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).*

2-3 An Order Appropriating $6,754.00 from Free Cash to Airport Professional Services.

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 FEBRUARY 12, 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 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:

UNACCEPTED/UNCORRECTED PROOF

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.

UNACCEPTED/UNCORRECTED PROOF

/0250

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*

James M. Walsh, Acting Mayor

RECEIVED
2020 FEB 26 PM 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

James M. Walsh
Acting Mayor

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

10250-10251

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.

ACTUAL FY19 RETRO	FY20 ESTIMATE RETRO AND REMAINDER OF YR AMT	TOTAL
$ 52,788.33	$ 54,818.65	$107,606.98

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

10250-10251

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.

United States Internal Revenue Service (IRS) Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that, unless and to the extent we otherwise state, any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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10250-10251

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

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

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:

		Money Order	Balance
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

10251

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

ORDERED:

That there be and is hereby appropriated the sum of Fifty-four Thousand Eight Hundred Eighteen and 67/100 ($54,818.67) from Free Cash to the Firefighters Salary and Wages Account.

10250-10251

City of Gardner, *Executive Department*

James M. Walsh, Acting Mayor

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2020 FEB 26 PM 2:57
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GARDNER, MA

February 26, 2020

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Very truly yours,

James M. Walsh

James M. Walsh
Acting Mayor

City Hall, 95 Pleasant Street, Room 125, Gardner, Massachusetts 01440
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Thank you

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Regards,
John Flick

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John M. Flick, Esq., City Solicitor
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/0250-10251

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

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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

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

10250-10251

CITY of GARDNER

Office of the City Auditor

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To: City Council

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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 AIRPORT PROFESSIONAL SERVICES.

ORDERED:

That there be and is hereby appropriated the sum of Six Thousand Seven Hundred Fifty-four and No Cents ($6,754.00) from Free Cash to Airport Professional Services.

2-3

City of Gardner, *Executive Department*

James M. Walsh, Acting Mayor

RECEIVED
2020 MAR -9 AM 11:48
CITY CLERK'S OFFICE
GARDNER, MA

March 9, 2020

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

RE: Airport Project Appropriation

Dear Councilors,

I am enclosing an Order appropriating $6,754.00, from Free Cash to the Airport Professional Services Account.

This is an additional amount necessary to secure grant funding from both the Federal and State governments to construct a six unit T-hangar to be owned by the City of Gardner at the airport. As you can see from the enclosed documentation, the sum of $45,025 has already been appropriated for this project. The additional amount is necessary to complete the City's share of 3.3% of the total project cost. This amount may not need to be spent if the FAA grant is amended at the end of the project.

The state's share of this project needs to be spent by June 30, 2020. The full amount of the City's share needs to be in place. As a result, I believe that the submission of this appropriation is a matter not admitting of delay.

Very truly yours,

James M. Walsh

James M. Walsh
Acting Mayor

Enclosures

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

GDM

Gardner Municipal Airport

2-3

March 5, 2020

Mr. James Walsh
Acting Mayor
95 Pleasant Street, Room 125
Gardner, MA 01440

Re: Construct T-Hangars – Gardner Municipal Airport – Gardner, Massachusetts – AIP No. 3-25-0020-016-2018 – Project Funding Request

Dear Mr. Walsh:

In Federal Fiscal Year (FFY) 2019, the Gardner Municipal Airport accepted grant funding from the FAA through the Airport Improvement Program (AIP) to construct a pre-fabricated, 6-unit T-Hangar to be owned by the City of Gardner. At the time this project was programmed, the Airport was eligible to receive up to $810,450.00 in federal funds (This would make up 90% of the funding for the Project). The State and Local share of the project costs make up the final 10% of the funding (5% from the Massachusetts Dept. of Transportation, and 5% from the City of Gardner).

Upon review of the bids submitted, it was determined that a budget shortfall of approximately $712,271.00 would prohibit award of this Contract. The Airport's Consultant, Gale Associates, Inc. has advocated for the City of Gardner to receive the additional funding for the Project from MassDOT and FAA, the result of which has been summarized in the table below:

4. PROJECT FUNDING BREAKDOWN			
	FAA ELIGIBLE WORK	INELIGIBLE WORK	TOTAL
FAA SHARE	$932,017.50		$932,017.50
STATE SHARE	$51,778.75	$532,171.00	$583,949.75
LOCAL SHARE	$51,778.75		$51,178.75
TOTAL PROJECT COST	$1,035,575.00	$532,171.00	$1,567,746.00

The information in this table suggests that the City of Gardner can leverage over $1.5M in funding for a local contribution of $51,778.75. It should be noted that the City of Gardner has already appropriated a sum of $45,025.00 for the original grant.

The intent of this letter is to respectfully request that the City of Gardner appropriate an additional amount totaling $6,753.00 to secure over $532,000 in state funding that is needed to complete this very important project. If approved, the City of Gardner will obtain a unit of hangars expected to generate approximately $20,000 of revenue for the Airport annually, while paying approximately 3.3% ("$0.03 on the dollar) for this Project.

Airport Commission
City Hall, Room 226 | 95 Pleasant Street | Gardner, MA 01440
KENNETH BONK, Chairman
JOHN LAVOIE
PHIL MORRISEY
ANDREW GUERTIN
JIM MORRISSEY

Airport Manager
KEVIN McCOLE

GDM

Gardner Municipal Airport

In order to obtain this additional funding through MassDOT, there is a requirement that the funding be spent by June 30th, 2020 (which is the end of the State's fiscal year) or the funding will be lost. your expeditious review and approval of this letter would be greatly appreciated.

Very truly yours,

Ken Bonk

Ken Bonk
Chairman, Gardner Airport Commission

cc: Nikolas A. Ippolito, P.E. – Gale Associates, Inc.
File

2-3

Mayor

From: Joshua Cormier
Sent: Monday, March 9, 2020 8:35 AM
To: Mayor; John Richard; Bonk, Kenneth
Subject: FW: GDM - T-Hangar Project

Gentlemen

I am forwarding this information that I received from Owen at MassDOT Aeronautics. This relates to the T-Hangar project and the request for additional funds.

Thank you.

Joshua L. Cormier
Purchasing Director
City Hall
95 Pleasant Street, Room 217
Gardner, MA 01440
Phone: 978-632-1900, ext. 8054

From: Silbaugh, Owen (DOT) <owen.silbaugh@state.ma.us>
Sent: Friday, March 6, 2020 2:58 PM
To: Joshua Cormier <jcormier@gardner-ma.gov>
Cc: Mahoney, Thomas (DOT) <thomas.mahoney@state.ma.us>
Subject: GDM - T-Hangar Project

Hey Josh,

Thanks for discussing this project with us today.

Here is a high-level overview. We can set up a call to fill-in the details when/if appropriate and needed.

The following table will help guide the following points below:

	FAA	15% of FAA	STATE	TOTAL
FAA	$ 810,450.00	$ 121,567.50		$ 932,017.50
STATE	$ 45,025.00	$ 6,753.75	$ 532,171.00	$ 583,949.75
GARDNER	$ 45,025.00	$ 6,753.75	$ -	$ 51,778.75
OVERALL TOTALS	$ 900,500.00	$ 135,075.00	$ 532,171.00	$ 1,567,746.00

1. "TOTAL" Column: The TOTAL Project cost is $1,567,746.00.
    a. FAA Share of TOTAL Project = 59.45%

b. State Share of TOTAL Project = 37.25%
c. Gardner Share of TOTAL Project = 3.30% - i.e. **3.3 cents on the dollar**

2. "FAA" Column: FAA issued a grant in 2018 for $900,500.00 with a funding split of 90% FAA / 5% State / 5% Local
   a. MassDOT issued a separate grant in 2019 to rebid the project to remove the complex drainage system and replace it was porous pavement (none of this cost is in the above table).
3. "15% of FAA" Column: The FAA allows their grant to be amended up to 15%.
   a. This money can be applied through an FAA grant amendment at the end of the project at the time of closeout.
   b. This can be funded in one of two ways:
      i. From money left over from other FAA projects in the New England Region
      ii. From money the FAA allots to the Airport each year (called non-primary entitlement or NPE)
   c. This amount would need to be carried by the Town until the FAA funds the grant amendment
4. "STATE" Column: This amount is the additional amount MassDOT is offering in a grant but it needs to be spent on or before June 30th, 2020 (SFY 2020).

Thanks,
Owen

Owen K. Silbaugh, Jr., PE | MassDOT Aeronautics Division
Senior Project Manager
Logan Office Center | One Harborside Drive | East Boston, MA 02128
Direct: 617-412-3689 | Cell: 412-491-6936

Ref: 6-1 & 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 [illegible]

Very truly yours,

C. Deborah Phillips /ST

C. Deborah Phillips

CDP/st

cc: Acting Mayor

RECEIVED
F: 10
By

6-1 & 6-2

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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
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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

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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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