

PRESIDENT
Elizabeth J. Kazinskas

COUNCILLORS AT LARGE
James S. Boone
Craig R. Cormier
Ronald F. Cormier
Scott Joseph Graves, Esq.
Judy A. Mack
George C. Tyros

CITY OF GARDNER
MASSACHUSETTS 01440-2630

OFFICE OF THE
CITY COUNCIL



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2020 MAY 14 AM 8:05

CITY CLERK'S OFFICE
GARDNER, MA

WARD 1 COUNCILLOR
James M. Walsh, Esq.

WARD 2 COUNCILLOR
Elizabeth J. Kazinskas

WARD 3 COUNCILLOR
Nathan R. Boudreau

WARD 4 COUNCILLOR
Karen G. Hardern

WARD 5 COUNCILLOR
Alek Dernalowicz, Esq.

May 14, 2020

FINANCE COMMITTEE MEETING NOTICE

Date: Monday, May 18, 2020
Time: 7:00 P.M.
Location: Remotely via Zoom/Broadcast on Gardner YouTube Channel

ANNOUNCEMENT - Any person may make a video or audio recording of an open session of a meeting, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. Any person intending to make such recording shall notify the Chair forthwith. All Documents referenced or used during the meeting must be submitted in duplicate to the Chair, pursuant to the Open Meeting and Public Records Law. All documents shall become part of the official record of the meeting.

SCHEDULE OF BUSINESS
(Agenda attached)

1. Acceptance/Corrections to Minutes of Prior Meeting(s).
2. Budget and Orders (Money orders, loan orders, revolving funds, other financial).
3. Appointments, vacancies and other personnel matters.
4. Ordinances and Acceptance of General Laws and Special Acts.
5. Authorizations Required by Statute (Contracts, Election Orders, Grants, etc.).
6. Land Acceptance, Disposal, Easements, etc.
7. Claims, Legal, Rules and Salaries.
8. Departmental Management and organizational matters.
9. Report from the Mayor on the State of the City.

NOTICE: The listing of Agenda items are those reasonably anticipated by the Chairman which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

CITY COUNCIL OF GARDNER
Elizabeth J. Kazinskas
ELIZABETH J. KAZINSKAS
Chair, Finance Committee

**Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Finance Committee will be conducted via remote participation. The audio recording, transcript, or other comprehensive record of proceedings will be posted on the City's website as soon as possible after the meeting.*

**CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE MEETING
Monday – May 18, 2020 – 7:00 PM
Remotely via Zoom**

AGENDA

CALL TO ORDER

ANNOUNCEMENT OF OPEN MEETING RECORDINGS

Any person may make a video or audio recording of an open session of a meeting, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. Any person intending to make such recording shall notify the Chair forthwith. All Documents and exhibits used or referenced at the meeting must be submitted in duplicate to the City Clerk, as they become part of the Meeting Minutes.

- 1-1 Review and Approval of the April 29, 2020 Regular Meeting Minutes.

- 6-1 A Measure Authorizing an Eighth Amendment to the April 9, 1968 Lease Between the City and Henry Heywood Memorial Hospital (Ref: Council Calendar No. 10119).

- 6-2 A Measure Authorizing an Easement Relocation Agreement Between the City of Gardner and Massachusetts Electric Company (Ref: Finance Committee Agenda Item No. 6-1).

- 6-3 A Measure Authorizing a Grant of Easement to Massachusetts Electric Company and Verizon New England, Inc. for an “Overhead System” on City-owned property on the northerly side of Pleasant Street.

ADJOURNMENT

Items listed on the Agenda are those reasonably anticipated by the Chair to be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF APRIL 29, 2020

The Finance Committee meeting was called to order remotely by Council President Elizabeth Kazinskas at 12:00 p.m. Finance Committee Members Councillors Ronald Cormier and James Walsh were also present.

President Kazinskas announced that pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Finance Committee will be conducted via remote participation. The audio recording, transcript, or other comprehensive record of proceedings will be posted on the City's website as soon as possible after the meeting.

Others participating were City Solicitor John Flick; Human Resources Director Debra Pond; City Auditor John Richard; Assistant Director of Community Development and Planning Jeffrey Legros; Conservation Agent Lyndsy Butler; Atty. Janet H. Morrison, Land Conservation Consulting; and, City Clerk Alan Agnelli. Councillor Scott Joseph Graves also joined the meeting remotely.

1-1 Reading and Approval of Minutes of Prior Meeting.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, on call of the roll, it was voted to approve the Minutes of the April 15, 2020 Regular Meeting, as printed.

2-1 #10250, An Order Appropriating \$52,788.00 from Free Cash to FY2019 Firefighters Salary and Wages Account (In City Council and Referred to Finance, 3/2/2020).

President Kazinskas proposed that the Committee forward the Order to the Council, citing various communications included with the Order and that it was negotiated and authorized by the previous Mayor.

Councillor Walsh questioned whether the Acting Mayor intended to sign the Agreement.

President Kazinskas responded, saying that she intends to sign the contract based on the information provided.

Councillor Walsh stated that for the purposes of discussion, he moved to recommend that the City Council pass the following Order, but reserving his right to vote in opposition.

AN ORDER APPROPRIATING FROM FREE CASH TO FIREFIGHTERS SALARY AND WAGES FY2019 ACCOUNT.

ORDER: That there be and is hereby appropriated the sum of Fifty-Fifty-two Thousand Seven Hundred Eighty-eight and 33/100 (\$52,788.33) from Free Cash to the Fiscal 2019 Firefighters Salary and Wages Account.

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF APRIL 29, 2020

Councillor Ronald Cormier seconded the motion.

On the motion, Councillor Walsh expressed concern about the impact on the City's finances, particularly in the third year of the Contract. He said that if the Orders are not passed, then the Contract reverts back to the Joint Labor Management Committee. He cited the uncertainty that the Corona virus may have on revenues – local aid, etc., as the Governor's revenue projections are not reliable. The third year is troublesome, he said, as the City would be "locked-in" and noted potential layoffs to personnel if funds are not available.

Councillor Ronald Cormier cited correspondence from the City Solicitor that the Acting Mayor can sign the Contract.

City Solicitor John Flick cited his opinion that states that the Acting Mayor has the legal authority to sign the Agreement, as supported by Outside Counsel (Mirick O'Connell) and that the MOA signed by Mayor Hawke, prior to his resignation, is considered a binding agreement. He added that the City is simply moving forward with the Collective Bargaining Agreement and that nothing more was added than what Mayor Hawke agreed to.

Concerning Councillor Walsh's comments, Attorney Flick said that a concern "is to take a speculative perspective at this juncture in the approval of an appropriation for a collective bargaining agreement that was duly negotiated would potentially subject the City to further unfair labor practice claims as the appropriate means of dealing with any financial ramifications of the COVID-19 virus and any impact that that may have on local aid would properly be left to impact bargaining by the incoming Mayor after an analysis is done based on the full picture of the City's finances and what impact it would have on the Firefighters Union, but on others."

Councillor Walsh said that he understands the Solicitor's concerns but that the Contract "is a bad deal" for the City.

Councillor Ronald Cormier questioned whether it would "be a worse deal" if the Contract went to impact bargaining.

Attorney Flick expressed caution, suggesting that any matters related to collective bargaining strategy is for an executive session. He said that impact bargaining is limited to a contract already in place and the City could be back to the JLMC.

On the motion, on call of the roll, it was voted two (2) yeas, President Kazinskas and Councillor Ronald Cormier; one (1) nay, Councillor James Walsh, to recommend to the City Council that the following Order ought to pass:

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF APRIL 29, 2020

AN ORDER APPROPRIATING FROM FREE CASH TO FIREFIGHTERS SALARY AND WAGES FY2019 ACCOUNT.

ORDER: That there be and is hereby appropriated the sum of Fifty-Fifty-two Thousand Seven Hundred Eighty-eight and 33/100 (\$52,788.33) from Free Cash to the Fiscal 2019 Firefighters Salary and Wages Account.

2-2 **#10251, An Order Appropriating \$54,818.67 from Free Cash to the Firefighters Salary and Wages Account (In City Council and Referred to Finance, 3/2/2020).**

Councillor James Walsh moved to recommend to the City Council that the following substituted Order ought to pass:

AN ORDER APPROPRIATING FROM FREE CASH TO FIREFIGHTERS SALARY AND WAGES ACCOUNT.

ORDER: That there be and is hereby appropriated the sum of One Hundred Thirteen Thousand One Hundred Fifty-Nine and 74/100 (\$113,159.74) from Free Cash to the Firefighters Salary and Wages Account.

Councillor Ronald Cormier seconded the motion.

City Auditor John Richard informed the Committee that the amount of the Order is an estimate, since the Fiscal Year hasn't ended, so he used FY2019 actual work hours and computed the amount utilizing FY20 wage rates.

Councillor James Walsh stated that the contract is a bad deal, so he would vote against recommending passage.

Citing the City Solicitor's comments, Councillor Ronald Cormier stated that he would support the Order.

On the motion, on call of the roll, it was voted two (2) yeas, President Kazinskas and Councillor Ronald Cormier; one (1) nay, Councillor James Walsh, to recommend to the City Council that the following Order ought to pass:

AN ORDER APPROPRIATING FROM FREE CASH TO FIREFIGHTERS SALARY AND WAGES ACCOUNT.

ORDER: That there be and is hereby appropriated the sum of One Hundred Thirteen Thousand One Hundred Fifty-Nine and 74/100 (\$113,159.74) from Free Cash to the Firefighters Salary and Wages Account.

4-1(a) **A Measure Accepting Grant Funds to Purchase a Conservation Restriction on 20.47 acres of land owned by the Gardner Fish and Gun Club, Inc. (south side of Clark Street).**

Leading to a motion, Councillor James Walsh stated that the two votes are to be taken – to accept the grant funds and authorize the conservation restriction. He questioned whether there are time restrictions on acceptance of the grant funds.

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF APRIL 29, 2020

Attorney Janet Morrison informed the Committee that she was awarded \$100,000 and that it is the end of the grant term, so funds must be expended by June 15, 2020. She said that the City is the sub-recipient, that \$16,000 was received by the City from her for "due diligence," and an additional \$17,000 would be provided to the City for consideration and recording fees (cost of acquiring the conservation restriction).

Councillor James Walsh moved to recommend that the City Council adopt the following Measure:

AUTHORIZING ACCEPTANCE OF GRANT FUNDS
FOR PURCHASE OF A CONSERVATION RESTRICTION
ON 20.47 ACRES OF LAND ON THE SOUTH SIDE OF CLARK STREET

VOTE: To authorize the Mayor of the City of Gardner to accept grant funds from the North American Wetlands Conservation Act, Small Grants Program, in the amount up to Thirty Three Thousand Eight Hundred and 00/ 1 00 Dollars (\$33,800.00), as sub-recipient of an award to the Gardner and Winchendon Wetlands Protection Project, and to enter any necessary contracts thereto, for the purpose of purchasing a conservation restriction on 20.47 acres of land owned by the Gardner Fish & Gun Club, Inc., located on the south side of Clark Street, being a portion of Assessor's Parcels H32/4/19 and H37/23/1A, as shown on the attached map and survey plan, to be held and monitored by the Conservation Commission for conservation and natural resource protection, pursuant to M.G.L. Chapter 40, Section 8C, and M.G.L. Chapter 184, Section 32, and to expend said funds for the purchase of said conservation restriction, and for necessary due diligence and costs, in accordance with the attached budget, the property to be permanently conserved under Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

Councillor Ronald Cormier seconded the motion.

Councillor James Walsh questioned the reasons that the conservation restriction would be good for the City.

Conservation Agent Lyndsy Butler stated that it is the last piece in preserving the Baily Brook Corridor, which has been in three phases.

Attorney Morrison added that the acquisition would presumably protect important resource areas around Bailey Brook, citing the recent acquisitions of the Alisaukas and Omealia properties.

Councillor Ronald Cormier questioned whether all costs associated with the project are covered by the grant.

Attorney Morrison said that the project has all Federal funding at this point.

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF APRIL 29, 2020

On the motion, on call of the roll, it was voted three (3) yeas, President Kazinskas and Councillors Ronald Cormier and James Walsh, to recommend to the City Council that the following Order ought to pass:

AUTHORIZING ACCEPTANCE OF GRANT FUNDS
FOR PURCHASE OF A CONSERVATION RESTRICTION
ON 20.47 ACRES OF LAND ON THE SOUTH SIDE OF CLARK STREET

VOTE: To authorize the Mayor of the City of Gardner to accept grant funds from the North American Wetlands Conservation Act, Small Grants Program, in the amount up to Thirty Three Thousand Eight Hundred and 00/ 1 00 Dollars (\$33,800.00), as sub-recipient of an award to the Gardner and Winchendon Wetlands Protection Project, and to enter any necessary contracts thereto, for the purpose of purchasing a conservation restriction on 20.47 acres of land owned by the Gardner Fish & Gun Club, Inc., located on the south side of Clark Street, being a portion of Assessor's Parcels H32/4/19 and H37/23/1A, as shown on the attached map and survey plan, to be held and monitored by the Conservation Commission for conservation and natural resource protection, pursuant to M.G.L. Chapter 40, Section 8C, and M.G.L. Chapter 184, Section 32, and to expend said funds for the purchase of said conservation restriction, and for necessary due diligence and costs, in accordance with the attached budget, the property to be permanently conserved under Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

4-1(b) A Measure Authorizing Purchase of a Conservation Restriction on 20.47 acres of land owned by the Gardner Fish and Gun Club, Inc. (south side of Clark Street).

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on call of the roll, it was voted three (3) yeas, President Kazinskas and Councillors Ronald Cormier and James Walsh, to recommend to the City Council that the following Measure ought to pass:

AUTHORIZING A CONSERVATION RESTRICTION ON 20.47 ACRES
OF LAND OWNED BY THE GARDNER FISH & GUN CLUB, INC.
LOCATED ON THE SOUTH SIDE OF CLARK STREET

VOTE: To authorize the Mayor of the City of Gardner to approve and accept a conservation restriction on 20.47 acres of land owned by the Gardner Fish & Gun Club, Inc., located on the south side of Clark Street, being a portion of Assessor's Parcels H32/4/19 and H37/23/1A, as shown on the attached map and survey plan, comprised of the riverfront area of Bailey Brook, including wetlands complex and flood plain, to be held and monitored by the Conservation Commission for conservation and natural resource protection, pursuant to M.G.L. Chapter 40, Section 8C, and M.G.L. Chapter 184, Section 32, the property to be permanently conserved under Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

6-1 **A Measure Authorizing an Eighth Amendment to the April 9, 1968 Lease Between the City and Henry Heywood Memorial Hospital (Ref: Council Calendar No. 10119).**

The Committee postponed action as no new information has been received from Attorney Phillips.

6-2 **A Measure Authorizing an Easement Relocation Agreement Between the City of Gardner and Massachusetts Electric Company (Ref: Finance Committee Agenda No. 6-1).**

The Committee postponed action as no new information has been received from Attorney Phillips.

NEW BUSINESS

President Kazinskas informed the Committee that the Governor extended the “stay-at-home” Order until May 18, so that the Special Preliminary Election, rescheduled to May 12, would now fall within the stay-at-home period.

Councillor Ronald Cormier suggested that an Informal Meeting be scheduled in light of the Governor’s decree and the challenge of acquiring poll workers.

The Committee agreed that an Informal Meeting be scheduled for Monday and that the City Clerk prepare the necessary documents for the Council’s consideration.

Councillor Cormier added that the issue of postponement and rescheduling options be considered at the same time.

President Kazinskas state that the Agenda should include both issues.

ADJOURNMENT

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, on call of the roll, it was voted three (3) yeas, President Kazinskas and Councillors Ronald Cormier and James Walsh, to adjourn at 12:38 p.m.

AMENDMENT TO LEASE BETWEEN CITY OF GARDNER
AND HENRY HEYWOOD MEMORIAL HOSPITAL

VOTE: That the City of Gardner, acting through its Mayor and its Director of Public Works, amend its lease with Henry Heywood Memorial Hospital dated April 9, 1968, and recorded in Worcester District Registry of Deeds, Book 4869, Page 185, to correct and confirm the land description subject to the Lease, the same being shown on a plan titled "Easement Plan of Land in Gardner, Massachusetts" which is attached hereto and recorded herewith; and

To further authorize the Mayor and the Director of Public Works, as successor to the rights, privileges, duties and liabilities of its former Public Works Board to further to sign, seal and deliver an agreement or amendment to said lease and to do any other thing deemed necessary or advisable to give full effect to this vote, his signature on such instrument to be conclusive that its execution is within the authority conferred by this vote.

Ref: 6-1 E 6-2

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CITY CLERK'S OFFICE
GARDNER, MA

NICKLESS, PHILLIPS AND O'CONNOR
ATTORNEYS AT LAW
625 MAIN STREET
FITCHBURG, MASSACHUSETTS 01420

DAVID M. NICKLESS
C. DEBORAH PHILLIPS
JAMES L. O'CONNOR, JR.

Telephone: (978) 342-4590
Facsimile: (978) 343-6383

February 7, 2020

Winfield S. Brown, President and CEO
Heywood Healthcare
242 Green Street
Gardner, MA 01440

Re: Green Street Parking Lot Land Lease

Dear Mr. Brown:

I was retained by the City of Gardner to review certain issues raised in your May 20, 2019, letter to the City Council regarding the "Green Street Parking Lot Land Lease." Your letter concerned, among other things, the number of acres being leased to the hospital by the City, and the related matter of the hospital's encroachment on a utility easement the City granted to Massachusetts Electric Company (MEC) in 1973 on the same property.

I reviewed relevant documents, including all amendments to the hospital's original 1968 Lease with the City, as well as the information provided in your letter concerning whether the land described in a 1998 Amendment leasing 2.12 acres of land to the hospital was an error. I have concluded that it was not a mistake, and I am happy to set forth my reasons in detail. I am also happy to address concerns regarding the easement granted to MEC. Currently, a package of materials provided to the City by MEC to affect a relocation of this easement is under review in my office.

There are several matters that need to be resolved between the City and the hospital before the lease can be amended and MEC's relocation plan endorsed by City officials. Would you please direct me to the person with whom I should be speaking to resolve these issues?

~~Please do not hesitate to contact me with any questions.~~

Very truly yours,

C. Deborah Phillips /ST

C. Deborah Phillips

CDP/st

cc: Acting Mayor

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By _____

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EIGHTH AMENDMENT TO LEASE

2019 NOV -8 AM 11:38

THIS EIGHTH AMENDMENT TO LEASE made this ____ day of _____, 2019, by and between the CITY OF GARDNER, a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, acting by and through its Mayor and by and through its Director of Public Works, successor to the rights, privileges, duties and liabilities of its former Public Works Board (the "City" or "Lessor") and HENRY HEYWOOD MEMORIAL HOSPITAL, a charitable corporation organized under the laws of the Commonwealth of Massachusetts and having a principal office at 242 Green Street, Gardner, Massachusetts 01440 (the "Hospital" or "Lessee").

Recitals

WHEREAS the City is the Lessor and the Hospital is the Lessee of a certain parcel of land situated on the westerly side of Green Street in Gardner, as further described in a Lease Agreement dated April 9, 1968, and recorded in Worcester District Registry of Deeds, Book 4869, Page 185, (the "Lease"), as amended by: 1) an agreement dated October 21, 1980 recorded in said Registry in Book 7135, Page 310 (First Amendment to Lease), 2) an amendment dated December 2, 1980 recorded in said Registry in Book 7135, Page 314, (Second Amendment to Lease), 3) by an agreement dated January, 1986, also called an amendment and certified by the city clerk as being signed January 21, 1986 (Third Amendment to Lease, unrecorded), 4) by an amendment entitled "Amendment to Lease Agreement," endorsed by the Mayor on January 26, 1998 (Fourth Amendment to Lease, unrecorded; see Deed also signed by the Mayor on January 26, 1998, recorded in said Registry in Book 19750, Page 159), 5) by amendment entitled "Second Amendment" dated May 11, 2000 (Fifth Amendment to Lease) recorded in said Registry in Book 22705 Page 320, 6) by amendment entitled "Third Amendment to Lease" dated July 25, 2016, recorded in said Registry in Book 55817 Page 392 (Sixth Amendment to Lease), and by 7) amendment entitled "Fourth Amendment to Lease" dated September 14, 2017 and recorded in said Registry in Book 57862 Page 98 (Seventh Amendment to Lease);

WHEREAS, in 1997, the City and the Hospital negotiated the sale of certain land by the City to the Hospital, including Parcel Two leased to the Hospital under the Lease agreement, and the release of a portion of the Hospital's leasehold in Parcel One;

WHEREAS, on October 14, 1997 the Hospital's Board of Trustees resolved to pay the City Twenty-Four Thousand Five Hundred (\$24,500) Dollars for the purchase of said property and to release the Hospital's leasehold in approximately 5.86 acres of said Parcel One;

WHEREAS, the Amendment to Lease Agreement endorsed on January 26, 1998 (Fourth Amendment to Lease) specifically reduced the area being leased by the Hospital to a parcel containing 2.16 acres, more or less;

WHEREAS, the City did convey said property to the Hospital by a Deed signed by the Mayor on January 26, 1998 (the same day the Fourth Amendment was endorsed) and recorded in said Registry in Book 19750, Page 159;

WHEREAS, in 2007 the City's Planning Board granted the Hospital a Special Permit dated October 9, 2007 to expand the Hospital's parking facilities, said permit being recorded in said Registry in Book 42418, Page 1;

WHEREAS, the Hospital did thereafter expand its parking facilities to an area that exceeds the 2.16 acres leased by the City to the Hospital as part of the 1997 negotiations, as commemorated in the Deed and the Fourth Amendment; and

WHEREAS the Parties now desire to resolve this pretermission;

NOW THEREFORE, in exchange for the mutual promises contained herein, and other good and valuable consideration, the sufficiency of which the Parties affirm, the City and Hospital agree as follows:

Article 1 of the Lease Agreement dated April 9, 1968 be amended to read as follows:

1. The Lessor leases to the Lessee the premises in the City of Gardner, County of Worcester, Commonwealth of Massachusetts, described as follows:

A certain parcel of land situated in the City of Gardner, County of Worcester, Commonwealth of Massachusetts bounded and described as follows:

BEGINNING at a point on the westerly sideline of Green Street at the northeasterly corner of land now or formerly of Henry Heywood Memorial Hospital;

THENCE S69°06' 14" W by land of said Henry Heywood Memorial Hospital one hundred eighty and 09/100 (180.09') feet to a point;

THENCE Northerly over land of the City of Gardner along a curve concave to the east having a radius of eight hundred twelve and 5011 00 (812.50') feet, an arc length of three hundred sixteen and 37/100 (316.37') feet to a point;

THENCE N03°01 '05" E over land of the City of Gardner two hundred twenty- six and 86/100 (226.86') feet to a point;

THENCE northerly over land of the City of Gardner along a curve concave to the west having a radius of one thousand seven hundred eighty-seven and 50/100 (1,787.50') feet, an arc length of two hundred thirty-eight and 84/100 (238.84') feet to a point;

THENCE N85°21 '4S" E over land of the City of Gardner one hundred eighty and 00/100 (180.00') feet to a Worcester County highway bound on the westerly sideline of Green Street;

THENCE Southerly by the westerly sideline of Green Street along a curve concave to the west having a radius of one thousand nine hundred sixty-seven and 50/100 (1,967.50')

feet, an arc length of two hundred sixty-two and $89/100$ (262.89') feet to a Worcester County highway bound;

THENCE $S03^{\circ}01'05''$ W by the westerly sideline of Green Street two hundred twenty-six and $86/100$ (226.86') feet to a point;

THENCE southeasterly by the westerly sideline of Green Street along a curve concave to the east having a radius of six hundred thirty-two and $50/100$ (632.50') feet, an arc length of two hundred forty-one and $24/100$ (241.24 ') feet to the point of beginning.

CONTAINING 3.13 Acres.

The remaining land in PARCEL ONE, as previously described in Article 1 of the April 9, 1968 Agreement, is released by the Lessee to the full ownership and control of the City of Gardner (Lessor).

This description of the leased area set forth herein shall be binding on the parties notwithstanding any prior revisions, agreements, or amendments to the Lease.

All other terms of the original Lease agreement, as amended from time to time, shall remain in full force and effect until the end of the original lease term, which remains April 8, 2067.

EXECUTED in Gardner, Massachusetts as a sealed instrument the date first above written.

CITY OF GARDNER

By: Mark P. Hawke, Manager

HENRY HEYWOOD MEMORIAL
HOSPITAL

By: Winfield S. Brown, CEO/President

Robert Crosby, CFO

As auth. (See Book 58824, Page 305)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

_____, 2019

Then personally appeared the above named, Mark P. Hawke, Mayor, duly authorized and declared that he executed the foregoing instrument as the free act and deed of the City of Gardner, before me,

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss _____, 2019

Then personally appeared the above named, Winfield S. Brown, President of Henry Haywood Memorial Hospital, duly authorized and declared that he executed the foregoing instrument as the free act and deed of the City of Gardner, before me,

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss _____, 2019

Then personally appeared the above named, Robert Crosby, CFO, duly authorized and declared that he executed the foregoing instrument as the free act and deed of the City of Gardner, before me,

Notary Public
My Commission Expires:

NICKLESS, PHILLIPS AND O'CONNOR

ATTORNEYS AT LAW

625 MAIN STREET

FITCHBURG, MASSACHUSETTS 01420

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2019 NOV -8 AM 11:38

DAVID M. NICKLESS

C. DEBORAH PHILLIPS

JAMES L. O'CONNOR, JR.

PATRICK J. OSBORNE

Telephone: (978) 342-4590

Facsimile: (978) 343-6383

September 17, 2019

Mark P. Hawke, Mayor
City of Gardner
95 Pleasant Street
Gardner, MA 01440

Re: City of Gardner and Heywood Memorial Hospital

Dear Mayor Hawke:

I am writing to report on my review of the various leases and related documents between the City of Gardner and Henry Heywood Memorial Hospital (the "hospital") over the past 50 years. You have provided me with a letter from the hospital, including the hospital's proposed Amendment Eight, the original 1968 Lease giving rise to the current situation, seven documents labeled Amendment One through Amendment Seven, a 2007 Special Permit granted by the City's Planning Board, a 1998 deed whereby the City conveyed certain land to the hospital, and various easements relating to portions of the same land involving Mass Electric (succeeded by National Grid). In addition to a comprehensive history of the lease arrangements with the hospital over the years since the 1968 Lease was authorized, you would like to know: 1) if the hospital is occupying city-owned land not covered by the current iteration of the lease and if so, 2) how it may be remedied.

In my opinion, the hospital is currently occupying land that is not included in the current version of the lease arrangement. The 2007 Special Permit granted by the Planning Board has no effect on the hospital's leasehold with the City. The occupation of city-owned land not governed by the lease may be remedied on terms as agreed to by and between the parties. Given that there is a third party (National Grid) holding one or more easements over the same land previously or currently leased to the hospital, any amendments to the leasehold may require the involvement of that third party. In light of my review and conclusion, I cannot recommend that the hospital's proposed Eighth Amendment be endorsed by the City. However, I offer an alternative as set forth in the enclosed draft entitled "Eighth Amendment to the Lease." For your reference, all the documents mentioned in this letter are organized in chronological order in the enclosed Appendix, labelled and tabbed 1-10.

In 1968, the hospital leased two parcels of land from the City. See Appendix, at 1. According to that lease, Parcel One consisted of 8.02 acres and is located on the north side of the

hospital. This is the parcel that has become problematic over time. Parcel Two consisted of 1.40 acres and is located on the south side of the hospital.¹

Thereafter, beginning in 1980, a series of amendments to the 1968 lease were negotiated and agreed to by and between the parties. However, there is no signed copy of one of these amendments, and not all of them were recorded. For purposes of this letter, I refer to every amendment in chronological order, regardless of whether it was signed or recorded.

Amendment 1: signed in October 1980 and recorded in the registry in December 1980, permits the hospital to erect a building on the south side of the hospital. This amendment relates to Parcel Two as described in the 1968 Lease. (Book 7135, Page 310). Appendix, at 2.

Amendment 2: signed in December 1980 and recorded in the registry on the same day as Amendment 1, provides that the hospital shall pay an additional \$600 per year in rent to the City. (Book 7135, Page 314). Appendix at 3.

Amendment 3: dated January 1986, is an Agreement between the City and the hospital whereby the City permitted the hospital to mortgage and assign its interests in land described as Parcel Two in the 1968 Lease. While I have not been able to locate a signed version of this agreement, the City clerk certified the unanimous vote of the city council on January 23, 1986, to so amend the lease. Regardless, it has no import with respect to the other amendments and is recited here to provide a complete picture of the interactions between the City and the hospital concerning the leased premises. (Not recorded in registry). Appendix at 4.

Amendment 4: entitled "Amendment to Lease Agreement (Dated April 9, 1968) Between the City of Gardner and Henry Heywood Memorial Hospital," was prepared in connection with the sale of three (3) parcels of city-owned land to the hospital. It sets forth the terms of the resulting lease arrangement after the sale. The parcels being sold include all of Parcel Two as referenced in the 1968 Lease (the 1.40 acres) and other land as depicted on a plan recorded with the deed (see below). This Amendment amends the 1968 Lease so that the hospital may continue to lease a portion of Parcel One consisting of 2.16 acres following the conveyance. In conjunction with this Amendment the hospital released back to the City its interest in the remaining portion of Parcel One (5.86 acres) effective upon execution of the contract granting title of the three city-owned

¹ In 1969, the City granted Mass Electric an easement along Parcel Two recorded in Book 4955, Page 101, and shown on a plan recorded in Plan Book 328, Page 1; the hospital also granted Mass Electric an easement on its property along the southern and eastern boundary of Parcel Two, as recorded in Book 4955, Page 97. See 1969 Plan Book 327 Page 125 for location of this easement.

In 1973, the City granted another easement to Mass Electric, recorded in Book 5396, Page 226, commencing at the westerly side of the easement conveyed in 1969 and extending generally on the west and north side of Parcel One as shown on a plan recorded in Plan Book 389, Page 38; the hospital consented to this further easement, see Book 5396, Page 228.

In 1980, Mass Electric released its rights in the 1969 Easement to the hospital. That release is recorded in Book 6976, Page 118. However, this release does not include a release of the 1973 easement from the city to Mass Electric. See Appendix 11-15.

parcels to the hospital.² This Amendment was signed January 26, 1998, but not recorded. Appendix at 5.

On March 26, 1998, a deed conveying three parcels (A, B, and C) to the hospital was recorded in the registry at Book 19750, Page 159. This Deed was also signed on January 26, 1998. It refers to a plan prepared for the City by Szoc Surveyors, recorded in Book 726, Plan 2. Parcel B is the same as Parcel Two in the 1968 Lease. Appendix at 6.

Amendment 5: signed in May of 2000 and recorded in June of 2000, is entitled “Second Amendment,” and refers to the “first amendment” which is Amendment 2 (found in Appendix at 3) herein. (Book 22705, Page 320). Appendix at 7.

Amendment 5 does not recognize Amendment 4, or the hospital’s acquisition of three parcels from the City. It refers to Parcel One as containing 8.02 acres. However, this Amendment was much like Amendment 3. It was prepared to permit the hospital to grant a mortgage for purposes of borrowing money. It was the lender’s responsibility to determine if the document prepared and recorded at that time was sufficient for its purposes. It cannot be considered conclusive between the City and the hospital as to the size of the area the hospital was then leasing from the City.

Amendment 6: signed in July of 2016 and recorded in August of 2016. It is entitled “Third Amendment.” We now know that this amendment is the sixth time that the 1968 Lease was “amended.” In this Amendment 6, the City grants the hospital a right to construct and maintain a solar carport system on a portion of “Parcel 1,” presumably referring to Parcel One in the 1968 Lease. There is no acreage or legal description in this amendment. The carport system is to be located on the “existing parking lot,” and the system is to be built on all or a portion of Parcel 1. (Book 55817, Page 392). Appendix at 8.

Amendment 7: signed in September of 2017 and recorded in October of 2017. It is entitled “Fourth Amendment,” but as we have learned from the above recited history, it is the seventh time the 1968 Lease between the City and the hospital was amended. It specifically permits a charitable project prohibited by the original Lease. It refers to Parcel One as consisting of 2.16 acres and includes a legal description consistent with the legal description in the 1998 amendment (Amendment 4 herein). In my opinion this is instructive, if not conclusive, as it indicates that the parties recently recognized the 1998 transactions. (Book 57862, Page 98). Appendix at 9.

The hospital’s letter of May 2019 asserts that a 2007 Special Permit (Appendix at 10) granted by the Planning Board may inform us as to what the hospital and the City actually agreed to in 1998. The letter explains that in 2007 the hospital applied for and was granted a Special

² Notwithstanding the view expressed in the hospital’s letter to the City Council of May 20, 2019, I do not agree that the description of the leased land in the 1998 Amendment whereby the acreage of the hospital’s leasehold was reduced to 2.16 acres was an error. Indeed, the hospital’s own Resolution, set forth in its Clerk’s Certificate of vote specifies that, “[i]n consideration of a grant by the City...of title to certain land... the Hospital ... shall release to the City the Hospital’s leasehold interest in approximately 5.86 acres of land...” Parcel One in the 1968 Lease contained 8.02 acres. Amendment 4 specifies that the reduced size of Parcel One (the portion that will continue to be leased by the hospital) will thereafter contain 2.16 acres. $5.86 + 2.16 = 8.02$; the original size of Parcel One.

Permit to expand the northern parking lot, resulting in its present configuration. According to the hospital, the expansion includes land that was included in the 1968 Lease, "with the exception of the slope from the ridgeline down the wooded hillside," and the hospital states that it includes a portion of land omitted from the 1998 amendment of approximately 3.13 acres. The hospital further states, "[i]t appears that the City's grant of the Special Permit in 2007 relied on the leased land description from the original 1968 lease, less the wooded hillside."

The Planning Board relied in this case, as it does in all cases, on the information provided by the applicant, or its representative, when the application is submitted. The applicant is responsible for supplying the Board with ownership information or otherwise demonstrating its right to use land for which it seeks the Special Permit. The Planning Board is not responsible for examining the nature or quality of the title asserted by an applicant. This Board has no authority and does not purport to authorize a use on property in which an applicant has no legal interest. Unless or until an applicant's right to use property is questioned through the public hearing process, the Board proceeds on the material and information submitted by the applicant. Typically, if a question is raised, the Board will require the applicant to produce further evidence of its right to seek the permit. I reviewed the minutes of the public meetings at which the Planning Board conducted its public hearing on this application. It is fair to conclude that no one questioned whether the size of the area designated for the expansion of the parking lot exceeded the area the hospital was entitled to use at that time. The Planning Board granted the Special Permit as requested. The hospital's subsequent reliance on the Special Permit to construct parking on 3.13 acres of Parcel One does not shed light on whether the City and/or the hospital made an error in 1998. Nor does it otherwise authorize the hospital's use of nearly an acre of the City's land that was not included in the lease that was in effect in 2007.

To date, no documentation has been presented or located suggesting that the City and/or the hospital made a mistake, mutual or otherwise, in 1998. In fact, the documents support the opposite conclusion. The hospital board's resolution voted on October 14, 1997, specifically states that the consideration for its acquisition of title to certain city-owned land is \$24,500 and the release of its interest in 5.86 acres of Parcel One. See Resolution attached to Amendment 4. The 5.86 acres released by the hospital, added to the 2.16 acres specifically described in Amendment 4, and more recently in Amendment 7, total 8.02 acres, the same as Parcel One in the 1968 Lease. I cannot reconcile the hospital's view that the City intended to allow it to retain a leasehold in 3.13 acres, or that the hospital did not realize it was retaining only 2.16 acres with these documents. Therefore, I cannot recommend the language in the hospital's proposed eight amendment.

I understand that the City and the hospital are amenable to rectifying the situation at this time so that the hospital may move forward with its current plans. It must be noted that National Grid (successor in interest to Mass Electric) continues to have an easement over the City's land that was previously leased by the hospital. See Note 1. Any successful arrangement providing the hospital with the rights necessary for it to move forward with its plans must include National Grid's

cooperation and agreement. With that in mind, I propose the enclosed Eighth Amendment to the Lease.

I recommend that the city's engineering department review the plan submitted by the hospital with its proposed eighth amendment to ensure that the location of the 3.13 acres is clearly and accurately delineated to the city's satisfaction.

If you have any further questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,


C. Deborah Phillips

CDP/st

Enclosures

RECEIVED

2019 NOV -8 AM 11:39

EASEMENT RELOCATION AGREEMENT

THIS EASEMENT RELOCATION AGREEMENT (this "Agreement") is made as of the day of _____, 2019 by and between MASSACHUSETTS ELECTRIC COMPANY, a Massachusetts corporation, having an office at 40 Sylvan Road, Waltham, MA 02451 (hereinafter "MEC"), and the CITY OF GARDNER, a municipal corporation with an address c/o City Hall, 95 Pleasant Street, Gardner, MA 01440 (the "City").

RECITALS:

WHEREAS, MEC is the owner of certain perpetual rights and easements for transmission line purposes over, across and upon certain lands in the City of Gardner, Worcester County, Massachusetts, being more particularly described in that certain easement from the City of Gardner dated October 2, 1973 and recorded with the Worcester District Registry of Deeds (the "Registry") in Book 5396, Page 226, and shown on that plan recorded with the Registry in Plan Book 389 as Plan 38 (hereinafter the "Existing MEC Easement");

WHEREAS, the City is the owner of a certain parcel of land in the City of Gardner, Worcester County, Massachusetts, more particularly described in that certain deed from Heywood Farm, Inc., to the City dated July 29, 1937 and recorded with the Registry in Book 2701, Page 9 (hereinafter the "Property"), which is subject, in part, to the Existing MEC Easement;

WHEREAS, the City leases a certain portion of the Property to Henry Heywood Hospital (HHH);

WHEREAS, HHH constructed a solar carport on the Property (the "Project"), portions of which Project are located within and materially interfere with the Existing MEC Easement;

WHEREAS, to resolve the interference with the Existing MEC Easement caused by the Project, MEC has agreed to relocate a portion of the Existing MEC Easement to another location on the Property, which relocation shall include the following (hereinafter collectively the "Easement Relocation"): (a) the grant by the City of a permanent 30' wide easement on the Property, free and clear of all encumbrances having priority over the easement, in the form attached hereto as Exhibit A and made a part hereof (hereinafter the "New Easement") for those locations shown as "PROPOSED 30' WIDE MASSACHUSETTS ELECTRIC COMPANY EASEMENT AREA "B" = 11,881 S.F." and "AREA "A" = 5,932 S.F." on that plan (the "Easement Relocation Plan") entitled: "EASEMENT PLAN OF LAND IN GARDNER, MASSACHUSETTS; SCALE 1" = 40'; DATE: MAR. 15, 2019," prepared by Hannigan Engineering, Inc. of Leominster, MA, a reduced copy of which Easement Relocation Plan is attached hereto as Exhibit B and made a part hereof, and which Easement Relocation Plan shall be recorded with the Registry on or before the recording of the New Easement; (b) delivery to MEC of any Subordination Documents and Authority Documents (both as hereinafter defined) in connection with said New Easement; and (c) upon the recording of the New Easement, Easement Relocation Plan and any Subordination Documents and Authority Documents (collectively, the "Easement Relocation Documents"), MEC shall deliver a partial release of the Existing MEC Easement whereby MEC will release a portion of its right, title and interest in and to the Existing MEC Easement from that location shown

shaded on the Easement Relocation Plan and labeled as “ APPROXIMATE LOCATION OF 30’ WIDE MASSACHUSETTS ELECTRIC COMPANY EASEMENT BK. 5396-226 PL. BK. 389-38 SEE ALSO BK. 5396-228 (TO BE EXTINGUISHED)” (the “Partial Release”);

WHEREAS, in consideration for MEC’s agreement to the Easement Relocation, the City of Gardner has agreed to pay to MEC the costs associated therewith, including without limitation, any and all costs associated with the development of Easement Relocation Plan and any and all recording fees; and

WHEREAS, the parties have reached an agreement as to the terms and conditions under which MEC is willing to undertake the Easement Relocation, and they desire to hereby document their agreement as to such.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged under seal, the parties hereto agree as follows:

SECTION I - RELOCATION AGREEMENT

1.1 Subject to the term and conditions set forth in this Agreement, the City hereby agrees to execute and deliver the Easement Relocation Documents to MEC within thirty (30) days following the execution of this Easement Relocation Agreement. Upon receipt and recordation of the Easement Relocation Documents and payment of the Estimate, MEC shall record the Partial Release in the form attached hereto as Exhibit C and made a part hereof.

SECTION 2 - COSTS AND EXPENSES; PAYMENT

2.1 The City shall be solely responsible for, and hereby agrees to pay the entire cost of, the Easement Relocation including, without limitation, general and administrative costs; the costs to prepare the Easement Relocation Plan; recording fees; and legal fees and expenses as set forth in this Agreement.

2.2 MEC estimates that the total cost of the work done by MEC hereunder is equal to One Thousand Six Hundred and Fifty Dollars (\$1,650.00) (the “Estimate”), and the City hereby acknowledges receipt of this Estimate. The City hereby acknowledges that (a) the Estimate is only a good faith estimate of the total costs that MEC will incur in connection with the Easement Relocation as of the date of the Estimate; (b) that the Estimate may not include all categories of expenses associated with the Easement Relocation; and (c) that the City is responsible for all categories of expenses associated with the Easement Relocation, regardless of whether such categories of expenses are included in the Estimate. Notwithstanding the foregoing, at this time, MEC does not anticipate the total costs to substantially exceed the Estimate.

2.3 Immediately upon the City’s execution and delivery of these presents to MEC, the City shall deliver to MEC the following: (a) a certified check in an amount equal to the Estimate (the “Estimate Payment”). Upon the recording of all of the Easement Relocation Documents and the Partial Release, the City shall pay, on demand, any and all direct and indirect costs and

expenses incurred by MEC in connection with the Easement Relocation to the extent said costs and expenses exceed the Estimate Payment.

SECTION 3 - CONDITIONS TO MEC'S OBLIGATIONS

3.1 MEC's obligations under this Agreement to deliver the Partial Release to the City are expressly contingent upon (a) the prompt payment to MEC by the City of any and all amounts required to be paid hereunder; (b) the execution, delivery, and recording of the New Easement and the Easement Relocation Plan; (c) MEC shall have received from the City, at the City's sole cost and expense, good, clear, record and marketable title to the New Easement, free and clear of all liens and encumbrances having priority over the New Easement; (d) receipt by MEC of releases, consents, and/or subordinations of any sublessees, assignees, mortgagees or any other party whose interest in the Property has priority over MEC's interest in the New Easement (collectively, the "Subordination Documents") generally in the form attached hereto as Exhibit D and made a part hereof, which Subordination Documents shall be obtained by the City at its sole cost and expense and shall be satisfactory to MEC in its sole but reasonable discretion; (e) receipt by MEC of all votes and authority documents ("Authority Documents") evidencing the City's and, with respect to the Subordination Documents, other such entities authority to enter into, and be bound by, all of the agreements referenced or described herein, which Authority Documents shall be obtained at the City's sole cost and expense and shall be satisfactory to MEC in its sole but reasonable discretion; and (f) the City's compliance with all of the other terms and conditions of this Agreement.

SECTION 4 - PARTIAL RELEASE OF EASEMENT RIGHTS

4.1 Until such time as a Partial Release has been executed by MEC and recorded with the Registry, nothing in this Agreement shall be deemed or construed as an abandonment or release of any of the rights and easements of MEC, and MEC specifically reserves said rights and easements, including without limitation the rights to clear and keep cleared the Existing MEC Easement of all vegetation and structures that may interfere with its easement, to pass and repass with vehicles and equipment, to reconstruct, maintain, operate, repair, renew, replace, add to and otherwise change any power lines, structures, guys, anchors or other facilities to meet the needs of its business, to construct towers, poles and lines of higher voltage thereon, and to relocate existing and/or future transmission structures, towers, poles and lines, at MEC's cost and expense.

4.2 MEC shall have no obligation to execute and deliver a Partial Release of Easement for portions of the Existing MEC Easement until the conditions set forth in Section 3 hereof have been satisfied.

SECTION 5 - DEFAULT

5.1 In the event the City shall at any time fail to make any payment due hereunder to MEC or fail to observe or perform any of the other covenants and agreements required to be performed and observed by the City and such default shall continue for a period of thirty (30) days for monetary obligations (for which no notice shall be necessary) or for a period of thirty (30) days after written notice to the City (or if such default is incapable of being cured in a reasonable manner within thirty (30) days, the City has not commenced to cure the same within said thirty (30) day

period and diligently prosecuted the same to completion) and the City shall not cure such default, then subject to the provisions of this Section 5, MEC shall be entitled, at its election, to bring suit for the collection of such payments or other amounts for which the City may be in default, for the performance of any other City covenant or agreement hereunder, including specific performance, and for any damages incurred by MEC, all without terminating this Agreement. MEC shall also be entitled, at its election, to terminate this Agreement. In the event MEC terminates this Agreement, all obligations of MEC shall cease and terminate (except those that expressly survive the termination of this Agreement), except that MEC may sue for and collect all direct and related indirect costs of the Easement Relocation not previously paid by the City and other amounts due as a result of the City's default and all damages to MEC by reason of any such breach.

5.2 In the event that MEC fails to record the Partial Release within thirty (30) days following the recordation of the Easement Relocation Documents, the City shall be entitled to bring suit for specific performance of the recordation of the Partial Release.

SECTION 6-MISCELLANEOUS

6.1 This Agreement shall not be assignable, in whole or in part, by the City to any other person or entity, and any such assignment in violation of this provision shall be null and void.

6.2 This Agreement and any amendment hereof may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original and all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

6.3 The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors and/or assigns of the parties hereto.

6.4 All Exhibits referred to herein are intended to be and hereby are specifically made a part of this Agreement.

6.5 This Agreement, including the Exhibits, easements, documents, agreements, certificates and instruments referred to herein, embody the entire agreement and understanding of the parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. This Agreement supersedes all prior agreements and understandings between the parties with respect to the subject of this Agreement.

6.6 The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties hereto and shall not in any way affect the meaning or interpretation of this Agreement.

6.7 Subject to the terms and conditions of this Agreement, each of the parties hereto will use all reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws, rules and regulations to complete and make effective the Easement Relocation pursuant to this Agreement. From time to

time after the date hereof, without further consideration but subject to the terms and conditions of this Agreement, the City will, at its own expense, execute and deliver such documents to MEC as MEC may reasonably request in order more effectively to complete the Easement Relocation. From time to time after the date hereof, without further consideration but subject to the terms and conditions of this Agreement, MEC will, at the City's sole cost and expense, execute and deliver such documents to the City as the City may reasonably request in order more effectively to complete the Project.

6.8 Each of the parties hereto hereby represents and warrants to the other party hereto that (a) such party has the power and authority to execute, deliver and perform its respective obligations under this Agreement, and (b) the person(s) executing and delivering this Agreement on behalf of such party are duly authorized to so execute and deliver this Agreement. The City hereby represents and warrants to MEC that the City is the record owner of the Property.

6.9 the City hereby acknowledges that MEC would not undertake the Easement Relocation but for the following, as set forth in this Agreement: (a) the City's agreement to pay for all of the direct and related indirect costs incurred by MEC in connection with the Easement Relocation; and (b) the City's agreement to obtain the Easement Relocation Documents.

6.10 This Agreement shall automatically terminate, be of no further force and effect and without recourse to either party except for those provisions contained herein that expressly survive the termination of this Agreement upon the earlier of (a) completion of the Easement Relocation; or (b) December 31, 2019. The City understands and agrees that, regardless of whether this Agreement is terminated for any reason, including without limitation the City's default hereunder, the City shall be solely responsible and liable for and hereby agrees to pay the entire cost of the Easement Relocation.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives, under seal, on the day and year first written above.

MASSACHUSETTS ELECTRIC COMPANY

By: _____
Title:
Name:

CITY OF GARDNER

By: _____
Name:
Title:

Mayor RECEIVED

From: 2019 NOV -8 AM 11:38 Chris Coughlin
Sent: Thursday, November 7, 2019 1:43 PM
To: CITY CLERK'S OFFICE Debbie Phillips
Cc: GARDNER, MA Mayor
Subject: RE: Hospital Easement

Debbie,

Easement "A", Easement "B" & "3.13 Acre Land Lease Area" all looked fine. The plan matched all their respective descriptions accurately.

If you need anything else just let me know.

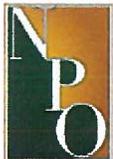
Thanks,

-Chris

From: Debbie Phillips <dphillips@NPOlegal.com>
Sent: Wednesday, October 30, 2019 12:22 PM
To: Chris Coughlin <ccoughlin@gardner-ma.gov>
Subject: Hospital Easement

Chris,

The plan showing the hospital's proposed correction of the easement is attached as the last page to this PDF (also Hannigan). The legal description starts on the 5th page of this PDF-its page 2 of their proposed amendment. If you can check those for accuracy, it would be great as well. Thanks again. Debbie



**NICKLESS,
PHILLIPS
and O'CONNOR**

C. DEBORAH PHILLIPS, ESQ.
NICKLESS, PHILLIPS AND O'CONNOR | ATTORNEYS AT LAW
625 MAIN STREET | FITCHBURG, MA 01420
PHONE: (978) 342-4590 | FAX: (978) 343-6383
www.NPOLEGAL.com

6-3



RECEIVED

Scott T. Farrar
Manager, Community & Customer Management

2020 MAY 14 AM 7:52

CITY CLERK'S OFFICE
GARDNER, MA

May 13, 2020

Hon. Elizabeth J. Kazinskas, Acting Mayor
City of Gardner
95 Pleasant Street, Room 125
Gardner, MA 01440

Re: DOT 608864 – RR Bridge project

Dear Mayor Kazinskas,

As part of the MA DOT bridge reconstruction project on Pleasant Street, National Grid is required to relocate its equipment (poles, wires) to facilitate the road-widening efforts. Our crews have been on-site and have completed as much required work as possible. Upon further review of the project, we have determined that moving Pole #34 approximately 90' in a southwesterly direction would serve us in the work we are required to complete.

I believe you received an easement request from Carol Childress on May 12, 2020 to place this pole and 2 guy wires on the City parcel of land. Assuming the City Council can approve this easement request, we can re-mobilize our crews to complete the necessary utility line work. Given the urgency to complete the bridge reconstruction project, we are requesting the approval of the easement request at your earliest convenience.

If you have any question, please contact me at scott.farrar@nationalgrid.com or my cell phone (508-868-4899).

Sincerely,

Scott T. Farrar

Property Address: Pleasant Street, Gardner, MA (Worcester South)

GRANT OF EASEMENT

The **CITY OF GARDNER**, a municipal corporation with a mailing address at 95 Pleasant Street, Gardner, Massachusetts 01440 (hereinafter referred to as the Grantor), for consideration of One (\$1.00) Dollar, grants to **MASSACHUSETTS ELECTRIC COMPANY**, 40 Sylvan Road, Waltham, Massachusetts 02451, a Massachusetts corporation, and **VERIZON NEW ENGLAND INC.**, a New York corporation, having a local address of 125 High Street – Oliver Tower, 07 Floor, Boston, MA 02110 (hereinafter referred to as the Grantees) with quitclaim covenants, the perpetual right and easement to construct, reconstruct, repair, maintain, operate and patrol, for the transmission of high and low voltage electric current and for the transmission of intelligence and telephone use, lines to consist of, but not limited to, one (1) pole, (which may be erected at different times) with wires and cables installed thereon, and all necessary foundations, anchors, guys, braces, fittings, equipment and appurtenances (hereinafter referred to as the "OVERHEAD SYSTEM") over, across, under and upon the Grantor's land in Gardner, Worcester County, Massachusetts, to serve Grantor's property and others.

Said "OVERHEAD SYSTEM" is to be located in, through, under, over, across and upon Grantor's property, which is located on the northerly side of Pleasant Street, to consist of Pole P.34, to become established by and upon the final installation thereof by the Grantees.

WR#28579845

Address of Grantee:
Mass. El., 40 Sylvan Road, Waltham, Massachusetts 02451
Verizon, 125 High Street – Oliver Tower, 07 Floor, Boston, MA 02110

After recording return to:
Carol Childress
National Grid USA
Service Company, Inc.
939 Southbridge Street
Worcester, MA 01610

05 GARDMA GEN

Also with the further perpetual right and easement from time to time without further payment therefore to pass and repass, over, across and upon Grantor's land, as is reasonable and necessary, in order to renew, replace, repair, remove, add to, maintain, operate and patrol and otherwise change said "OVERHEAD SYSTEM" and each and every part thereof and to make such other excavation or excavations as may be reasonably necessary in the opinion and judgment of the Grantees, their successors and assigns, and to clear and keep cleared the portions and areas of the premises wherein the "OVERHEAD SYSTEM" is specifically located of such trees, shrubs, bushes, above ground and below ground structures, objects and surfaces, as may, in the opinion and judgment of the Grantees, interfere with the efficient and safe operation and maintenance of the "OVERHEAD SYSTEM".

It is agreed that the "OVERHEAD SYSTEM" shall remain the property of the Grantees, their successors and assigns, and that the Grantees, their successors and assigns, shall pay all taxes assessed thereon. Grantor agrees that the rights and easement herein granted are for the purpose of providing service to Grantor's property and the further right to service others from said "OVERHEAD SYSTEM". The Grantor, for itself, its successors and assigns, covenant and agrees with the Grantees, for themselves, their successors and assigns, that this Grant of Easement and the location of the "OVERHEAD SYSTEM" may not be changed or modified without the written consent of the Grantees, their successors and assigns, which consent may be withheld by the Grantees in their sole discretion. The rights and easement herein granted are over, across and upon a certain parcel of land being more particularly described in an Instrument of Taking dated December 17, 1956, recorded with the Worcester South District Registry of Deeds in Book 3833, Page 584.

And further, said "OVERHEAD SYSTEM" (locations of the electrical equipment and other facilities on the hereinbefore referred to premises of the Grantor) is approximately shown on a sketch entitled: "EASEMENT SKETCH; Exhibit A – Not to Scale; Designer: David Terk Date: 5/1/20; Address: Pleasant Street Gardner, MA Work Order: 28579845; nationalgrid", a reduced copy of said sketch is attached hereto as "Exhibit A", copies of which are in the possession of the Grantor and Grantees herein, but the final definitive locations of said "OVERHEAD SYSTEM" shall become established by and upon the installation and erection thereof by the Grantees.

It is the intention of the Grantor to grant to the Grantee, its successors and assigns, all the rights and easements aforesaid and any and all additional and/or incidental rights needed to install, erect, maintain and operate within a portion of the Grantor's land an "OVERHEAD SYSTEM" for the transmission of intelligence and for supplying electric service for the building, buildings or proposed buildings shown on the last herein referred to sketch or amended sketch and the right to service others from said "OVERHEAD SYSTEM".

For Grantor's title, see Instrument of Taking dated December 17, 1956, recorded with the Worcester South District Registry of Deeds in Book 3833, Page 584.

IN WITNESS WHEREOF, the City of Gardner has caused its corporate seal to be hereto affixed and these presents to be signed in its name and behalf by Elizabeth Kazinskas, the Acting Mayor, being thereto duly authorized this _____ day of _____, 2020.

CITY OF GARDNER

By: Elizabeth Kazinskas
Its: Acting Mayor

Commonwealth of Massachusetts

County of _____ } ss.

On this the _____ day of _____, 2020, before me,

Name of Notary Public

the undersigned Notary Public,
personally appeared Elizabeth Kazinskas, proved to me through satisfactory evidence of identity,
which was

Description of Evidence of Identity

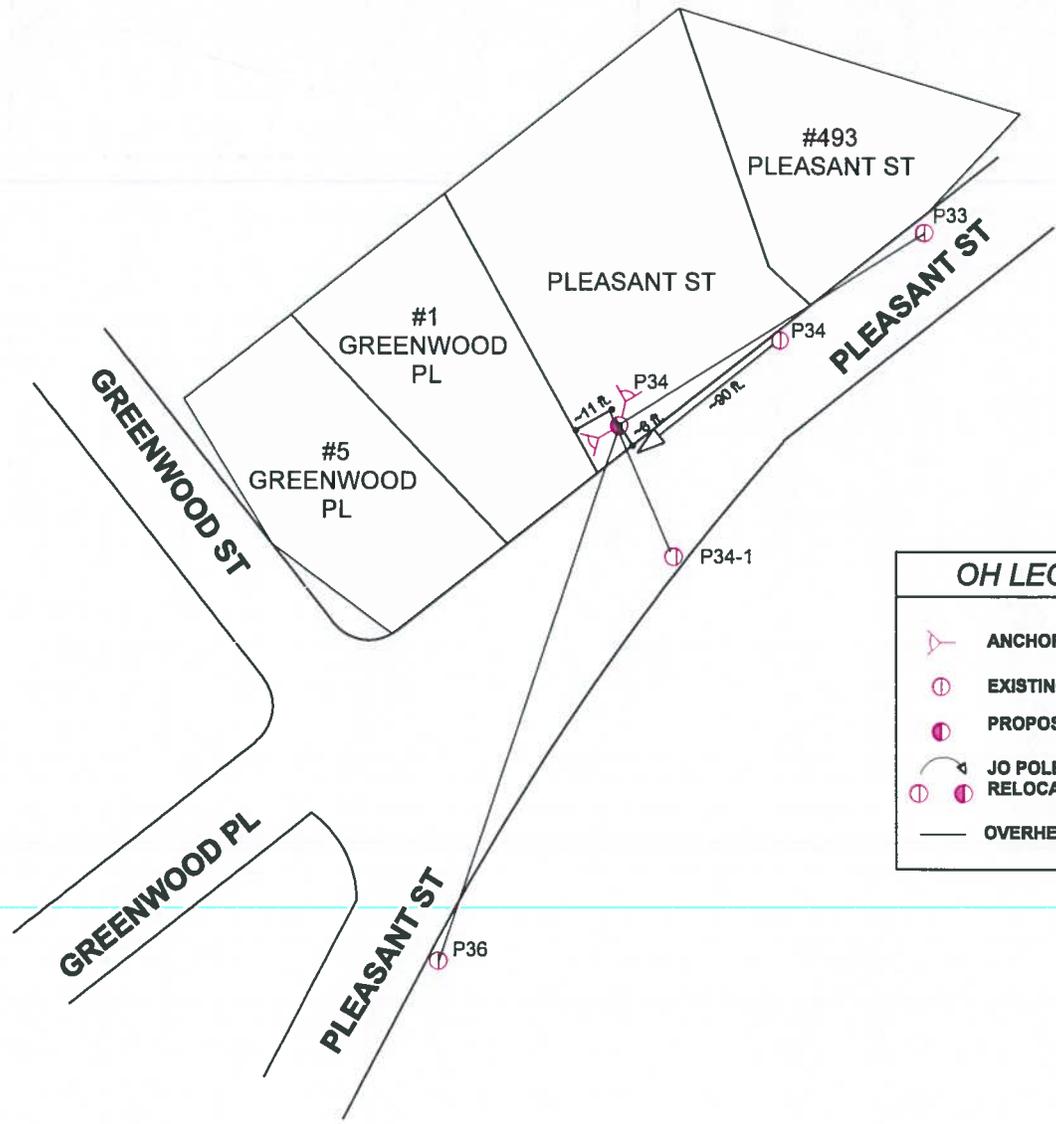
to be the person whose name is signed on the preceding Grant of Easement and acknowledged to
me that she signed it voluntarily for its stated purpose, as the Acting Mayor in the City of
Gardner.

Signature of Notary Public

Printed Name of Notary

My Commission Expires _____

Place Notary Seal and/or Any Stamp Above



OH LEGEND	
	ANCHORED GUY
	EXISTING JO POLE
	PROPOSED JO POLE
	JO POLE TO BE RELOCATED
	OVERHEAD WIRES

Sketch to accompany an easement for Pleasant Street property for the installation of relocated pole 34 approximately 6 ft. on to private property along with the installation of associated anchors and overhead wires.

EASEMENT SKETCH	Exhibit A - Not to Scale	
Designer: David Terk Date: 5/1/20 Address: Pleasant Street Gardner, MA Work Order: 28579845	The exact location of said Facilities to be established by and upon the installation and erection of the Facilities thereof.	