# CITY OF GARDNER, MASSACHUSETTS
## CITY COUNCIL FINANCE COMMITTEE MEETING
**Wednesday – January 29, 2020 – 12:00 PM**
***City Council Chamber - City Hall***

# 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 January 15, 2020 Regular Meeting Minutes.

3-1 A Measure Relative to the City Council's Election of the City Auditor.

3-2 A Measure Confirming the Mayor's Appointment of Eric Knudsen to the position of Member, Disability Commission, for term expiring 1/15/2023.

3-3 A Measure Relative to a Financial Interest under G.L. Chapter 268A, § 20(b) in the Matter of Bradley J. Fucile, Data Collector, for a Contract for Parking Meter Clerk Services.

4-1 #10237, An Ordinance Amending the Code of the City of Gardner, Chapter 171 Thereof, Entitled "Personnel" to change Article IX. Vacations for City Officers and Employees, Section 171-36, Other full-time officers and employees; and, by adding new Section 171-37 (a) Conservation/ Planning Agent, providing for additional vacation leave *(In City Council and Referred to Finance, 1/21/2020).*

4-2 #10238, An Ordinance Amending the Code of the City of Gardner, Chapter 171 Thereof, Entitled "Personnel" to change Article XIII. Department Head Benefit Time and Longevity Pay, Section 171-53, Vacation, providing for additional vacation leave *(In City Council and Referred to Finance, 1/21/2020).*

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).*

## ADJOURNMENT

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*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 JANUARY 15, 2020

The Finance Committee meeting was called to order by Council President James Walsh at 12:00 p.m. in the City Council Chamber, Room 219, City Hall. Finance Committee Members Councillors Ronald Cormier and Elizabeth Kazinskas were also present.

Others participating were DPW Director Dane Arnold; Community Development & Planning Director Trevor Beauregard; Community Development & Planning Assistant Director Jeffrey Legros; Human Resources Director Debra Pond; City Auditor John Richard; and, City Clerk Alan Agnelli.

President Walsh asked if anyone present planned to record the meeting, in accordance with the requirements of the Open Meeting Law, as follows:

> *Any person may make a video or audio recording of the open session of this meeting so long as it does not interfere with the conduct of the meeting. All documents and exhibits used or referenced at this meeting shall be submitted in duplicate to the City Clerk, as they become part of the minutes of the meeting. Is there anyone present who will be recording this meeting?*

No one responded.

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

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to approve the Minutes of the December 11, 2019 Regular Meeting, as printed.

**2-1 #10229, An Order Appropriating $400,000.00 from Free Cash to Greenwood Pool Demolition Account** ***(In City Council and Referred to Finance, 1/6/2020).***

Councillor Ronald Cormier opened the discussion by recommending that the Order be returned to the Executive Department as there should be an engineering report that identifies whether an imminent danger exists. He said that there should be a preliminary plan for reuse of the land, including the former National Grid Substation parcel, and that a plan should include projected costs and a timeline for implementation.

Councillor Cormier moved to return the Order to the Executive Department for further information, including and engineering report certifying a need for demolition and for a land reuse plan, including the former National Grid Substation parcel that includes projected costs and a timeline for implementation.

Councillor Elizabeth Kazinskas seconded the motion.

On the motion, Councillor Kazinskas recommended that such a Plan be timely submitted to the Council, adding her concern that delays may affect the cost for demolition and/or reuse.

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Citing the Mayor's correspondence, President Walsh stated that the Committee needs a better sense for reuse of the parcels, particularly since the Mayor seeks to use $400,000.00 from Free Cash to demolish the building.

On the motion, it was voted unanimously to recommend that the following Order be returned to the Executive Department for further information, including and engineering report certifying a need for demolition and for a land reuse plan, including the former National Grid Substation parcel that includes projected costs and a timeline for implementation.

> AN ORDER APPROPRIATING FROM FREE CASH TO GREENWOOD POOL DEMOLITION ACCOUNT.
>
> ORDER: That there be and is hereby appropriated the sum of Four Hundred Thousand Dollars and No Cents ($400,000.00) from Free Cash to the Greenwood Pool Demolition Account.

**2-2** **#10230, An Order Appropriating $95,500.00 from Sewer Surplus to Sewer Capital Project Pump Station Upgrades Expense** ***(In City Council and Referred to Finance, 1/6/2020).***

DPW Director Dane Arnold informed the Committee that the appropriation would fund evaluation, design, and construction services for improvements to the Dyer and Coleman Street sewer pump stations. He said that $600,000.00 is the estimated cost for construction of both stations and that the recent $1,750,000 Loan Order for sewer main installation and upgrades, which provides for upgrades to the Willis Road Pump Station and the City Hall Avenue sewer upgrades, should have a sufficient surplus to cover the cost of the Dyer Street and Coleman Street upgrades.

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to recommend that the following Order ought to pass:

> AN ORDER APPROPRIATING FROM SEWER SURPLUS TO SEWER CAPITAL PROJECT PUMP STATION UPGRADES EXPENSE.
>
> ORDER: That there be and is hereby appropriated the sum of Ninety Five Thousand Five Hundred Dollars and No Cents ($95,500.00) from Sewer Surplus to Sewer Capital Project Pump Station Upgrades Expense.

**3-1** **A Measure Confirming the Mayor's Appointment of Priya Gandbhir to the position of Assistant City Solicitor for term expiring 1/3/2021.**

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to recommend confirmation of the Mayor's Appointment of Priya Gandbhir to the position of Assistant City Solicitor for term expiring 1/3/2021.

President Walsh noted that Atty. Gandbhir is being reappointed.

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**3-2** **A Measure Confirming the Mayor's Appointment of Dr. Michele Parker to the position of Member, Board of Health, for term expiring 12/31/2022.**

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to recommend confirmation of the Mayor's Appointment of Dr. Michele Parker to the position of Member, Board of Health, for term expiring 12/31/2022.

President Walsh noted that Dr. Parker is replacing Dr. John Mulqueen who recently relocated to another community.

Councillor Kazinskas added that she knows Dr. Parker personally and praised her qualifications.

**3-3** **A Measure Confirming the Mayor's Appointment of Robert O'Keefe to the position of Information Technology Director for term expiring 1/7/2023.**

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to recommend to the City Council to confirm the Mayor's Appointment of Robert O'Keefe to the position of Information Technology Director for term expiring 1/7/2023.

President Walsh noted that he has received very good feedback about Mr. O'Keefe's job performance.

**3-4** **A Measure Confirming the Mayor's Appointment of Stephen Hirons to the position of Sealer of Weights and Measures for term expiring 1/8/2021.**

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to recommend to the City Council to confirm the Mayor's Appointment of Stephen Hirons to the position of Sealer of Weights and Measures for term expiring 1/8/2021.

**3-5** **A Measure Confirming the Mayor's Appointment of Lyndsy Butler to the position of Conservation Agent for term expiring 1/8/2023.**

Community Development & Planning Director Trevor Beauregard informed the Committee that Lyndsy Butler applied for the position of Assistant Director of Community Development and Planning, but the position was given to Jeffrey Legros, the City's Conservation Agent, thus leaving his position vacant.

He said that Ms. Butler worked as Administrator in the Townsend Land Use Department for five years and then as Land Use Coordinator for the past year and formerly worked for the Massachusetts Department of Correction and the Sheriff's Office for eight years. She recently completed her MBA from Fitchburg State University and is currently enrolled in Suffolk University's Public Management Program in Littleton, he added.

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Continuing, Mr. Beauregard said that Ms. Butler started working as Conservation Agent during the last week of December.

President Walsh expressed concern that she started working before she was appointed by the Mayor and confirmed by the City Council. It was noted that the Mayor did not file a temporary appointment certificate for her.

Mr. Beauregard said that the position needed to be filled right away.

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to recommend to the City Council to confirm the Mayor's Appointment of Lyndsy Butler to the position of Conservation Agent for term expiring 1/8/2023.

**4-1** **#10226, Correspondence from the Mayor Relative to the Title and Compensation of the Executive Secretary** ***(Introduced under New Business and referred to Finance, 12/16/2019; More time granted, 1/6/2020).***

Opening the discussion, Councillor Ronald Cormier noted that the Mayor's request to change the position title and to increase compensation at this time has implications beyond this position and suggested that such a change should require input from a new executive administration.

Councillor Cormier moved to return the request to the Executive Department for consideration during the FY2021 Budget process.

Councillor Elizabeth Kazinskas seconded the motion.

On the motion, Councillor Kazinskas cited the current uncertainty of Mayor Hawke's intentions and suggested that the Executive Secretary deserves additional compensation for assuming many more responsibilities since the Executive Aide position has been vacant for a long time. She questioned whether any action could be taken at this time to provide additional compensation during the interim.

Councillor Cormier agreed that the Executive Secretary has assumed many more duties and that her presence is vital; however, the changes in the Mayor's office should be studied along with the other positions and that it isn't appropriate to change the Executive Department staffing structure at this time.

President Walsh noted that the Mayor's correspondence did not include a Job Description and an Ordinance amendment. He suggested that the new Mayor may desire to consider restructuring the staffing and noted that the Mayor did not fill the Executive Aide position for the entire year of 2019. He also said that the Mayor's Office once had a position of Administrative Assistant, but that the Ordinance defining the

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position was repealed; however, the Mayor's current Budget contains a line item for Administrative Assistant.

**4-2** **An Ordinance Amending the Code of the City of Gardner, Chapter 171 Thereof, Entitled "Personnel" to change Article IX. Vacations for City Officers and Employees, Section 171-36, Other full-time officers and employees; and, by adding new Section 171-37 (a) Conservation/Planning Agent, providing for additional vacation leave.**

Human Resources Director Debra Pond informed the Committee that Mayor Hawke directed her to submit the proposed Ordinance amendments to the Finance Committee, but that the Community Development and Planning Director was better suited to explain the amendments.

Community Development and Planning Director Trevor Beauregard explained that Ms. Butler, the new Conservation Agent, has an extensive work background and education and that she requested three weeks of vacation leave. He said that he discussed the request with the Mayor and that the Mayor agreed to offer her 3 weeks; however, he and the Mayor did not know that the City Code allowed for only 2 weeks. Therefore, he said, the amendment was proposed for a "one-time exception" for only the Conservation Agent, but that vacation leave should be looked at on a case-by-case basis.

Continuing, Mr. Beauregard stated that 4 of the 6 employees in his Department possess undergraduate or advanced degrees or have relevant experience and that without some flexibility, the City is limited in its ability to offer compensation packages to attract qualified persons. He said that when he was hired ten years ago as Economic Development Coordinator, Mayor Hawke and Rob Hubbard granted him with three weeks of vacation leave.

On questioning from President Walsh, Ms. Pond stated that the Mayor advised her that the only position to be considered for the additional week vacation leave is the Conservation Agent's position and that the Mayor did not provide any correspondence to support the request.

President Walsh questioned the authority by which she was hired, noting that she wasn't hired through a 60-day temporary appointment, although she has been on the payroll since the last week of December.

Ms. Pond stated that she was unaware whether the Mayor filed a 60-day temporary appointment, but that she understands that Ms. Butler will continue in the position even though the vacation leave may not be extended.

Continuing, Ms. Pond expressed concern that, if adopted, the Ordinance amendment would "open Pandora's box" as it would affect many other municipal positions, particularly those with similar educational qualifications and/experience. She said that perhaps the City should study the current vacation leave benefits for all positions and

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noted that in 2009, the City amended its non-union vacation leave benefits for department heads by adding a third week upon hire. She added that if a third week of vacation leave is granted to the Conservation Agent, it would then match the vacation leave for all new department heads and those with less than ten years of service in the position.

Councillor Kazinskas questioned whether Ms. Pond is aware of other examples of employees granted vacation leave beyond what is permitted by the City Code.

Ms. Pond responded by saying that she is aware of only Trevor Beauregard's situation, that when he was hired as Economic Development Coordinator, the Mayor directed her to allot 3 weeks of vacation leave to Mr. Beauregard upon his hire, which was beyond that which was permitted by Ordinance. She added that she objected to the additional week, but was overruled by the Mayor.

Councillor Cormier also expressed concern that such an arrangement would "open Pandora's box" and cause confusion.

President Walsh suggested that the issue of vacation leave be studied more comprehensively which should involve the input from the Executive Office.

The Committee suggested that the HR Director study and then formulate a comprehensive plan for vacation leave, as well as a Compensation Plan with steps.

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to recommend to the City Council to refer the Measure back to the Finance Committee for further study and that the Human Resources Director research methods to address vacation leave and compensation issues.

**4-3** **An Ordinance Amending the Code of the City of Gardner, Chapter 171 Thereof, Entitled "Personnel" to change Article XIII. Department Head Benefit Time and Longevity Pay, Section 171-53, Vacation, providing for additional vacation leave.**

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to recommend to the City Council to refer the Measure back to the Finance Committee for further study and that the Human Resources Director research methods to address vacation leave and compensation issues.

**5-1** **#10231, A Measure Authorizing the City to Enter in Contracts not-to-exceed 5 Years for School Transportation Services** ***(In City Council and Referred to Finance, 1/6/2020).***

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to recommend to the City Council to authorize the City to enter into contracts not to exceed five (5) years for School Transportation Services, pursuant to the provisions of Massachusetts General Law, Chapter 30B, section 12 and under the terms outlined in the Purchasing Agent's December 13, 2019 Memorandum.

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**5-2 An Order Relative to the March 3, 2020 Presidential Primary.**

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to recommend to the City Council to adopt the following Order:

PRESIDENTIAL PRIMARY ORDER
TUESDAY, MARCH 3, 2020

It is ordered that meetings of the citizens of this City qualified to vote in the Presidential Primaries shall be held on **TUESDAY, MARCH 3, 2020** for the purpose of casting their votes in the Presidential Primaries for the candidates of political parties for the following offices:

PRESIDENTIAL PREFERENCE...…..……...FOR THIS COMMONWEALTH
STATE COMMITTEE MAN…..…....WORCESTER & MIDDLESEX DISTRICT
STATE COMMITTEE WOMAN…....WORCESTER & MIDDLESEX DISTRICT
WARD COMMITTEE …..…….……..…..CITY OF GARDNER

It is further ordered that the polls shall open at 7:00 o'clock in the morning and close at 8:00 o'clock in the evening.

**5-3 A Measure Authorizing the FY2020 Community Development Block Grant Mini Entitlement Plan.**

Community Development & Planning Assistant Director Jeffrey Legros informed the Committee that the CDBG Application is due by March 6.

President Walsh suggested that Mr. Legros present the Block Grant Mini-Entitlement Plan to the entire Council in an informal session on February 3, 2020, since there are three new Councillors who should become familiar with the program and the process.

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to recommend to the City Council to refer the following Resolution to the Council as a Committee of the Whole:

**FY 2020 COMMUNITY DEVELOPMENT BLOCK GRANT**
**Mini-Entitlement Plan**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GARDNER AS FOLLOWS:

WHEREAS, the City council has reviewed the proposals prepared by the Department of Community Development and Planning for inclusion within the FY 2020 Community Development Block Grant (CDBG) Mini-Entitlement Plan; and

WHEREAS, the CDBG proposals seek funding for support of public social services, demolition, infrastructure repair and upgrade, economic development, rehabilitation, planning and design, and associated administrative costs; and

WHEREAS, the activities proposed within the FY 2020 CDBG Mini-Entitlement Plan meet the priorities identified within the City's 2018-2021 Community Development Strategy, and the 2004 Community Development Plan; and

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WHEREAS, the City does not possess the bonding capacity or have the availability of funds to appropriate from its general budget to undertake such projects and reliance upon grant funds is required; and

WHEREAS, the City Council supports each of the activities as being consistent with the City's goal of promoting quality programs for its citizens;

NOW THEREFORE, the City Council hereby extends its support of each proposed activity and endorses the City's FY 2020 CDBG Mini-Entitlement Plan to be submitted to the Commonwealth of Massachusetts, Department of Housing and Community Development.

**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 further action on the Lease until Attorney Phillips completes additional research.

**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 further action on the Easement until Attorney Phillips completes additional legal research.

## NEW BUSINESS

The Committee was informed that the term of office for City Auditor John Richard expires on February 3, 2020, so the Committee recommended that the election for the City Auditor be placed on the February 3, 2020 Regular Meeting Calendar.

## ADJOURNMENT

On a motion by Councillor Elizabeth Kazinskas and seconded by Councillor Ronald Cormier, it was voted to adjourn at 12:47 p.m.

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3-2

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CITY CLERK'S OFFICE
GARDNER, MA

January 15, 2020

# Commonwealth of Massachusetts

Worcester County

City of Gardner

## CERTIFICATE OF APPOINTMENT

*I appoint* ***Eric Knudsen*** *to the position of* ***Member, Disability Commission,*** *and I certify*
172 Manca Drive, Gardner, MA
*that in my opinion he/she is a person specially fitted by education, training, or experience to perform the duties of said office, and that I make the appointment solely in the interests of the City.*

_____ *Mayor*

*Mark P. Hawke*

Confirmed by City Council _____

_____ City Clerk

Alan L. Agnelli

Expires: January 15, 2023

*Worcester, ss.,* _____

*Then personally appeared the above named* **Eric Knudsen** *and made oath that he/she would faithfully and impartially perform the duties of the office of* **Member, Disability Commission** *according to law and the best of his/her abilities.*

*Before me,*

_____ *City Clerk*

*Chapter 303 Acts of 1975*
*and*
*Chapter 409 Acts of 1983*

*Received* _____

APPROVAL OF EXEMPTION PURSUANT TO G.L. C.268A, §20(b)
FINANCIAL INTEREST OF BRADLEY J. FUCILE
CONTRACT FOR PARKING METER CLERK SERVICES

*VOTE:* To approve an Exemption pursuant to G.L. C. 268A, §20(b) in the Matter of a Financial Interest by Bradley J. Fucile for a Contract for Parking Meter Clerk Services.

3-3

# DISCLOSURE BY MUNICIPAL EMPLOYEE OF FINANCIAL INTEREST IN A MUNICIPAL CONTRACT AS REQUIRED BY G. L. c. 268A, § 20(b)

RECEIVED
2020 JAN 17 PM 12: 19
CITY CLERK'S OFFICE
GARDNER, MA

| | MUNICIPAL EMPLOYEE INFORMATION |
|---|---|
| Name of municipal employee: | Bradley J. Fucile |
| Title/ Position | Data Collector (part time - less than 20 hours) |
| **Fill in this box if it applies to you.** | If you are a municipal employee because a municipal agency has contracted with your company or organization, please provide the name and address of the company or organization. |
| Agency/ Department | City of Gardner - Assessor's Department |
| Agency Address | 95 Pleasant Street, Rm. 226<br>Gardner, MA 01440 |
| Office phone: | (978) 630-4004 |
| Office e-mail: | |
| | **Check one:** ____ **Elected** **or** X **Non-elected** |
| Starting date as a municipal employee. | 09/12/2018 |
| **BOX # 1**<br><br>**Select either STATEMENT #1 or STATEMENT #2.**<br><br>**Write an X beside your financial interest.** | **ELECTED MUNICIPAL EMPLOYEE**<br><br>I am an **elected municipal employee**.<br><br>___ **STATEMENT #1**: I had one of the following financial interests in a contract made by a municipal agency before I was elected to my municipal employee position. I will continue to have this financial interest in a municipal contract. **OR**<br><br>___ **STATEMENT #2**: I will have a new financial interest in a contract made by a municipal agency.<br><br>**My financial interest in a municipal contract is:**<br><br>____ I have a non-elected, compensated municipal employee position.<br><br>____ A municipal agency has a contract with me.<br><br>____ I have a financial benefit or obligation because of a contract that a municipal agency has with another person or an entity, such as a company or organization.<br><br>____ I work for a company or organization that has a contract with a municipal agency, and I am a "key employee" because the contract identifies me by name or it is otherwise clear that the city or town has contracted for my services in particular. |
| **BOX # 2**<br><br>**Select either STATEMENT #1 or STATEMENT #2.** | **NON-ELECTED, COMPENSATED MUNICIPAL EMPLOYEE**<br><br>I am a **non-elected municipal employee**.<br><br>___ **STATEMENT # 1**: I had one of the following financial interests in a contract made by a municipal agency **before** I took a position as a non-elected municipal employee. I will continue to have this financial interest in a municipal contract. |

| | |
|---|---|
| **Write an X beside your financial interest.** | **My financial interest in a municipal contract is:**<br><br>____ A municipal agency has a contract with me, but not an employment contract.<br><br>____ I have a financial benefit or obligation because of a contract that a municipal agency has with another person or an entity, such as a company or organization.<br><br>**-- OR --**<br><br>___ **STATEMENT # 2**: I will have a **new** financial interest in a contract made by a municipal agency.<br><br>**My financial interest in a municipal contract is:**<br><br>X I have a non-elected, compensated municipal employee position.<br><br>X A municipal agency has a contract with me.<br><br>____ I have a financial benefit or obligation because of a contract that a municipal agency has with another person or an entity, such as a company or organization.<br><br>____ I work for a company or organization that has a contract with a municipal agency, and I am a "key employee" because the contract identifies me by name or it is otherwise clear that the city or town has contracted for my services in particular. |
| | **FINANCIAL INTEREST IN A MUNICIPAL CONTRACT** |
| Name and address of municipal agency that made the contract | City of Gardner - Treasurer/Collector's Department<br>95 Pleasant Street, Rm. 116<br>Gardner, MA 01440 |
| **Please put in an X to confirm these facts.** | **"My Municipal Agency"** is the municipal agency that I serve as a **municipal employee**.<br><br>The **"contracting agency"** is the **municipal agency that made the contract.**<br><br>___ My Municipal Agency is not the contracting agency.<br><br>X My Municipal Agency does not regulate the activities of the contracting agency.<br><br>X In my work for my Municipal Agency, I do not participate in or have official responsibility for any of the activities of the contracting agency.<br><br>X The contract was made after public notice or through competitive bidding. |
| **FILL IN THIS BOX OR THE BOX BELOW** | **ANSWER THE QUESTION IN THIS BOX IF THE CONTRACT IS BETWEEN THE CITY OR TOWN AND YOU.**<br><br>- Please explain what the contract is for.<br><br>Part time employment in the City of Gardner Treasurer/Collector's Department performing parking meter clerk duties including the collection of parking fees and the repair of parking meters. |
| **FILL IN THIS BOX OR THE BOX ABOVE** | **ANSWER THE QUESTIONS IN THIS BOX IF THE CONTRACT IS BETWEEN THE CITY OR TOWN AND ANOTHER PERSON OR ENTITY.**<br><br>- Please identify the person or entity that has the contract with the municipal agency.<br>- What is your relationship to the person or entity?<br>- What is the contract for? |

| | |
|---|---|
| What is your financial interest In the municipal contract? | - Please explain the financial interest and include the dollar amount if you know it.<br>I will receive hourly compensation for each hour worked as the Parking Meter Clerk, not to exceed twenty hours, in addtion ot receiving compensation as the part time Data Collector for the Assessor's Department. Work for each department will be conducted during working hours - not to exceed full time hours (total of 40 hours). |
| Date when you acquired a financial interest | Commences January 21, 2020. |
| What is the financial interest of your immediate family? | - Please explain the financial interest and include the dollar amount if you know it.<br>None. |
| Date when your immediate family acquired a financial interest | N/A |
| **Write an X to confirm each statement.** | **FOR A CONTRACT FOR PERSONAL SERVICES –**<br>**Answer the questions in this box ONLY if you will have a contract for personal services with a municipal agency (i.e., you will do work directly for the contracting agency).**<br>I will have a contract with a municipal agency to provide personal services.<br>X The services will be provided outside my normal working hours as a municipal employee.<br>X The services are not required as part of my regular duties as a municipal employee.<br>___ For these services, I will be compensated for not more than 500 hours during a calendar year. |
| Employee signature: | Bradley J Fuller |
| Date: | 1/17/2020 |

**Attach additional pages if necessary.**

**NOT A PERSONAL SERVICES CONTRACT -- File disclosure with the city or town clerk.**

**SEE CERTIFICATION AND APPROVAL REQUIRED FOR PERSONAL SERVICES CONTRACTS, BELOW.**

## FOR CONTRACTS FOR PERSONAL SERVICES ONLY:

**If you are disclosing a financial interest in a contract for personal services with a municipal agency, you must file the Certification below signed by the head of the contracting agency, and you must get approval of the exemption from the city council, board of aldermen, board of selectmen or town council.**

## CERTIFICATION BY HEAD OF CONTRACTING AGENCY

| | INFORMATION ABOUT HEAD OF CONTRACTING AGENCY |
|---|---|
| Name: | Mark Hawke |
| Title/ Position | Mayor |
| Municipal Agency: | City of Gardner |
| Agency Address: | 95 Pleasant Street, Gardner, MA 01440 |
| Office Phone: | (978) 632-1490 |
| | **CERTIFICATION** |
| | I have received a disclosure under G.L. c. 268A, § 20(b) from a municipal employee who seeks to provide personal services to my municipal agency, identified above. I certify that no employee of my agency is available to perform the services described above as part of his or her regular duties. |
| Signature: | |
| Date: | 1/14/20 |

## APPROVAL BY CITY COUNCIL, BOARD OF ALDERMEN, BOARD OF SELECTMEN OR TOWN COUNCIL

| | INFORMATION ABOUT APPROVING BODY |
|---|---|
| Name: | James Walsh, Esq. |
| Title/ Position | President, Gardner City Council |
| Agency Address: | 95 Pleasant Street<br>Gardner, MA 01440 |
| Office Phone: | (978) 630-4058 |
| | **APPROVAL** |
| | I have received a disclosure under G.L. c. 268A, § 20(b) from a municipal employee who seeks to provide personal services to a municipal agency, identified above. The exemption under § 20(b) is approved. |
| Signature: | On behalf of the Council or Board, I sign this approval. |
| Date: | |

**Attach additional pages if necessary.**
**File disclosure, Certification and Approval with the city or town clerk.**

(10237) 4-1

RECEIVED
2020 JAN -8 AM 10: 47
CITY CLERK'S OFFICE
GARDNER

## § 171-34. Police Officer

All police officers of the City of Gardner, not covered by a collective bargaining agreement, regularly employed full time by the City shall be granted an annual vacation without loss of pay as follows:

A. Regularly employed for one to four years shall be entitled to two weeks (14 calendar days).

B. Regularly employed from five to nine years shall be entitled to three weeks (21 calendar days).

C. Regularly employed from 10 to 14 years shall be entitled to four weeks (28 calendar days).

D. Regularly employed for over 15 years shall be entitled to 31 calendar days.

E. Employees shall have two consecutive days off with each five days of vacation. Each two-week vacation period shall consist of 10 paid vacation days and four regular days off. One vacation week shall consist of fi working days plus two days off.

## § 171-35. Firefighter

All firefighters of the City of Gardner, not covered by a collective bargaining agreement, regularly employed full time by the City shall be granted an annual vacation without loss of pay as follows:

A. Regularly employed for one to four years shall be entitled to two weeks (14 calendar days).

B. Regularly employed from five to nine years shall be entitled to three weeks (21 calendar days).

C. Regularly employed from 10 to 14 years shall be entitled to four weeks (28 calendar days).

D. Regularly employed for 15 years or more shall be entitled to 31 calendar days.

## § 171-36. Other full-time officers and employees. [Amended 6-1-2009 by Ord. No. 1492]

All other employees or officers, except ***for the Conservation/Planning Agent***, those provided for by law and those covered by a collective bargaining agreement, regularly employed full time by the City shall be granted an annual vacation without loss of pay as follows:

A. Regularly employed for one to four years shall be entitled to two weeks or 10 working days.

B. Regularly employed from five to nine years shall be entitled to three weeks or 15 working days.

C. Regularly employed from 10 years to 14 years shall be entitled to four weeks or 20 working days.

D. Regularly employed for 15 years or more shall be entitled to fi weeks or 25 working days.

### § 171-37. Other part-time officers and employees. [Amended 6-1-2009 by Ord. No. 1492]

All other employees or officers, except those provided for by law and those covered by a collective bargaining agreement, regularly employed part time by the City shall be granted an annual vacation without loss of pay as follows:

A. To be eligible a part-time worker must have worked 27 weeks in the aggregate during the 12 months preceding the fi day of June in each year and must meet the eligibility requirements of part-time employees as defined in Article XII, § 171-50A.

B. They shall be entitled to the same vacation increments as full- time employees as defined in § 171-36 based upon an eligible part-time employee's specific work hour schedule. One day will be equivalent to the total number of hours worked per week divided by five days (i.e., one day for 25 hours per week will be equivalent to five hours).

### *§ 171-37(a). Conservation/Planning Agent.*

***The Conservation/Planning Agent, shall be granted annual vacation without loss of pay as follows:***

*(1) Employed for one to nine years of regular employment shall be entitled to three (3) weeks or fifteen (15) working days.*
*(2) Regularly employed from ten (10) years to fourteen (14) years shall be entitled to four (4) weeks or twenty (20) working days.*
*(3) Regularly employed for fifteen (15) years or more years shall be entitled to five (5) weeks or twenty-five (25) days.*

***Newly hired Conservation/Planning Agents shall be granted vacation time according to the following schedule:***

| *First day of Employment* | *Number of Vacation Days* |
|---|---|
| *January 1 to April 30* | *15* |
| *May 1 to August 31* | *10* |
| *September 1 to December 31* | *5* |

## § 171-38. Vacations to be granted by department heads.

Such vacations shall be granted by the heads of each department, as such time as in their opinion will cause the least interference with the performance of the regular work of the City.

## § 171-39. Determination of regular employment.

A person shall be deemed to be regularly employed within the meaning of this article if he or she has been actually employed for 27 weeks in the aggregate during the 12 months preceding the fi day of June of the year in which the vacation is to be granted.

## § 171-40. New employees.

New full-time employees will earn one day per month up to 10 days per calendar year. This day will be credited the last day of each month. The new employee shall continue to earn vacation in this manner until January 1 of the year following his/her anniversary date of benefited employment. This vacation will only be allowed upon the completion of a probationary period of six months. In no event shall a new employee be eligible for more than 10 days of vacation per calendar year.

## § 171-41. Accumulation of vacation time.

Employees that do not utilize all of their vacation time within the calendar year it was granted will be allowed to carry over into the next calendar year twice their annual vacation accrual. Any employee who has excess of that amount of vacation accumulation on December 31 shall forfeit any excess of the permitted accumulation.

## § 171-42. Minimum increments.

Vacation time may not be taken in less than one-half-day increments.

## § 171-43. Payment for accumulated vacation time.

In the event that an employee terminates employment with the City, any vacation accrued will be paid to the employee. If an employee dies, any accrued vacation days shall be paid to the estate of said deceased employee.

(10238) 4-2

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## § 171-53. Vacation.

A. The Police Chief and Fire Chief shall be granted an annual vacation without loss of pay as follows:

(1) Employed for one to four years shall be entitled to two weeks (14 calendar days).

(2) Regularly employed five to nine years shall be entitled to three weeks (21 calendar days).

(3) Regularly employed 10 to 14 years shall be entitled to four weeks (28 calendar days).

(4) Regularly employed for over 15 years shall be entitled to 31 calendar days.

B. All other department heads as defined in § 171-52 shall be granted an annual vacation without loss of pay as follows:

(1) Employed for one to ~~nine~~ ***four*** years of regular employment shall be entitled to three weeks or 15 working days.

(2) Regularly employed from ~~10~~ ***five*** years to ~~14~~ fourteen years shall be entitled to four weeks or 20 working days.

(3) Regularly employed ~~15~~ fifteen years to nineteen years ~~or more years~~ shall be entitled to five weeks or 25 working days.

***(4) Regularly employment for twenty or more years shall be entitled to 6 weeks or thirty working days.***

C. A department head shall be deemed to be regularly employed within the meaning of this article if he or she has been actually employed for 27 weeks in the aggregate during the 12 months preceding the fi day of June of the year in which the vacation is to be granted.

D. Department heads that do not utilize all of their vacation time within the calendar year it was granted will be allowed to carry over into the next calendar year twice their annual vacation accrual. Any department head who exceeds that amount of vacation accumulation on December 31 shall forfeit any excess of the permitted accumulation.

E. Newly hired department heads shall be granted vacation time according to the following schedule:

| First Day of Employment | Number of Vacation Days Police/Fire | All Other Department Heads |
|---|---|---|
| January 1 to April 30 | 14 | 15 |
| May 1 to August 31 | 10 | 10 |
| September 1 to December 31 | 5 | 5 |

F. In the event that a department head terminates employment with the City, any vacation accrued will be paid to the department head. If a department head dies, any accrued vacation days shall be paid to the estate of said deceased department head.

# 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.

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# EIGHTH AMENDMENT TO LEASE

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 comer 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°0 1 '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 00/1 00 (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°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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GARDNER, MA

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

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[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 Parel 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

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[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 <u>and</u> the release of its interest in 5.86 acres of Parel 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

C. Deborah Phillips

CDP/st

Enclosures

6-2

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# 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 ELECTRJC 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 ELECTRJC 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

2019 NOV -8 AM 11:38
CITY CLERK'S OFFICE
GARDNER, MA

**From:** Chris Coughlin
**Sent:** Thursday, November 7, 2019 1:43 PM
**To:** Debbie Phillips
**Cc:** 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

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**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.
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