

**CITY OF GARDNER, MASSACHUSETTS  
CITY COUNCIL FINANCE COMMITTEE MEETING  
Wednesday – March 11, 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 February 12, 2020 Regular Meeting Minutes.
  
- 2-1 #10250, An Order Appropriating \$52,788.00 from Free Cash to FY2019 Firefighters Salary and Wages Account *(In City Council and Referred to Finance, 3/2/2020).*
  
- 2-2 #10251, An Order Appropriating \$54,818.67 from Free Cash to the Firefighters Salary and Wages Account *(In City Council and Referred to Finance, 3/2/2020).*
  
- 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 FEBRUARY 12, 2020

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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 Assistant Director of Community Development and Planning Jeffrey Legros; Conservation Agent Lyndsy Butler; City Treasurer Jennifer Dymek; 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 January 29, 2020 Regular Meeting, as printed.

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

Assistant Director Jeffrey Legros informed the Committee that the appropriation represents the City's share (30%) for the design of Phase I of Bailey Brook Park and that the design must be completed and invoiced by June 1, 2020 to qualify for reimbursement from the PARC grant. Fuss & O'Neill will be the designers and that site work will commence after July 1.

President Walsh noted that the City was authorized to receive \$589,000 in project reimbursable grant funds and that the former Mayor designated \$190,000 in his Free Cash expense plan before he left office.

Councillor Ronald Cormier suggested that the appropriation "meets the required essence of time" for action.

President Walsh agreed, saying that he would file a memorandum with the Order, expressing an urgency to complete the design.

Mr. Legros said that there will be a public meeting scheduled for residents and officials to offer comment on the design phase of the project.

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

CITY OF GARDNER, MASSACHUSETTS  
CITY COUNCIL FINANCE COMMITTEE  
MINUTES OF MEETING OF FEBRUARY 12, 2020

---

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

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

**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.**

President Walsh noted that both Ordinance amendments were proposed by the former Mayor, through the Human Resources Director, immediately prior to leaving office.

Councillor Ronald Cormier added that both Measures (4-2 and 4-2) require amendments to existing Ordinances and that the Committee should recommend that both be returned to the Executive Department so that the new Mayor can properly address them as part of the next Budget.

President Walsh added that they are policy matters and were presented by the former Mayor to the Council at the last minute.

On a motion by Councillor Ronald Cormier and seconded by Councillor Elizabeth Kazinskas, it was voted to recommend to the City Council that the following Ordinance be returned to the Executive Department.

**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 that the following Ordinance be returned to the Executive Department.

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

The Committee postponed action until Attorney Phillips completes her 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 action until Attorney Phillips completes her research.

**ADJOURNMENT**

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

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

ORDERED:

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

10250-10251

# City of Gardner, *Executive Department*



RECEIVED

James M. Walsh, Acting Mayor

2020 FEB 26 PH 2: 57

CITY CLERK'S OFFICE  
GARDNER, MA

February 26, 2020

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

**RE: *Firefighters Contract Funding***

Dear Council Members,

With this correspondence, I am submitting a money order in the amount of \$107,607.00 from Free Cash to fund the recently negotiated contract between the City and the Firefighter's Union through June 30, 2020. Also included is correspondence from the City Auditor identifying the specific amount necessary to fund the contract.

This contract was negotiated and entered into in mid-December. I have asked the City's negotiating team, which included the City Solicitor and the Human Resources Director, to provide me with additional information about the negotiations that led to the contract as well as legal and factual justification which would authorize me, as Acting Mayor, to finalize the deal. I have also enclosed a copy of my correspondence to the team requesting that information.

Until such time I receive that additional information and am satisfied of my authority to act further, I recommend that the money order be referred to the Finance Committee.

Please feel free to contact me, if you have further questions about this topic.

Very truly yours,

James M. Walsh  
Acting Mayor

**Mayor**

---

**From:** John Richard  
**Sent:** Wednesday, February 19, 2020 3:13 PM  
**To:** Mayor  
**Subject:** RE: Funding for Firefighters Contract

Hi Jim

Here is the total estimated funding amount needed to satisfy the Firefighters contract. This amount includes the pay increase from now until 6/30/20.

<b>ACTUAL FY19 RETRO</b>	<b>FY20 ESTIMATE RETRO AND REMAINDER OF YR AMT</b>	<b>TOTAL</b>
<b>\$ 52,788.33</b>	<b>\$ 54,818.65</b>	<b>\$107,606.98</b>

I will be out of the office the next two days. We can discuss this further on Monday on the game plan.

Thank you

JR

**Rachel Stephano (Mayor's Office)**

---

**From:** John Flick <jflick@flicklawgroup.com>  
**Sent:** Wednesday, February 26, 2020 1:17 PM  
**To:** Mayor  
**Subject:** Firefighters July 1, 2018 to June 30, 2021 Contract

Acting Mayor Walsh,

In light of the legal issues pertaining to the MOA negotiated in December 2019 and the resulting Collective Bargaining Agreement (CBA) with the Firefighters, and now that the amount of the supplemental appropriation needed to fund the CBA is known, the Law Department recommends that a money order be submitted to the City Council for consideration at its March 2, 2020 meeting. Specifically, the City is required by M.G.L. c. 150E, sec. 7 to submit a money order to the appropriate legislative body for consideration of any appropriation needed to fund the contract within thirty (30) days of the execution of the agreement. Whereas the Agreement was signed by the Union on February 20, 2020, and in order to comply with M.G.L. c. 150E, it is appropriate to submit the required money order at this time.

Regards,  
John Flick

\*\*\*\*\*

John M. Flick, Esq., City Solicitor  
City of Gardner Law Department  
144 Central Street, Suite 201  
Gardner, MA 01440  
978-632-7948, Ext. 301 Voice  
978-630-3703 Fax

\*\*\*\*\*

**WIRE FRAUD ALERT:** If you receive an e-mail from this office requesting that you wire or otherwise transfer funds, you must confirm the request and any corresponding instructions by telephone with this office before you initiate any transfer.

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# City of Gardner, *Executive Department*



James M. Walsh, Acting Mayor

February 24, 2020

Attorney John Flick, City Solicitor &  
Debra Pond, Director of Personnel  
144 Central Street  
Gardner, MA 01440

Good Morning,

I have been asked, as Acting Mayor, to sign off on the recently negotiated contract with the Firefighters Union. Since I have not been involved with negotiating that contract and am limited in my authority, I ask that you provide me with the following:

1. As I understand it, the proposed contract covers the period from July 1, 2018 through June 30, 2021. Please provide me with a history of contract negotiations. Please also include a summary of any material changes from the existing contract, and of any state agency involvement and the binding effect, if any, of that involvement. I'd also appreciate a listing of all participants in each negotiating team.
2. As you know, as Acting Mayor, my authority is limited to matters "not admitting of delay". Please provide any factual basis which would justify my execution of this contract rather than deferring it to evaluation and consideration by the newly elected Mayor in mid-May 2020.

Depending on the content of your reply, I may have additional questions.

Thank you for your prompt consideration of this request.

Very truly yours,

James M. Walsh  
Acting Mayor

JMW/rjs

cc: John Richard

10250-10251



**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 March 02, 2020

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

These balances are as of February 27, 2020:

		<u>Money Order</u>	<u>Balance</u>
Free Cash	10000-35400		\$1,368,995.00
to Fire Dept for Contract Renewal Retro Pay FY19	12220-510**	52,788.33	\$1,316,206.67
to Fire Dept for Contract Renewal Retro Pay FY20	12220-510**	54,818.67	\$1,261,388.00

The Snow & Ice account currently has available (\$189,818.22)  
14421-52210

Sincerely

John Richard  
City Auditor

copies: Acting Mayor  
City Clerk

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

ORDERED:

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10250-10251

# City of Gardner, *Executive Department*

RECEIVED



James M. Walsh, Acting Mayor

2020 FEB 26 PM 2: 57

CITY CLERK'S OFFICE  
GARDNER, MA

February 26, 2020

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# City of Gardner, *Executive Department*



James M. Walsh, Acting Mayor

February 24, 2020

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Debra Pond, Director of Personnel  
144 Central Street  
Gardner, MA 01440

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James M. Walsh  
Acting Mayor

JMW/rjs

cc: John Richard

10250-10251



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14421-52210

Sincerely

John Richard  
City Auditor

copies: Acting Mayor  
City Clerk

Ref: 6-1 E 6-2

RECEIVED

2020 FEB 10 AM 10:17

CITY CLERK'S OFFICE  
GARDNER, MA

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

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

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

February 7, 2020

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

Re: Green Street Parking Lot Land Lease

Dear Mr. Brown:

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

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

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

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

Very truly yours,

*C. Deborah Phillips / ST*

C. Deborah Phillips

CDP/st

cc: Acting Mayor

RECEIVED  
FEB 10  
By \_\_\_\_\_

6-1 : 6-2

RECEIVED

NICKLESS, PHILLIPS AND O'CONNOR

ATTORNEYS AT LAW  
625 MAIN STREET

FITCHBURG, MASSACHUSETTS 01420

2020 JAN 28 PM 12: 00

CITY CLERK'S OFFICE  
GARDNER, MA

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

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 corner of land now or formerly of Henry Heywood Memorial Hospital;

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

THENCE Northerly over land of the City of Gardner along a curve concave to the east having a radius of eight hundred twelve and 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

**EASEMENT RELOCATION AGREEMENT**

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

**RECITALS:**

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

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

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

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

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

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

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

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

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

### SECTION I - RELOCATION AGREEMENT

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

### SECTION 2 - COSTS AND EXPENSES; PAYMENT

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

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

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

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

### SECTION 3 - CONDITIONS TO MEC'S OBLIGATIONS

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

### SECTION 4 - PARTIAL RELEASE OF EASEMENT RIGHTS

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

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

### SECTION 5 - DEFAULT

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

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

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

#### SECTION 6-MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

**MASSACHUSETTS ELECTRIC COMPANY**

By: \_\_\_\_\_  
Title:  
Name:

**CITY OF GARDNER**

By: \_\_\_\_\_  
Name:  
Title:

Mayor RECEIVED

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

Debbie,

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

If you need anything else just let me know.

Thanks,

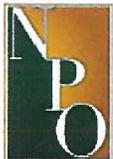
-Chris

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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 5<sup>th</sup> page of this PDF-its page 2 of their proposed amendment. If you can check those for accuracy, it would be great as well. Thanks again. Debbie



**NICKLESS,  
PHILLIPS  
and O'CONNOR**

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