ("Additional Facilities") shall be subject to an additional purchase price calculation. If, at such time, Seller desires to sell to Buyer and Buyer desires to purchase from Seller such Additional Facilities, Buyer shall pay to Seller a new purchase price in consideration for the Additional Facilities.

4 As of the Closing Date (as defined below), the Buyer shall assume all responsibilities and obligations associated with ownership of the Facilities, including, without limitation, those contemplated by the S-5 Tariff.

5 To the extent that Seller possesses existing physical, hardcopy paper maps that appear to relate to the Facilities, and such maps are able to be copied in a legible form, Seller shall furnish the Buyer with one (1) copy of each such map in its current form ("Map(s)") after the Closing as such Maps may be available. Seller shall not have any obligation to create any new maps for the Buyer, nor shall Seller have any obligation to review, update or correct any Maps. The Buyer assumes all risk and liability arising from the Buyer's (including any contractor, agent or representative of Buyer) use or reliance on any Map or information contained therein. SELLER MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES IN CONNECTION WITH THE MAPS, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, (I) WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND (II) REPRESENTATIONS, WARRANTIES OR GUARANTEES WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE MAPS. If and to the extent the Buyer transfers the Facilities back to the Seller, the Buyer agrees to return to Seller, at no charge, all Maps (including all revisions or updates thereto made by Buyer), together with all newly created maps with respect to the Facilities, on or before the date that the Facilities are transferred back to the Seller.

II. PURCHASE PRICE

1. The Buyer shall pay to Seller at Closing a total consideration of \$1.00 ("Purchase Price") for the Facilities. The Parties acknowledge that the Purchase Price is mutually agreed and is legal and sufficient consideration for the Facilities pursuant to Section 34A.

2. The Buyer shall be solely responsible for the payment of all taxes on or relating to the Facilities, if any, following the Closing Date and thereafter. The Seller shall pay all taxes on the Facilities up to and including the Closing Date. Notwithstanding the designation of a Party as the owner of record of the Facilities for tax purposes, unless the tax liability on the Facilities is abated in its entirety as of the Closing Date, the tax liability shall be apportioned between Buyer and Seller in proportion to the number of days during such tax year within which Buyer and Seller, respectively, owned the

Facilities. If the amount of the tax liability is not known or cannot be determined reliably at the time of the Closing, the tax liability shall be apportioned on the basis of the tax assessed for the most recent tax year for which such an apportionment or determination can be made, with a reapportionment to be performed as soon as the new tax rate and valuation can be ascertained.

III. CLOSING, TITLE AND DISCLAIMER OF WARRANTIES

1. **CLOSING:** The closing of the purchase and sale of the Facilities ("Closing") shall occur on or about January __, 2017 or such other date as may be mutually agreed by the Parties ("Closing Date"). At the Closing, Buyer shall pay the Purchase Price to Seller, and Seller shall deliver to the Buyer a Bill of Sale in the form attached hereto as Exhibit B and incorporated herein by reference (the "Bill of Sale").

2. **LIENS AND ENCUMBRANCES:** Notwithstanding any provision to the contrary, Seller represents to Buyer that the Facilities are free from all liens and encumbrances that are known to the Seller.

3. **CONDITION PRECEDENT:** The Closing shall be conditioned upon the execution of the License Agreement for Overhead Sourced Street and Area Lighting and the License Agreement for Underground Sourced Street and Area Lighting between Seller and Buyer (collectively the "License Agreements"), in the forms attached hereto as Exhibits C and D, respectively, incorporated herein by reference.

4. **BILL OF SALE; DISCLAIMER OF WARRANTY:**

(a) Seller shall transfer title to the Facilities to Buyer by the Bill of Sale attached hereto as Exhibit B.

(b) THERE ARE NO PROMISES, COVENANTS OR UNDERTAKINGS WITH RESPECT TO THE FACILITIES OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, EXCEPT AS SET FORTH EXPRESSLY HEREIN. THE EXPRESS COVENANT SET FORTH IN THE BILL OF SALE IS IN LIEU OF, AND SELLER DISCLAIMS, ANY AND ALL OTHER WARRANTIES, GUARANTEES, PROMISES, CONDITIONS, UNDERTAKINGS OR REPRESENTATIONS (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE FACILITIES OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT SELLER KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), OR COMPLIANCE WITH THE NATIONAL ELECTRIC CODE (NEC), NATIONAL ELECTRIC SAFETY CODE (NESC), OR THE RULES, REGULATIONS, AND PROVISIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. THE FACILITIES ARE SOLD "AS IS." IN ADDITION, THE

SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY THIRD PARTY WITH RESPECT TO THE FACILITIES OR ANY PART THEREOF.

IV. TRANSFER, OPERATION AND MAINTENANCE OF THE FACILITIES

1. **REMOVAL OF COMPANY DESIGNATION:** Buyer shall remove or permanently cover up, in a reasonable manner and within a reasonable time, the designation "Massachusetts Electric Company" or any other reference to Seller, Seller's affiliates, or Seller's predecessors in interest found on or among the Facilities, so that no reference to Seller remains visible on or among the Facilities being transferred. The foregoing sentence shall only apply to wooden poles and street light standards included in the Facilities. The Buyer shall also place Buyer identification labels on all Facilities.
2. **FACILITY IDENTIFICATION:** The Buyer shall also place Buyer identification labels on all Facilities which shall include the name of the Buyer and a number identification pursuant to the License Agreements. As Buyer places its identification labels on the Facilities or any new street lighting equipment, Buyer shall provide a quarterly inventory list to the Seller that identifies (i) any equipment on which a new identification label has been affixed, (ii) its unique identification number per luminaire location, and (iii) the street address. The Buyer may utilize the numbering system established by the Seller. Any number identification system used by the Buyer shall be clear and comprehensive to the Seller.
3. **REPAIR AND MAINTENANCE:** From and after the Closing Date and subject to this Agreement, the Buyer shall be the sole owner of the Facilities with all rights, duties and obligations arising from, or in connection with, such ownership, including, without limitation, the obligations to repair, replace, maintain and operate the Facilities. Seller shall be responsible for the repair, replacement, maintenance, and operation of the Facilities up to, but not including, the Closing date.
4. **DEMARCATIION OF OWNERSHIP:** The Parties acknowledge and agree that there may not be a physical ownership demarcation point to separate or identify ownership (post-Closing) of Buyer's Facilities from Seller's electric distribution structures or systems. Accordingly, the Parties agree that the point of ownership demarcation shall be deemed to be the existing connection point where the applicable street light Facility is energized from the electric distribution system ("Connection Point"). The Seller shall retain ownership of the electric distribution system up to and including the Connection Point. Buyer shall own the street lighting system from the Connection Point to the luminaire inclusive of the applicable Facilities. To the extent there is any uncertainty or conflict with respect to the Connection Point, the Seller shall, in its sole discretion, define the Connection Point.
5. **THIRD PARTY LIGHTING:** Lighting facilities (including, without limitation poles, standards, arms, brackets, wires, cable, conductor, conduit, foundations and luminaires) owned by Seller and used to provide regulated lighting services to independent third

party customers (each, a "Third Party Lighting Asset" or collectively, the "Third Party Lighting Assets") shall not be included in the Facilities that are being transferred to the Buyer through this Agreement. The transfer of Facilities shall exclude facilities upon which Third Party Lighting Assets are attached, physically and/or electrically ("Third Party Lighting Facility(ies)"); provided, however, the Seller shall transfer the requested luminaires and associated brackets or arms to the Buyer on these facilities upon which Third Party Lighting Assets are attached. The Seller shall retain ownership of all existing Third Party Lighting Facilities. The Buyer understands that the Seller shall continue to provide the regulated lighting services to independent customers in the Town of Ayer after the Closing.

6. **AUTHORITY TO PERFORM CONNECTIONS:** The Buyer shall not perform or make any connections (permanent or temporary) to, or disconnections from, or in any way handle, tamper or interfere with, or otherwise disrupt, the Seller's electric distribution system or assets, in whole or in part, nor shall the Buyer permit or cause any third party (including without limitation, Buyer's agent or contractor) to do so. The Seller shall be the sole Party with authority to perform or make any and all (permanent and temporary) connections or disconnections to the Seller's electric distribution system or assets for the purpose of providing electric service to the Buyer's outdoor street and area lighting system or otherwise in connection with the Facilities. If and to the extent the Buyer has a need for a connection to, or disconnection from the Seller's electric distribution system or assets, the Buyer shall contact the Seller through normal customer contact channels to initiate the proper work order and scheduling, whereas Seller shall perform the necessary work, provided, that the Seller determines, in its sole discretion, that such work is appropriate under the terms of Agreement, Licenses, applicable codes, standards, laws, regulations and Seller's practices and policies.

7. **JOINT USE INFRASTRUCTURE:** Buyer acknowledges and agrees that some of the Facilities ("Coexisting Facilities") are currently installed or otherwise coexist, in whole or in part, on or within Seller's conduit, vaults, or other Seller facilities, assets or infrastructure ("Joint-Use Structures"), that such Coexisting Facilities shall not be separated from the Joint Use Structures prior to Closing, and that, following Closing, the Coexisting Facilities and/or the Joint Use Structures may, from time to time, require modification or replacement. If Seller elects, in its sole discretion, to significantly modify or replace any Joint Use Structure, including, without limitation, making significant repairs or upgrades to such Joint Use Structure or associated Seller assets, or if Buyer determines that the Coexisting Facilities require significant repair, modification or replacement, or as otherwise provided in the License Agreements, it shall be the sole responsibility of the Buyer to relocate the Buyer's Coexisting Facilities associated with such Joint Use Structure (at Buyer's expense and in compliance with all applicable laws, rules, regulations codes and standards (each, a "Relocation")) as if such Coexisting Facilities were new facilities. For each such Relocation and subject to this Agreement, Buyer shall relocate the applicable Coexisting Facilities in a manner that is completely separate from the Joint Use Structure or any other Seller assets and Buyer shall be solely responsible for implementing and paying for any associated work and materials, including, without limitation, new conduit, cable and handholes.

8. **ACCESS:** The Buyer or its contractors are prohibited from, have no authority to, and shall not permit or cause any third party to, access or ingress any of the Seller's enclosed or underground primary or secondary electric distribution system infrastructure, including, but not limited to, manholes, handholes, vaults, transformers, and switchgears. The Buyer or its contractors shall comply with all applicable codes, standards, laws, regulations, and Seller's practices and policies when accessing or making contact with any overhead or underground electric distribution system infrastructure. If and to the extent the Buyer needs to access or ingress to any of the Seller's underground or overhead electric distribution system infrastructure, the Buyer shall contact the Seller and the Seller shall respond to the Buyer's request and perform the work as requested following its normal work scheduling protocol, provided, that, the Seller determines, in its sole discretion, that such work is appropriate under the terms of applicable codes, standards, laws, regulations, any other applicable agreements between the Parties, including but not limited to the License Agreements, and Seller practices and policies.

9. **ATTACHMENT RIGHTS:** The Seller shall provide attachment rights to the Buyer to attach the Facilities to the Seller's support infrastructure and electric distribution system in accordance with the terms in the License Agreements attached hereto. The Buyer, and not the Seller, shall be solely responsible for obtaining all other necessary and appropriate attachment rights or consents required for the Buyer to maintain and operate the Facilities or otherwise required in connection with the Facilities, including, without limitation, rights to attach to support infrastructure (i.e. poles). The Buyer, and not the Seller, has the responsibility to arrange with any other support infrastructure owners (i.e. Verizon) and any other necessary parties other than Seller to obtain such attachment rights, including, without limitation, the owners or joint owners of the support infrastructure (which may be entities other than the Seller). The Seller makes no representations or warranties with respect to, and is not purporting to provide any third party (including, without limitation, Verizon) attachment rights or consents for or in connection with the Facilities.

10. **EASEMENT/ACCESS RIGHTS:** The Seller makes no representations or warranties with respect to, and is not purporting to provide, easements, rights of way or other access rights in connection with this Agreement, the License Agreements or the Facilities ("Access Rights"). The Buyer, and not the Seller, shall be solely responsible for obtaining at Buyer's sole expense any Access Rights required to maintain and operate the Facilities or otherwise required in connection with the Facilities. It is not the responsibility of the Seller to provide or deliver to the Buyer any lists or other documentation of existing easements or rights granted currently held by the Seller. Nor shall it be the Seller's responsibility to assist the Buyer in obtaining any easement or Access Rights.

11. **NEW LIGHTING FACILITIES:**

(a) All new, reconfigured or Materially Changed (as defined in the License Agreements) street lighting facilities which the Buyer requests to be connected to the Seller's electric distribution system shall meet the requirements of the Seller's

applicable engineering standards and other design requirements for customer owned Facilities (as determined by Seller) before any request for connection will be performed or completed. All customer equipment connections by the Buyer shall comply with all applicable Seller standards and requirements as provided in the License Agreements, including, but not limited to, the application of a physical disconnect in close proximity to the electric distribution system source. All new lighting/illumination sources (i.e. lamps) for existing or new lighting locations must comply with applicable Seller tariffs and policies.

(b) Buyer acknowledges and agrees that, in the event the Buyer seeks to convert to lighting/illumination sources other than those provided in Seller's tariff, (each, a "Non-Compliant Source"), Seller shall not be able to provide service for such Non-Compliant Source and Seller shall be under no obligation to permit or provide service to such Non-Compliant Source.

(c) Anything in this Agreement to the contrary notwithstanding, the Buyer understands and agrees that any new outdoor lighting within an underground residential distribution (URD) area shall be placed only in the name of the Buyer as opposed to being placed in the name of the developer or other third party.

(d) Buyer shall immediately notify Seller of the installation of any new street lighting equipment or any material change to any street lighting equipment. Seller shall provide a form to be used for such notification after the Closing.

V. LIABILITY

From and after the Closing Date, the Seller, its affiliates, and their respective officers, directors, employees, and agents, shall not be liable to Buyer or its officers, officials, employees, representatives or contractors for direct, indirect, consequential, punitive, special, exemplary, or any other damages under any theory of law that is now or may in the future be in effect, including without limitation, contract, tort, M.G.L. c. 93A, strict liability, or negligence, in connection with this Agreement, the License Agreements or the Facilities, including, without limitation, damages with respect to or arising from the condition, operation of, or failure of operation of the Facilities. The Buyer's sole remedy for recovery under this Agreement shall be limited to an equitable remedy to enforce the transfer of the Facilities under the Agreement.

Anything in this Agreement to the contrary notwithstanding, if the Buyer's liability in connection with this Agreement is limited or capped pursuant to any applicable statute or regulation, then the Seller hereto shall be entitled to elect an identical liability limitation and/or cap as if such statute or regulation were applicable to the Seller.

VI. INDEMNIFICATION

The Parties acknowledge and agree that the indemnification provisions in the License Agreements are incorporated herein by reference; provided, however, that this

Article shall not apply to any liability, loss, damages, or expense arising out of any claim from personal injury or property damage or other type of claim, in which the cause of action occurred before the Closing Date.

The Buyer agrees, to the extent permitted by law and to the extent of the Buyer's insurance coverage (under which Seller shall be named an additional insured as set forth in Article VII below) to defend and to pay, protect, indemnify and save harmless the Seller and its affiliates against and from any and all liabilities, claims, suits, fines, penalties, damages, personal injury, losses, fees (including reasonable attorneys' fees), costs, and expenses (hereinafter "Claims") arising out of or in connection with this Agreement resulting from any act, failure or omission on the part of the Buyer or its officers, officials, employees, representatives or contractors.

VII. INSURANCE

In accordance with the License Agreements, the Buyer shall, at its sole cost and expense, obtain and keep in force comprehensive general liability insurance in terms and amounts commercially reasonable (but no less than any applicable statutory or regulatory limit or cap on liability) covering any action arising in connection with this Agreement, and shall name the Seller as an additional insured thereunder. Such insurance will insure all of the indemnity obligations set forth herein and, upon request, the Buyer shall provide a certificate of insurance to Seller showing such coverage.

VIII. GOVERNING LAW

This Agreement shall be governed by, performed, and construed in accordance with the laws of The Commonwealth of Massachusetts without regard to the conflicts of law principles contained therein.

IX. PRIOR AGREEMENTS

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all previous agreements, discussions, communications, and correspondence. Any prior agreements, promises, negotiations, or representations not set forth in this Agreement are of no force or effect.

X. ASSIGNMENT, MODIFICATION

This Agreement and the rights and obligations set forth herein shall not be assigned by either Party without the written agreement of both Parties. This Agreement may not be amended or modified except in a writing signed by both Parties, and shall inure to and be binding upon the Parties and their respective successors and assigns.

XI. SEVERABILITY

If any provision of this Agreement is held invalid by any court or body of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

XII. SURVIVAL

Articles I, II, III, IV, V and VI shall survive the Closing.

XIII. NOTICE

Any notice given under this Agreement shall be in writing and shall be hand delivered, sent by registered or certified mail, delivered by a reputable overnight courier, or sent by facsimile with electronic confirmation of receipt, to the other party's representative as follows:

Buyer:

Town of Ayer
Ayer Town Hall, 1 Main Street
Ayer, MA 01432
Attention: _____

Seller:

Massachusetts Electric Company d/b/a National Grid
40 Sylvan Avenue
Waltham MA 02451
Attention: Outdoor Lighting & Attachments

XIV. APPLICABLE STATUTE AND TARIFF

The Parties understand and agree that this Agreement is made pursuant to Section 34A and shall be subject to the terms of the S-5 Tariff. To the extent there is any conflict between this Agreement and the S-5 Tariff, the S-5 Tariff shall govern.

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

MASSACHUSETTS ELECTRIC COMPANY

By: _____
Name: Christopher Kelly
Title: Acting Senior Vice President, Electric
Process and Engineering

TOWN OF AYER

By: _____
Name: Gary J. Luca
Title: Chair, Board of Selectmen

Office of the Ayer Board of Selectmen
Office of the Ayer Town Administrator



Town of Ayer | Ayer Town Hall | 1 Main Street | Ayer, MA 01432 | 978-772-8220 | Fax 978-772-3017 | www.ayer.ma.us

MEMORANDUM

DATE: December 16, 2016

TO: Ayer Board of Selectmen

FROM: Robert A. Pontbriand
Town Administrator

SUBJECT: Town Administrator's Report for the December 20, 2016 BOS Meeting

Dear Honorable Selectmen,

I transmit to you the following Town Administrator's Report for the December 20, 2016 BOS Meeting. If you have any questions prior to the meeting, please do not hesitate to contact me directly. Thank you.

Administrative Update:

- I will provide a brief administrative update to include an overview of the major projects and accomplishments of the Town over the past year.

Indemnification Agreement – Depot Square:

- As part of the eminent domain taking of Depot Square, the attached indemnification agreement as drafted and reviewed by Town Counsel requires authorization and signature by the Board of Selectmen. This is a result of the Ayer Development Corporation (which owned some of the parcels taken by eminent domain) being dissolved as a legal corporation at the time of the eminent domain takings. (See Attached).

66 Westford Road Enforcement Update:

- A public update on the 66 Westford Road Enforcement measures being undertaken by the Town will be presented and reported at the BOS Meeting.

Procurement Threshold Authorization Change:

- As part of the Massachusetts Modernization Act, the Inspector General's Office recently increased the statutory threshold for Town Administrator's (previously \$35,000) to authorize purchases and contracts up to \$50,000.00
- Accordingly, I am respectfully recommending and requesting that the BOS authorize the Town Administrator to approve purchases and contracts up to \$50,000.00. Any and all purchases and contracts over \$50,000 must be approved by the BOS.

Attachment.

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) is made this ____ day of December, 2016, by and between **Worthen Dale Realty Corp.**, a Massachusetts corporation, having an address of 3 Depot Square, Ayer, Massachusetts 01432 (“Worthen Dale”) and the **Town of Ayer**, a Massachusetts municipal corporation, having an address of One Main Street, Ayer, Massachusetts 01432 (“Town”) (collectively, the “Parties”).

WHEREAS, Town, by an Order of Taking dated June 1, 2016, recorded with the Middlesex South District Registry of Deeds in Book 67366, Page 350, took certain property, being Parcels A, B, C, D and E, as shown on a plan entitled “Plan of Lands of Worthen Dale Realty Corp. Access Corridor and Advocates Building to be Acquired by the Town of Ayer, Massachusetts,” dated May 6, 2016, prepared by Prime AE, recorded with said Registry of Deeds as Plan 461 of 2016 (the “Plan”); and

WHEREAS, Town acquired Parcels A, C and D shown on the Plan from Worthen Dale Realty Corp., and awarded damages in the amount of \$546,601.00, which damages award was paid in full; and

WHEREAS, Town acquired Parcels B and E shown on the Plan from Ayer Development Company, Inc., and awarded damages in the amount of \$48,399.00, which damages award is being held by the Town as Ayer Development Company, Inc. was involuntarily dissolved by Court Order on June 30, 2014; and

WHEREAS, Worthen Dale has requested that the Town pay the damages award payable to Ayer Development Company, Inc. in the amount of \$48,399.00 (the “Damages Award”) to it, in exchange for an indemnification of the Town; and

WHEREAS, the Town agrees to pay the Damages Award to Worthen Dale in consideration of Worthen Dale indemnifying the Town against any claims that may be brought by or on behalf of Ayer Development Company, Inc. as a result of this payment, in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Worthen Dale Realty Corp. agrees for itself, its successors and/or assigns, to defend and hold harmless the Town and its officers, agents, representatives and employees from and against any and all manner of actions, causes of action, suits, debts, covenants, contracts, controversies, agreements, promises, claims and demands whatsoever, including, but not limited to, attorney’s fees, and any and all costs and expenses, which Ayer Development Company, Inc., its successors and/or assigns, or any other entity or person has ever had, now has, or may in the future have, known or unknown, from the beginning of all time or in the future against the Town, arising directly or indirectly out of the payment of the Damages Award to Worthen Dale Realty Corp. However, Worthen Dale Realty Corp. is not releasing any rights to seek additional compensation for Parcels B and E pursuant to G.L. c. 79, and the \$48,399.00 is accepted on a pro tanto basis.

2. This Agreement shall be binding upon and inure to the benefit of the Parties' respective successors and assigns.

3. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and there are no inducements, representations, warranties or understandings that do not appear within the terms and provisions of this Agreement.

4. This Agreement may only be modified by a writing signed by both Parties. No waiver of any provision of this Agreement at any time shall be deemed a waiver of any other provision of this Agreement.

5. Each person signing this Agreement hereby represents and warrants that he/she has the full authority and is duly authorized and empowered to execute this Agreement on behalf of the Party for which he/she signs.

6. The provisions of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts, and any action arising out of this Agreement must be brought in a court of competent jurisdiction within the Commonwealth.

7. If any portion of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provision shall, nevertheless, remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Indemnification Agreement as of the date and year set forth above.

WORTHEN DALE REALTY CORP.

By: _____
David W. Berry, President and Treasurer

Date

TOWN OF AYER,
By its Board of Selectmen

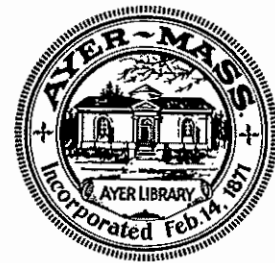
Gary J. Luca, Chair

Christopher R. Hillman, Vice Chair

Jannice L. Livingston, Clerk

Date

Town of Ayer
Board of Selectmen
Ayer Town Hall – 1st Floor Meeting Room
Ayer, MA 01432



Tuesday December 6, 2015
Meeting Minutes

Present: Gary J. Luca, Chair; Christopher R. Hillman, Vice-Chair; Jannice L. Livingston, Clerk
Robert A. Pontbriand, Town Administrator
Carly M. Antonellis, Assistant to the Town Administrator

Call to Order: G. Luca called the meeting to order at 7:00 PM.

Pledge of Allegiance: BOS members and meeting attendees stood and recited the Pledge of Allegiance.

Review and Approve Agenda: C. Hillman asked for an update on the odor issue at Nasoya under Selectmen's questions.

Motion: A motion was made by J. Livingston and seconded by C. Hillman to approve the agenda, as amended.
Motion passed 3-0.

Announcements: G. Luca made the following announcements: the Winter Parking Ban is now in effect; The 15th Annual Holiday Concert Music and Sing Along featuring the Nashoba Valley Concert Band will be held at the Town Hall at 2:00 PM on December 10, 2016; The 17th Annual Tuba Christmas Concert will be held on Sunday December 11, 2016 at 2:00 PM at the Town Hall; Pearl Harbor Day is tomorrow December 7th. C. Hillman stated that the Page Hilltop school held the Lip Sync contest this past weekend and was a success.

Public Input: None

Turkey Crossing Signs for Groton School Road --Mr. Preston O. Campaner: The Board presented Mr. Preston Campaner with a certificate of appreciation. Preston recently wrote the Town and requested the installation of two "Turkey Crossing" signs on Groton Harvard Road.

Mr. Alan Manoian, Director of Community and Economic Development: *Approval of FY' 17 UDAG Funds – Economic Development Budget* – A. Manoian was in attendance requesting approval of \$43,704 from the UDAG budget to fund the annual appropriation to the Economic Development Budget.

Motion: A motion was made by J. Livingston and seconded by C. Hillman to approve the request to fund \$43,704 out of the UDAG account of the Economic Development budget. **Motion passed 3-0.**

Developer Proposal Historic Ayer Central Fire Station - A. Manoian reported that the Town received one proposal in the amount of \$1,000 (one thousand dollars) from Page Moore Realty Trust for the sale of the former fire station located on Washington Street. A. Manoian reported that within the proposal there were multiple requests including: a reduction in building department fees, water and sewer connection fees, a TIF agreement, 21e report, assistance with the application for the National Register of Historic Places, zoning relief and the Town's support for a façade grant through Community Preservation funds.

The BOS felt that the low offer price and the list of requests were not beneficial for the Town. The BOS asked A. Manoian to reassess the condition of the building with the Building Inspector and to get a cost on securing the building during the winter months. A. Manoian will report back.

Motion: A motion was made by C. Hillman and seconded by J. Livingston to reject the bid from Page Moore Realty Trust and to pursue securing the building from the winter elements. **Motion passed 3-0.**

Public Hearing – Tax Classification Hearing: At 7:46 PM J. Livingston read the Public Hearing Notice as advertised in the Nashoba Valley Voice. The BOS was joined by Administrative Assessor Tom Hogan and the Board of Assessors. T. Hogan presented four items as it relates to the FY' 17 tax rate, pursuant to MGL c.40 §56: 1) open space discount, 2) residential exemption 3) small commercial exemption 4) and the adoption of a residential factor. T. Hogan reported that the property values in Ayer increased 5%, which was the most in recent years.

Motion: A motion was made by J. Livingston and seconded by C. Hillman to not adopt item #1, an open space discount up to 25%. **Motion passed 3-0.**

Motion: A motion was made by J. Livingston and seconded by C. Hillman to not adopt item #2, a residential exemption up to 20%. **Motion passed: 3-0.**

Motion: A motion was made by J. Livingston and seconded by C. Hillman to not adopt item #3, a small commercial exemption up to 10 %. **Motion passed: 3-0.**

T. Hogan then detailed several pieces of information that details setting the residential factor.

G. Luca asked if there was any public input. There was none.

Motion: A motion was made by C. Hillman and seconded by J. Livingston to adopt a residential factor of .718708. **Motion passed 3-0.**

Motion: A motion was made by J. Livingston and seconded by C. Hillman to close the public hearing at 8:11 PM. Motion passed 3-0.

Superintendent Mark L. Wetzel, Department of Public Works: M. Wetzel and Town Engineer Dan Van Schalkwyk were in attendance to discuss the following items:

Sewer Inflow/Infiltration Professional Services Agreement – M. Wetzel stated that this is an agreement with Arcadis US Inc. for Phase 1B Sewer Inflow and Infiltration Investigation. The cost is \$50,000 and involves installation of flow metering equipment.

Motion: A motion was made by C. Hillman and seconded by J. Livingston to approve the agreement between the Town of Ayer and Arcadis US Inc. in the amount of \$50,000 for Sewer Inflow/Infiltration Professional Services with signature by the Chair. **Motion passed 3-0.**

East Main Street Water & Sewer Change Order #2 – M. Wetzel stated that the change order is for additional work on the East Main Street Area water and sewer upgrade project in the amount of \$111,430.06. This Change Order has been reviewed and approved by the USDA.

Motion: A motion was made by J. Livingston and seconded by C. Hillman to approve Change Order #2 in the amount of \$111,430.06 for Cedrone Corp. with signature by the Chair. **Motion passed 3-0.**

MS4 Stormwater Permit Update – M. Wetzel and D. Van Schalkwyk gave a brief presentation of the new Stormwater permit for the Town which will become effective July 1, 2017. M. Wetzel stated there will be new requirements that the Town will be mandated to comply with. Potential future operating budget impacts include: Capital Budget - street sweeper, culvert, storm sewer and outfall improvements; Operating budget - Need to set up and manage permitting and inspections, DPW will need to spend time preparing Notice(s) of Intent, required plans, bylaws, regulations and public education; water quality sampling and lab costs; increased catch basin cleaning costs.

Town Administrator’s Report: *Administrative Update* – R. Pontbriand gave a brief administrative update stating that the FY ’18 budget process is officially underway. The FY’ 18 budget directive will focus on “no new personnel” and level funding of budgets.

Appointments - R. Pontbriand is requesting appointments for the following Committees: Memorial Garden, Mr. Steven Slarsky and Cultural Council Mr. Chris Maloney and Mr. Stephen Quinn.

Motion: A motion was made by C. Hillman and seconded by J. Livingston to appoint Mr. Steve Slarsky to the Memorial Garden Committee for a one year unexpired term to expire on June 30, 2017. **Motion passed 3-0.**

Motion: A motion was made by C. Hillman and seconded by J. Livingston to appoint Mr. Chris Maloney to the Cultural Council for a three year unexpired term to expire on June 30, 2018. **Motion passed 3-0.**

Motion: A motion was made by C. Hillman and seconded by J. Livingston to appoint Mr. Stephen Quinn to the Cultural Council for a three year unexpired term to expire on June 30, 2018. **Motion passed 3-0.**

Appointment of BOS Member to Approve Payroll and A/P Warrants – R. Pontbriand stated that with the passage of the Municipal Modernization Legislation, specifically, MGL c. 41 section 52, as amended allow the BOS to designate a single member to approve payroll and accounts payable warrant provided that the member provides an update of their actions at the next BOS meeting.

Motion: A motion was made by C. Hillman and seconded by J. Livingston to appoint BOS member G. Luca as the authorized BOS member to sign accounts payable and payroll warrants. **Motion passed 3-0.**

2017 License Renewals – C. Antonellis presented the list of 2017 license renewals. She is recommending conditional passage subject to successfully meeting all requirements as set forth by Ayer Bylaw XLII and relevant Massachusetts General Law(s).

Additional License Renewal Requirements, As set forth by Town of Ayer Bylaw XLII and Massachusetts General Law(s)		
Code	License Type	Requirements
Class 1	New/Used Motor Vehicle Dealership License	Proof of \$25,000 Surety Bond
Class 2	Used Motor Vehicle License	
Class 3	Junk Auto Dealer’s License	n/a
CV	Common Victualler	n/a
BW	Beer/Wine	Completion of ABCC Form, proof of liquor liability insurance, Fire Inspection by
AA	All Alcohol	
s15	Off Premise/Package Store	

s12	On Premise/Restaurant/Club	AFD
Amusement	Amusement License	n/a
Sunday Entertain	Sunday Entertainment License	n/a

2017 License Renewals		
Business Name	Business Address	License Type
Toreku Tractor & Equipment, Inc.	4 Littleton Road	Class 1
Gervais Inc.	5 Littleton Road	Class 1
Trailer Home Sales	1 Fitchburg Road	Class 1
L-3 Communications	90 Nemco Way	Class 1
Central Collision Center	121 Central Avenue	Class 2
Don's Auto Sales	9 Bishop Road	Class 2
J.C. Madigan, Inc.	8 Shaker Road	Class 2
Terranova Auto Body	40 Littleton Road	Class 2
Sean's Auto & Truck Center, Inc.	42 Littleton Road	Class 2
Rt 2A Auto Sales, Inc.	77 Fitchburg Road	Class 2
Power of Honesty, Inc.	179 West Main Street	Class 2
Harry Schwartz & Sons, Inc.	20 Sandy Pond Road	Class 3
Subway	1 Mill Street	CV
Ayer Convenience	60 Park Street	CV
Deven's Pizza & Deli	210 West Main Street	CV
McDonald's Restaurant	2 Sandy Pond Road	CV
Wendy's Restaurant	2 Barnum Road	CV
Woo Jung Restaurant	174 West Main Street	CV
Verona Pizza & Seafood	18 Park Street	CV
Dunkin Donuts	18 Park Street	CV
Dan's Place	200 West Main Street	CV
Ayer Gulf	26 Park Street	CV
The Cottage Restaurant	18 Main Street	CV
Wok & Roll	49 Park Street	CV
Lazy Mary's	30 Littleton Road	CV
Taco Bell	4 Sandy Pond Road	CV
Union Coffee	25 Main Street #1	CV
Tipo Taco's	35 Main Street	CV
Lamp and Dragon	41 Main Street	CV
The Vineyard	63 Park Street	s15BW
Ayer Shop 'n Save	22 Fitchburg Road	s15BW
Ayer Package Store, Inc.	48 Main Street	s15AA
Traffic Circle Liquors, Inc.	2 Littleton Road	s15AA
Barnum Road Liquors, Inc.	1 Barnum Road	s15AA
Archer's Mobil	70 Main Street	s15BW; CV
Chung Ge Market	210D West Main Street	s15BW; CV
Pauline's Variety	67 1/2 East Main Street	s15BW; CV
Ayer Gun & Sportsmen's Club	225 Snakehill Road	s12BWC; CV
Carlin's	7 Depot Square	s12AA; CV; Amusement; Sunday Entertain;

2017 License Renewals		
Business Name	Business Address	License Type
Billiard's Café	39 Main Street	s12AA; CV; Amusement; Sunday Entertain;
Mango Grill	38 Littleton Road	s12AA; CV
Lucia's Tavola Ristorante	31 Main Street	s12AA; CV
Markoh's on Main	43 Main Street	s12AA; CV
Shaker Hills Country Club	146 Shaker Road	s12AA; CV
Tiny's Restaurant	2 Groton School Road	s12AA; CV; Amusement
Nashoba Club	14 Central Avenue	s12AA; CV; Amusement
Parthenon Pizza	60 West Main Street	CV; Amusement
New England Flatbread & Ale Company, Inc.	9 Main Street	s12AA; CV

Motion: A motion was made by C. Hillman and seconded by J. Livingston to conditionally approve the 2017 License Renewals subject to successfully meeting all requirements as set forth by Ayer Bylaw XLII and relevant Massachusetts General Law(s). **Motion passed 3-0.**

MART Project Update/Depot Square Relocation Update – R. Pontbriand stated that the interim fence would be going up in Depot Square within the coming weeks. R. Pontbriand also reported that the Town should see conceptual designs from the Architect within the month and that the Rail Trail Transfer to the Town was finally moving ahead.

New Business/Selectmen's Questions: C. Hillman asked to discuss the persistent odor issues at Nasoya Foods. He would like to explore the possibility of fining the company if the problem persists.

Approval of Meeting Minutes:

Motion: A motion was made by J. Livingston and seconded by C. Hillman to approve the meeting minutes of November 15, 2016. **Motion passed 3-0.**

Adjournment: A motion was made by J. Livingston and seconded by C. Hillman to adjourn at 9:15 PM. **Motion passed 3-0.**

Minutes Recorded and Submitted by Carly M. Antonellis

Date Minutes Approved by BOS: _____

Signature Indicating Approval: _____