CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE MEETING
Wednesday – February 12, 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 29, 2020 Regular Meeting Minutes.

2-1 An Order Appropriating $175,000.00 from Free Cash to PARC Bailey Brook Capital Project.

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

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 29, 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 City Assessor Susan Byrne, City Treasurer/Collector Jennifer Dymek, Assessing Data Collector Bradley Fucile, 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 Elizabeth Kazinskas and seconded by Councillor Ronald Cormier, it was voted to approve the Minutes of the January 15, 2020 Regular Meeting, as printed.

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

Noting that City Auditor John Richard's term of office expires on February 3, 2020, Councillor Ronald Cormier recommended that the Election of the City Auditor be placed on the February 3, 2020 Council Calendar. He said that Mr. Richard is completing his three-year certification program this year and will be taking his exam. In addition, he said that Mr. Richard has done a fine job in the position and that his experience will prove invaluable during the upcoming budget cycle and the transition to a new Mayor.

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to recommend to the City Council to re-elect John Richard to the position of City Auditor for term expiring February 3, 2023.

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.

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 Eric Knudsen to the position of Member, Disability Commission, for term expiring 1/15/2023.

The Committee noted that Mr. Knudsen has served on the Commission since 2014.

UNACCEPTED/UNCORRECTED PROOF

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.**
On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to recommend to the City Council 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.*

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.**

The Committee postponed action since the HR Director is formulating a comprehensive plan for vacation leave, as well as a Compensation Plan with steps.

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.**
The Committee postponed action since the HR Director is formulating a comprehensive plan for vacation leave, as well as a Compensation Plan with steps.

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).***
President Walsh noted that Atty. Phillips, with the Committee's authorization, will contact National Grid and Heywood Hospital in order to work out the details of the Easement. He added that the Hospital will pay National Grid directly or reimburse the City for all legal work. He added that a piece of the Hospital's facilities was constructed across the Easement.

The Committee postponed further action on the Easement until Attorney Phillips completes additional legal research.

ADJOURNMENT

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to adjourn at 12:08 p.m.

UNACCEPTED/UNCORRECTED PROOF

2-1

City of Gardner, *Executive Department*

James M. Walsh, Acting Mayor

2020 FEB -7 PM 12: 59

CITY CLERK'S OFFICE
GARDNER, MA

February 6, 2020

Gardner City Council
Room 219
Gardner City Hall
95 Pleasant Street
Gardner, MA 01440

RE: Bailey Brook Project

Dear Council Members:

With this correspondence I am submitting an Order appropriating $175,000 from Free Cash to *PARC Bailey Brook Capital Project*. This amount represents the City's 30% share of the project cost covering design and Phase I construction.

I've attached documentation about the project. As you all know this has been in development for a lengthy period. To be eligible for reimbursement from the grant, payment for the design phase of the project needs to be made June 1, 2020, I consequently believe there is an urgency for the appropriation of these funds at this time.

Please contact me if you have any questions.

Very truly yours,

James M. Walsh
Acting Mayor

Attachments: Project Narrative
Memo
Order

JMW/rjs

City Hall, 95 Pleasant Street, Room 125, Gardner, Massachusetts 01440
Telephone: (978) 630-1490 • Facsimile (978) 630-3778 • Email: mayor@gardner-ma.gov

AN ORDER APPROPRIATING FROM FREE CASH TO PARC BAILEY BROOK CAPITAL PROJECT.

ORDERED:

That there be and is hereby appropriated the sum of One Hundred Seventy-five Thousand and No Cents ($175,000.00) from Free Cash to PARC Bailey Brook Capital Project.

2-1

memo

City of Gardner, Department of Community Development and Planning

To: Acting Mayor James Walsh

From: Jeffrey Legros, Assistant Director of Community Development & Planning

CC: Lyndsy Butler, Conservation & Planning Agent

Date: 4 February 2020

Re: PARC Grant Baily Brook Park – Summary of Activities and Grant Timeline

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Comments: This memo is related to a Notice to Proceed for the Design of Bailey Brook Park under the City's On-Call Engineering Contract with Fuss & O'Neill. The design portion of the PARC Grant awarded to the City for Bailey Brook Park must be completed by June 1st, 2020.

Below is a brief summary and timeline of activities related to the PARC Grant awarded to the City for the Design and Phase I Construction (Site Development Preparation):

- **July 2019** – PARC Grant Application Submitted
- **September 3, 2019** – City Council adopted Resolution #10162, effective at the time of its passage, authorizing the allocation of funds necessary for the Design and Construction of Bailey Brook Park and authorizing the City to borrow, appropriate, and expend the full amount of funds necessary for that purpose.
- **October 4, 2019 –** PARC grant awarded to the City of Gardner in the amount of $400,000.00 for Design (FY20) and Phase I Construction (FY21) of Bailey Brook Park
- **October 17, 2019 –** Contract signed by Mayor Hawke and returned to Mass EOEEA
- **December 12, 2019 –** Contract signed and fully executed by the Commonwealth
- **January 27, 2020 –** Proposal to conduct design of Bailey Brook Park received from Fuss & O'Neill

Next Steps:

<u>FY20</u>

- **February 2020** - Issue Notice to Proceed to Fuss & O'Neill (See attached cover letter and proposal)
- **February to May 31, 20202** – Design must be completed and invoiced by **June 1st 2020** in order to qualify for reimbursable funds under the PARC grant
- **June 2020** – Request for Bids for construction (June 2020)

<u>FY21</u>

- **July 2021** – Select contractor and begin Phase I construction of Bailey Brook Park
- **July 2022 to June 1st 2022 (FY21)** – Complete construction of Phase I and complete and submit final reimbursement for PARC grant

In order to meet the requirements of the timeline established by the PARC grant program, the Design of Bailey Brook park must begin so that it may be completed in a timely manner by June 1st, 2020.

Attachments: Project Summary Cover Letter, Bailey Brook Park Project Summary, and Fuss & O'Neill Proposal and Notice to Proceed

Bailey Brook Park & Recreation Area, Gardner – FY2020 PARC Grant Application

Project Narrative

Project Overview

The City of Gardner recently acquired the 37-acre Bailey Brook Park & Open Space Recreation Area through a FY 2018 PARC grant and an adjacent 84-acre Conservation Area, Bailey Brook Conservation Area, funded by the LAND grant program (Acquisition Phase – Completed June 2018).

The City is now submitting an FY 2020 PARC grant to design and develop an open space, multipurpose park and conduct site work associated with site access driveways, parking, construction of an ADA accessible trail, and 1-mile, healthy-heart, wellness walking loop trail with a scenic overlook and sitting & resting area, at the Bailey Brook Park located off of Leo Drive. Both trails will include interpretive nature learning signage and other experiential, nature-based learning components. The accessible, ADA compliant trail will also include tactile, sensory, playground equipment elements for nature-based play and learning for children with social-emotional learning and development disabilities.

The initial design and development project proposed here (Development Phase I) will allow the City of Gardner to create an engineered, landscape and construction design plan for a low-impact design, multi-use, open space park and playground and will include the necessary site work to provide access to the park (e.g., grading and gravel base material surface of an access driveway and parking area), design and facilitate the initial and future development, and create basic amenities like a 1-mile walking path, improved access to Bailey Brook, an accessible loop trail, and nature-based learning and exploration features (e.g., plant and tree id placards, natural timber and stone play features, and interactive, tactile, nature-based learning features). The design will incorporate input from City officials and the public, including members of Gardner's Environmental Justice population and will include focus on the construction of athletic fields, a playground and nature exploration & learning area, and restrooms (See Map: Conceptual Plan). The design will also include low-impact-design, natural stormwater improvements in the form of infiltration trenches, bioswales, and raingardens. In addition to the design and site work that this initial phase will provide, the current proposal (Development Phase I) will also allow for immediate passive accessory uses such as mountain biking, walking, hiking, fishing, snowshoeing and cross-country skiing and will also facilitate a proposed free, public disc golf course to be constructed by a group of committed group of volunteers with donations and funding from a regional disc golf association and local partners.

A secondary development phase (Development Phase II) will be included in the design plan and future funding will be sought from private, state, local, and Federal sources. The full design will incorporate plans for the development of a playground, athletic fields, LID drainage (e.g., swales, infiltration trenches, raingardens), accessible bathrooms, and related utilities and services.

The proposed park elements will occupy the upland area of the property, on the east side of Bailey Brook, outside of critical habitat and protected resource areas. The Park will be developed on an area of the property, within which a timber harvest was recently completed (**See Map: Conceptual Plan, shaded area**). Since the land has been recently harvested and the proposed Park area has been cleared to the greatest extent, minimal tree removal will be required and will be avoided wherever possible to maintain a forested open space park. However, a considerable amount of grading, stumping and grubbing will be necessary within the previously cut area given the undeveloped history of the property and recent logging activity and associated slash and stump debris. The recent timber harvest left a buffer of forested land adjacent to existing homes on Leo Drive, which we plan to maintain and which could be augmented by the planting of additional trees and shrubbery in targeted locations to be identified in the design plan. Similarly, forested areas within the park, but outside of the proposed development area, will be left to remain as forested and will serve as an Open Space area to include a 1-mile loop trail, scenic vistas of Bailey Brook, and a natural buffer between the park and the adjacent Conservation Area and Bailey Brook. The Park will be accessed from three locations with road frontages to Leo Drive. A singular, central, main entrance is proposed on Leo Drive

across from Margaux Way for vehicle access and two additional gated pedestrian and emergency entrances are proposed near the Northern and Southern portions of the park at existing access points with frontage to Leo Drive.

Park Location

The area adjacent to the proposed park has seen significant development and increased population over the last few decades, associated with a large, multi-phased residential subdivision adjacent to Wilder Brook and its' Wetland Resource Areas. As a result a large park in West Gardner was identified as a priority need in the City's most recent Open Space and Recreation Plan. This proposed project, Bailey Brook Park, is located within a half-mile radius of 303 residences, 236 of which are considered to be within safe walking distance (**See Map: Population Served**), and would allow the City to achieve the goal of a multipurpose park in West Gardner as identified in our Open Space and Recreation Plan. To further demonstrate the suitability and community need of this proposed park we have provided an additional map displaying the site location and the distance to the nearest park and Environmental Justice Area (**See USGS Map: Proximity Map and FHWA Title VI Map**).

Community Needs, OSRP Goals, and Project Benefits

The City of Gardner is a diverse, low-income, community that acts as a regional hub and includes a developed downtown commercial and residential district in addition to many developed and densely populated neighborhoods. The majority of the City's area includes designated Title VI Populations including, Elderly, Foreign Born, and Language designated populations. Bailey Brook Park is located directly within a Title VI Designated Elderly Population Area and will serve this population and all other Title VI designated populations throughout the community and within close proximity to this proposed multipurpose park.

Development of a park at this location is consistent with the goals and needs analysis of our Open Space and Recreation Plan, specifically: Goal One, Objectives 2, 3, and 5; Goal Two, Objectives 3, 4, and 5; Goal Three, Objective 4; and Goal Five, Objectives 1, 3, 4, 5, and 6. Further, the 7-Year Action Plan of our OSRP identified the specific goals of "Identifying and Acquiring Land in West Gardner Suitable for a Municipal Park and Playground" (OSRP, Sec. 8-8, p. 50), and "development of a Multi-purpose Municipal Park with Playground Equipment and Athletic Fields in West Gardner" (OSRP, Sec. 8-8, p. 51). Accomplishment of the acquisition portion of this goal was targeted for the first two years of our OSRP and was achieved within that time-frame with the identification and acquisition of the Omealia and RHO land under an FY-18 PARC grant. Achieving the second portion of this goal, *development of a multi-purpose park in West Gardner*, was targeted for years 3-5 and is the subject of this application. The project is also consistent with several of the needs identified in the Statewide Conservation and Outdoor Recreation Plan (SCORP) and current draft plan, including serving underserved populations (e.g., Title VI, Elderly Population and EJ Area), increasing the availability of water-based recreation (e.g., access to Bailey Brook for canoeing, kayaking, and fishing), connecting and enhancing accessibility of trails (e.g., 1-mile park loop trail, and connections and access to existing trails on adjacent conservation land), and creating and improving access to parks and recreational opportunities close to home and within neighborhoods (e.g., creation of a multipurpose park within one of the largest residential neighborhoods in town where no such park or safe access to any nearby parks exists). In addition, the proposed Bailey Brook Park addresses all of the needs and values identified by the designated categories of the PARC grant program rating system as listed and described below:

Disadvantaged Populations and Accessible Amenities

The project is located within close proximity to an Environmental Justice (EJ) area and directly within a Designated Title VI Elderly Population Area (**See Maps: USGS Proximity Map and FHWA Title VI Map**). The park will serve the elderly population of the area and community and, as a public multipurpose park, will also serve the broader community, including EJ Areas and their populations. While the project is not located directly within an EJ Area, it *is* located within a Title VI Designated Population (Elderly) area and will directly serve the public of the community, including EJ Areas and other Title VI Designated Population Areas (**See Map: FHWA Title VI Map**), by providing future active recreation amenities (public athletic fields) and access to nature and a unique type of park, one that

This proposed park will continue to develop and benefit from cooperative partnerships between the City and recreational user groups and organizations and non-profit Land Trusts (e.g., Mount Grace Land Trust and North County Land Trust). The Conservation Commission and Department of Public Works will build upon and enhance existing land stewardship activities and partnerships. Successful examples of these partnerships can be found in other examples of joint land stewardship activities between the Conservation Commission, Department of Public Works, Engineering and Forestry Department, the Cultural Council, Youth Commission, youth sports groups, and local land trust. For example, the Conservation Commission and Department of Public Works have worked closely with the Millers River Watershed Council, Mount Grace Land Trust, and North County Land Trust on trail-related projects such as the Millers River Blue Trail and hiking bridges and signage for along City trails. In the past few years alone Gardner Boyscout Troop 9 has conducted several public service projects within Gardner's Open Space lands and public parks. With specific regard to this proposed project, the Chair City Soccer Club has expressed their support and willingness to provide stewardship, host athletic events, and maintain and upkeep the park's proposed athletic fields in the future.

Community Compact and MVP Program

The City of Gardner was an early adopter of the Community Compact Agreement and was the second community in the Commonwealth to sign a compact with the Governor's Office. While our Community Compact commitment is focused on public safety and transportation improvements, we have dedicated substantial resources and focus, and made substantial investments and recent improvements, in Conservation, Open Space, Recreation, Trails, Forest Stewardship, Recreational Trail Improvements, Parks and Playgrounds, Sustainability, Flood Control, and Climate Change Resiliency. For example, recent efforts under the Mass DOT Complete Streets Program to develop a Complete Streets Prioritization Plan have focused on connectivity of trails (including the North Central Pathway Bike trail) between Conservation, Recreation, and Public Service Areas. Such connections serve to enhance public safety, health & well-being, and a connection to the natural environment through open space recreation.

In 2019, the City of Gardner successfully applied for and was awarded grant funding through the Massachusetts Municipal Vulnerability Preparedness Program to identify and assess our community vulnerabilities (and strengths) related to climate change and to develop a Climate Change Resiliency Plan. We look forward to developing our MVP Plan and continuing our efforts to identify, address, and reduce potential vulnerabilities and increase our preparedness and resiliency to future change. A component of our MVP Planning will assess urban tree canopy in City Parks and will include considerations on how the Bailey Brook Park can incorporate LID and achieve sustainability and resiliency targets and goals. The proposed Bailey Brook Open Space Park is directly in line with those goals and will be a large part of our future community efforts toward addressing climate change and promoting sustainable and wise use of our land and resources by our citizens of all ages, backgrounds, and abilities. The park has the potential to serve as a model of both cultural and natural diversity that can exist in a forested, open space, multipurpose, community and regional park.

27

CITY of GARDNER

Office of the City Auditor
John Richard, City Auditor
95 Pleasant Street, Room 126
Gardner, MA 01440
Phone: 978-632-1900 ext. 8020 • Fax: 978-630-3778
Email: jrichard@gardner-ma.gov

To: City Council

Re: Money Orders for consideration on February 12, 2020

Listed below are balances in various ledger accounts that pertain to Money Order transfers for your consideration.

These balances are as of February 4, 2020:

		Money Order	Balance
Free Cash	10000-35400		$1,543,995.00
to Conservation Dept for PARC Bailey Brook Capital Project	38182-58651	175,000.00	$1,368,995.00
			$1,368,995.00

The Snow & Ice account currently has available ($71,401.93)
14421-52210

Sincerely

John Richard

John Richard
City Auditor

copies: Acting Mayor
City Clerk

(10237) 4-1

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

§ 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.

6-1 & 6-2

RECEIVED
2020 JAN 28 PM 12: 00
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

January 28, 2020

Finance Committee
Gardner City Council
City of Gardner
95 Pleasant Street
Gardner, MA 01440

Re: City of Gardner and Heywood Memorial Hospital

Dear Committee Members:

I am writing to summarize the conclusions set forth in a detailed letter to the Mayor in September of 2019 regarding the lengthy history of a lease arrangement between the City and Heywood Memorial Hospital (the hospital). At that time, the Mayor wanted 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.

After an extensive review of the many documents recited in that letter, I advised the Mayor that, in my opinion, the hospital is currently occupying land that is not included in the current version of the Lease.

Under the original 1968 lease, the hospital leased two parcels of City owned land; one consisting of (8.02 acres) located on the north side of the hospital and another consisting of 1.40 acres located on the south side of the hospital. A series of amendments to the original lease were negotiated and agreed to by and between the parties over the years.

In 1998, the City sold three (3) parcels of land to the hospital. The land sold included all of the 1.40 acre parcel referenced in the original 1968 Lease and other City owned land. The hospital's recent suggestion that the description of the leased land in the 1998 Amendment reducing its leasehold to 2.16 acres was in error and is not supported by the documents or the record of the 1998 transactions. In fact, the hospital's own Resolution, set forth in its Clerk's Certificate of the vote for the hospital's acquisition of the City owned parcels 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...." (emphasis supplied). The leasehold interest released to the City was a portion of the 8.02 acre parcel. The 1998 Amendment specifies that the reduced size of the original 8.02 acre parcel would continue to be leased by the hospital and "will thereafter contain **2.16 acres.**" (emphasis added). The hospital's own records support the conclusion that the acreage released to the City and the acreage that would continue to be leased (5.86 + 2.16) equaled the entirety of the original 8.02 acre parcel. I have been

unable to reconcile the hospital's current 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.

Regardless, the occupation of City-owned land not governed by the lease may be remedied on terms agreed to by and between the parties. A proposed amendment to remedy the matter between the City and the hospital (the Eight Amendment) is enclosed.

The situation is complicated by the rights of a third party, Massachusetts Electric Company (MEC). This public utility holds an easement over a portion of the land currently being occupied by the hospital and not subject to the lease. The hospital was informed of this easement in 1973 and assented to it (see Book 5396, Page 228 in the Worcester County Registry of Deeds; Plan Book 389, Page 38). The hospital was reportedly reminded by MEC of the easement's location during the planning phase for construction of its new parking facility. Nevertheless, the construction and resulting facility encroaches on MEC's easement.

To avoid more costly remedies, MEC has agreed to relocate its easement, and developed and provided to the City a complete package of documents to reflect this relocation.

The proposed Easement Relocation Agreement with MEC requires the City to pay all of MEC's relocation costs, and it includes an estimate of less than $2,000.00 for these costs. The proposed Agreement also requires the City to guarantee payment for any and all costs, known or unknown, associated with the relocation. I am in the process of seeking some modifications to this proposed Agreement.

To advance this matter, with your approval, I would like to contact the hospital and identify an individual with whom I may correspond regarding the situation, with an eye towards negotiating a payment or reimbursement agreement with the hospital for any financial obligations the City may have under the final Easement Relocation Agreement with MEC.

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
Enclosure

EIGHTH AMENDMENT TO LEASE

THIS EIGHTH AMENDMENT TO LEASE made this _____ day of _____, 2020, 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 Acting Mayor, as Mayor and as successor to the rights, privileges, duties and liabilities of the CITY OF GARDNER'S former Public Works Board and its Director of Public Works (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, recorded in said Registry in Book 22705 Page 320 (Fifth Amendment to Lease), 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, 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 50/100 (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°21'45"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°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.

See Vote of the City Council attached hereto as Exhibit A.

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

CITY OF GARDNER

_____

By: James M. Walsh, Esq., Acting Mayor

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, James M. Walsh, Esq., Acting 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:

6-2

RECEIVED
2019 NOV -8 AM 11:39
CITY CLERK

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

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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