PRESIDENT
Elizabeth J. Kazinskas

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

WARD 1 COUNCILLOR
James M. Walsh, Esq.

WARD 2 COUNCILLOR
Elizabeth J. Kazinskas

WARD 3 COUNCILLOR
Nathan R. Boudreau

WARD 4 COUNCILLOR
Karen G. Hardern

WARD 5 COUNCILLOR
Alek Dernalowicz, Esq.

CITY OF GARDNER
MASSACHUSETTS 01440-2630

RECEIVED
2020 APR 27 AM 10: 53
CITY CLERK'S OFFICE
GARDNER, MA

OFFICE OF THE
CITY COUNCIL

April 27, 2020

FINANCE COMMITTEE MEETING NOTICE

Date: Wednesday, April 29, 2020
Time: 12:00 P.M.
Location: Remotely*

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

SCHEDULE OF BUSINESS
(Agenda attached)

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

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

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

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

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE MEETING
Wednesday – April 29, 2020 – 12:00 PM
Remotely

RECEIVED
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CITY CLERK'S OFFICE
GARDNER, MA

AGENDA

CALL TO ORDER

ANNOUNCEMENT OF OPEN MEETING RECORDINGS

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

1-1 Review and Approval of the April 15, 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).*

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

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 APRIL 15, 2020

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

Others participating were City Treasurer Jennifer Dymek; City Auditor John Richard; and, City Clerk Alan Agnelli.

President Kazinskas announced that the meeting is being recorded and that the recording would be posted on the City's website.

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

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, on call of the roll, it was voted to approve the Minutes of the April 1, 2020 Regular Meeting, as printed.

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

President Kazinskas informed the Committee that she spoke with City Solicitor John Flick and was advised that the Law Department has been consulting with the Law Firm of Mirick O'Connell for an outside legal opinion, as well as his continuing dialogue with the Firefighter's Union legal counsel. She suggested that the Committee request the Council for more time.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on call of the roll, it was voted to seek more time on the following Order:

> AN ORDER APPROPRIATING FROM FREE CASH TO FIREFIGHTERS SALARY AND WAGES FY2019 ACCOUNT.
>
> ORDER: That there be and is hereby appropriated the sum of Fifty-Fifty-two Thousand Seven Hundred Eighty-eight and 33/100 ($52,788.33) from Free Cash to the Fiscal 2019 Firefighters Salary and Wages Account.

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

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on call of the roll, it was voted to seek more time on the following Order:

4-1 A Measure Adopting Various Provisions of Chapter 53 of the Acts of 2020.

President Kazinskas informed the Committee that she received an updated letter from City Solicitor John Flick as a result of a new directive from the Division of Local Services that was received that morning. She said that the new documents will be provided to the Council. The letter, she said, provides observations of certain sections of *Chapter 53 of the Acts of 2020* and provides guidance that states that no legal action by the City Council is required at this time, other than an endorsement.

UNACCEPTED/UNCORRECTED PROOF

Councillor James Walsh informed the Committee that he questioned whether the Act provided for "local option" that requires acceptance, particularly Sections 10 and 11. He said that the April 3, 2020 Bulletin from DLS indicated that these were local option provisions that would require local acceptance by those communities that chose to implement them. As he looked at it, he said, the language in the Act wasn't clear, so he submitted correspondence to DLS seeking clarification and was advised that there would be further guidance from DLS.

President Kazinskas said that she just received updated guidance from DLS, dated April 15, which advises that the legislation is not local option, as determined by the City Solicitor. He advised her to seek the endorsement by the Council.

Councillor Walsh stated that the language provides that the authority to implement the actions is within the Chief Executive Officer of the city or town and does not require local acceptance; however, he believes that the endorsement of the Council is a wise and prudent thing to do. He asked the City Treasurer to outline the process for waiving interest and penalties on taxes.

City Treasurer Jennifer Dymek stated that under Section 10, real estate taxes that are currently due for May 1 would be extended to June 1. She estimated that 75% to 80% of real estate taxes would be paid by mortgage companies through escrow holdings, so that there would not be a huge delay on cash inflow; however, some banks may delay payments until June 1.

Continuing, Ms. Dymek stated that Section 11 relates to interest earned on late payments for water, sewer, and trash accounts, which Munis (accounting system) can be modified to suspend late penalties for various due dates.

On questioning by Councillor Walsh, Ms. Dymek informed the Committee that the provisions of Section 11 (waiver of fees and penalties) applies to the 4th Quarter real estate tax payments due on or after March 10. If payments were made in the first three quarters or for prior years, she said, then interest and fees would be collected. She added that at the State level, they want bills to be paid by June 30, but the "look-back date" on interest and penalties is unclear at this time.

Councillor Walsh asked whether the Committee has matters to recommend for Endorsement.

President Kazinskas outlined the three sections of Chapter 53 that the Council would be asked to endorse.

Councilor Walsh inquired about modifying the Measure to change the Council's action from acceptance to endorsement.

UNACCEPTED/UNCORRECTED PROOF

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on call of the roll, it was voted to endorse the three provisions, as follows:

ENDORSING VARIOUS PROVISIONS OF
CHAPTER 53 OF THE ACTS OF 2020

VOTE: Part I. That the City of Gardner hereby endorses Section 10(a)(i-iii) of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to extend the due dates of property tax bills from May 1, 2020 to no later than June 1, 2020.

Part II. That the City of Gardner hereby endorses Section 10(a)(iv) of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to extend the due date for exemptions filed in accordance with M.G.L. c. 59, sec. 59 from April 1, 2020 to no later than June 1, 2020.

Part III. That the City of Gardner hereby endorses Section 11 of Chapter 53 of the Acts of 2020 which authorizes the City, through its Chief Executive Officer, to waive interest and other penalties for late payments of any excise, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to a tax for any payments with a due date on or after March 10, 2020 where payment is made after its respective due date but before June 30, 2020.

5-1 **A Measure Discontinuing Use of AccuVote ES2000 Optical Scan Tabulators and Implementing use of ImageCast® Precinct Optical Tabulators, effective for the September 1, 2020 State Primary.**

President Kazinskas outlined the process for implementing the use of new ballot tabulators.

Councillor Walsh questioned whether funds were appropriated for the new tabulators.

The City Clerk confirmed that the City Council appropriated $70,000 on November 18, 2019 and that the items are tabulators, not voting machines (tabulators record the votes). He cited advanced features of the new tabulators and cited their use by many communities in Massachusetts.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, on call of the roll, it was voted to recommend to the City Council to discontinue use of the AccuVote ES2000 Optical Scan Tabulators and to implement use of the ImageCast® Precinct Optical (ICP) Tabulators in all precincts, effective for the September 1, 2020 State Primary and for the all elections thereafter, in accordance with M.G.L. Chapter 54, Section 34.

UNACCEPTED/UNCORRECTED PROOF

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).***
President Kazinskas informed the Committee that she spoke with Atty. Deborah Phillips who advised that Heywood Hospital agreed to pay all fees due National Grid. She added that Atty. Phillips and Heywood Hospital have not been able to reach the real estate contact person at National Grid.

Councillor Walsh added that both matters are only before the Finance Committee.

The Committee postponed action until Attorney Phillips completes her research.

NEW BUSINESS

A Communication from the Greater Gardner Chamber of Commerce Relative to Resources for Business Owners and Managers During COVID-19.
President Kazinskas cited a letter from the Greater Gardner Chamber of Commerce informing the City Council of available assistance to local businesses during the COVID-19 pandemic.

ADJOURNMENT

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on call of the roll, it was voted to adjourn at 12:27 p.m.

UNACCEPTED/UNCORRECTED PROOF

10250

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.

2-1 & 2-2

CITY OF GARDNER
LAW DEPARTMENT

John M. Flick
City Solicitor

Priya Gandbhir
Assistant City Solicitor

144 Central Street, Suite 201
Gardner, MA 01440

Telephone (978) 632-7948
Fax (978) 630-3703

Writer's Email:

April 27, 2020

RECEIVED
2020 APR 27 AM 11:01
CITY CLERK'S OFFICE
GARDNER, MA

VIA ELECTRONIC MAIL
AND HAND DELIVERY

Elizabeth Kazinskas, Acting Mayor
City of Gardner
95 Pleasant Street
Gardner, MA 01440

Re: Firefighter Contract

Dear Acting Mayor Kazinskas:

I am writing to provide you with an update regarding the status of the Collective Bargaining Agreement (the "CBA") with the City of Gardner Firefighters, Local 2215. As you know, former Acting Mayor Walsh submitted a money order to the City Council seeking an appropriation to fund the CBA between the Firefighters and the City. At the time he submitted the funding, the CBA had not been signed by the Mayor or Acting Mayor. However, the City had entered into a memorandum of agreement (the "MOA") with the Firefighters on December 16, 2019 prior to Mayor Hawke's resignation. This MOA had been approved by Mayor Hawke and was signed by me as the duly authorized bargaining agent for the City.

Due, in part, to the timing of the execution of the MOA, which occurred on the same day as the last City Council meeting of 2019, and before the swearing in of the new City Council on January 6, 2020, the City did not seek an appropriation to fund the MOA prior to Mayor Hawke's resignation on January 21, 2020. As a result, the Firefighters filed an Unfair Labor Practice (the "ULP") charge against the City with the Commonwealth of Massachusetts Labor Relations Commission. The basis of the ULP is that the City is in violation of M.G.L. c. 150E, § 7 in that if failed to seek an appropriation within thirty days of the execution of the MOA. I am scheduled to appear at an investigative conference on May 28, 2020. In addition, at the direction of Active Mayor Walsh, the Law Department filed a Complaint in Superior Court seeking a declaratory judgment. The question presented in the Complaint for Declaratory Judgment concerns the authority of an active mayor to sign a collective bargaining agreement, specifically the CBA between the City and the Firefighters. I must stress that this is not a lawsuit against the City's Firefighters. The Firefighters union was named as an interested party as the question presented concerns their CBA. Therefore, they are an interested party.

It is my understanding that the Council has not yet voted on the appropriation pending the outcome of the Declaratory Judgment action. The Law Department and the Union's legal counsel

have continued to discuss this situation as any resolution to the Declaratory Judgment action may be months, if not years away. To that end, the Union requested that the City obtain an outside legal opinion regarding the authority of the acting mayor to sign the CBA.

As we discussed, the Law Department sought an outside legal opinion from Attorney Kim Rozak at Mirick O'Connell. I have enclosed a copy of her opinion for your review. I am also awaiting a letter from former Mayor Mark Hawke providing the Council with additional information regarding the authorizations he gave to myself and Debra Pond, the City's Human Resources Director to conduct negotiations with the Firefighters through the end of 2019. I will provide a copy of that letter once it has been provided to me by former Mayor Hawke.

Based on the enclosed, and prior information provided to the Council by the Law Department, the Law Department recommends that you, as Acting Mayor, sign the CBA and that the Council proceed with its vote on the requested appropriation to fund the CBA so as to bring this matter to close.

Thank you for your attention to this matter. Please let me know if you have any additional questions.

Very truly yours,

John M. Flick
City Solicitor

Enc.

Cc: Debra Pond, Dir. Human Resources

2-1 & 2-2

MIRICK O'CONNELL

ATTORNEYS AT LAW

Kimberly A. Rozak
Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477
krozak@mirickoconnell.com
t 508.860.1428
f 508.983.6294

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2020 APR 27 AM 11:01
CITY CLERK'S OFFICE
GARDNER, MA

April 20, 2020

VIA E-MAIL

John M. Flick, Esq., City Solicitor
City of Gardner
144 Central Street, Suite 201
Gardner, MA 01440

Re: Authority of Acting Mayor to Sign Firefighters Collective Bargaining Agreement

Dear Attorney Flick:

This letter is in response to your request for an opinion regarding the powers of the Acting Mayor. Specifically, you requested our opinion as to whether the Acting Mayor has the authority to sign the July 1, 2018 – June 30, 2021 integrated Collective Bargaining Agreement between the City of Gardner and the Gardner Firefighters Local 2215 ("integrated CBA").

The issue of whether the Acting Mayor has the authority to sign the integrated CBA depends on whether or not the City Council will hold to its longstanding past practice requiring that an integrated collective bargaining agreement be signed and that document be submitted to the City Council as the basis for a vote to determine whether the City Council will appropriate (or not) funding for the successor CBA.

On December 16, 2019, the City of Gardner ("City") reached an agreement with the Gardner Firefighters Local 2215 ("Union") on the terms of a successor collective bargaining agreement for the period of July 1, 2018 – June 30, 2021, and executed a Memorandum of Agreement ("MOA") memorializing those terms. The Union ratified the MOA on or about December 20, 2019.[1]

The City's Director of Human Resources prepared the integrated CBA, a draft of which was provided to the Union on January 17, 2020, and finalized on February 12, 2020.

On January 21, 2020, Mayor Mark Hawke resigned from office. The resignation occurred during the first eighteen months of his two-year term. The City has had an Acting

[1] For purposes of this opinion letter, I understand that you were designated by Mayor Hawke to act as the City's representative pursuant to M.G.L. c.150E, section 1, for purposes of dealing with the fire union at the time the terms of a successor agreement were reached on December 16, 2019.

Mayor since that time and will continue to have an Acting Mayor until the new Mayor is elected in June 2020.

The relevant language in Section 32 of the City's Charter bestows the following powers upon the Acting Mayor:

> If the Mayor is absent or unable from any cause temporarily to perform his duties, or if his office is vacant during the first eighteen months of his term, his duties shall be performed by the president of the city council. The person upon whom such duties shall devolve shall be called 'acting mayor', and he shall possess the powers of mayor only in matters not admitting of delay, but shall have no power to make permanent appointments.

With respect to all documents examined by us, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies or forms, and the legal capacity of all natural persons.

We have made such examination of Massachusetts laws as we have deemed relevant for purposes of this opinion letter, and we have not considered and express no opinion on the laws of any other state or jurisdiction. Our opinions are expressed only with respect to Massachusetts laws which are presently in effect.

Based upon the foregoing, we are of the opinion that:

1. <u>If the City Council holds to its longstanding past practice requiring that an integrated collective bargaining agreement be signed and submitted to the City Council as the basis for a vote to determine whether the City Council will appropriate (or not) funding for the CBA, then the Acting Mayor would have the authority to execute the integrated CBA based on the following analysis.</u>

Section 7(b) of Chapter 150E of the Massachusetts General Laws states, in relevant part, "The employer … shall submit to the appropriate legislative body within thirty days after the date on which the agreement is executed by the parties, a request for an appropriation necessary to fund the cost items contained therein …." Pursuant to Section 5 of the City Charter, the City Council is the legislative body.

Under Chapter 150E, employers and unions have a duty to bargain in good faith over the terms and conditions of collectively bargained agreements. Subsequent to reaching an agreement, the duty to bargain in good faith includes submitting it to the legislative body for funding within thirty (30) days of the execution of the agreement. Failure to bargain in good faith constitutes an unfair labor practice for which the public union in Massachusetts may

institute legal proceedings against the employer at the Massachusetts Department of Labor Relations.

There are numerous examples of conduct that violates the obligation to bargain in good faith. In the context of the City's current landscape relative to the fire union labor contract, where the City Council has not acted on the appropriation order before it because the integrated CBA is not signed by the City, the failure of the Acting Mayor to execute the negotiated collective bargaining agreement would likely constitute a violation of c.150E. Similarly, the City's apparent unwillingness to execute the negotiated collective bargaining agreement (even if due to concern over the Acting Mayor's authority to sign the document), and delay in doing so for several more months until a new Mayor is elected, compounds the c. 150E violation. To be clear, the fire union has already filed a charge of prohibited practice against the City, so legal proceedings are underway. However, taking immediate action to hold an appropriation vote may render the charge moot or otherwise serve as grounds for a request by the City for dismissal of the Union's charge.

Because the City is required by law to bargain in good faith with the fire union and because of the City's longstanding past practice that a signed, integrated CBA be submitted to support a request for appropriation, the Acting Mayor's execution of the CBA would constitute a matter not admitting of delay, which would allow the City Council to vote to determine if it will appropriate (or not) funding for the CBA. Thus, if the City Council maintains its past practice relative to voting on funding for a collectively bargained agreement, the Acting Mayor would have the authority to sign the CBA to permit a vote to take place.

2. Alternatively, if the City Council does not hold to its longstanding past practice requiring that an integrated collective bargaining agreement be signed and submitted to the City Council to support a vote to determine if it will appropriate (or not) funding for the CBA, then the Acting Mayor would not have the authority to execute the CBA based on the following analysis.

Without prejudice to the City's longstanding past practice, a signed, integrated collective bargaining agreement is not required before a legislative body can vote on whether to appropriate funds for a collectively bargained contract. The Massachusetts Department of Labor Relations ("DLR"), which is the state agency that enforces, in the first instance, the funding requirements under Section 7 of Chapter 150E, interprets the word "agreement" as used in that section to consist of the terms and conditions of the existing collective bargaining agreement as amended by the memorandum of agreement (MOA) reached through negotiations. While it is universally advisable to integrate the terms of the MOA into one document, i.e. the successor collective bargaining agreement, that step is not required to have a binding agreement between the parties.

The binding nature of the MOA is often evidenced by including language, similar to the language found in the current MOA between the City and fire union in this matter:

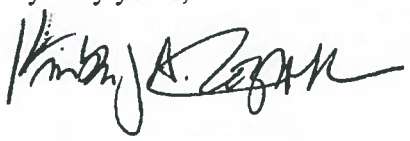
> By execution of this Agreement, the City of Gardner (the "City") and the Gardner Firefighters Local 2215 (the "Union") agree that all terms and conditions of the Union and City July 1, 2017 through June 30, 2018 Collective Bargaining Agreement as amended by the following shall remain in full effect for the duration as provided in both Paragraph one below and in Article XXXIV of the Collective Bargaining Agreement.

As a result, the requirement to submit an "agreement" for appropriation within thirty days of execution under Section 7(b) of Chapter 150E refers to the date the memorandum of agreement is signed by the parties. In other words, the MOA must be submitted to the appropriate legislative body within thirty days after the date on which it is signed by the parties. Thus, if the City Council is willing to forego its longstanding past practice requiring that an integrated CBA be signed and submitted to the City Council to support a vote and instead relies on the MOA for the basis for an appropriation vote, the Acting Mayor would have no authority to sign the CBA, because the MOA has already been fully executed by the City and the Union. Simply put, there would be no urgent or necessitous reason for the Acting Mayor to sign the integrated CBA, and thus no matter "admitting of delay" requiring any action on the part of the Acting Mayor. And more importantly, there would be no need for the integrated CBA to be signed at this time.

3. <u>Conclusion</u>

In the end, whether the Acting Mayor has the authority to sign the integrated CBA depends on whether the City Council will vote on the appropriation order to fund (or not) the successor contract based solely on the signed MOA.

Very truly yours,



Kimberly A. Rozak

SFM/KAR

2-1 & 2-

Alan Agnelli

RECEIVED

2020 APR 27 AM 11: 12

CITY CLERK'S OFFICE
GARDNER, MA

From:	John Flick <jflick@flicklawgroup.com>
Sent:	Monday, April 27, 2020 11:11 AM
To:	Elizabeth Kazinskas; Alan Agnelli
Cc:	Debra Pond
Subject:	GF Firefighters
Attachments:	GFD Authority.pdf

Acting Mayor Kazinskas,

Attached is the letter from Mark Hawke which I just received. I also wanted to advise you that I am in active discussions with the Union's legal counsel regarding a mutual withdrawal of both pending matter, the ULP and the Declaratory Judgment complaint should the requested appropriation be cleared for a vote. I will let you know of any developments.

Regards,
John

****

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

****

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2-1 & 2-2

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2020 APR 27 AM 11: 12
CITY CLERK'S OFFICE
GARDNER, MA

April 27, 2020

Elizabeth Kazinskas, Acting Mayor
City of Gardner
95 Pleasant Street
Gardner, MA 01440

Dear Acting Mayor Kazinskas:

I have been asked to provide information related to any authorization I gave to certain employees of the City of Gardner to complete negotiations with the Gardner Firefighters for the FY 2018 to FY 21 collective bargaining agreement (CBA). In July 2019, contract negotiations between the City and the Firefighters had come to an impasse. Throughout the negotiations leading up to that point, and as I had done on various previous negotiations, I had authorized Debra Pond, Director of Human Resources, to negotiate the terms and conditions of the CBA with the Firefighters while the ultimate approval authority still remained with myself.

The Firefighters filed with the Commonwealth of Massachusetts Joint Labor Management Commission (JLMC) due to the impasses reached in negotiations. At that time, I contacted the City Solicitor, John Flick, to assist in the JLMC process. The JLMC scheduled several mediation sessions to attempt to resolve the impasses reached in negotiations. I was present during most, but not all the mediation sessions. In my absence, Debra Pond, and Attorney Flick were authorized to negotiate on behalf of the City and would report to me what progress, if any, had been made in reaching a resolution.

A final mediation session was scheduled for December 16, 2019 outside of Gardner. I instructed Debra Pond and Attorney Flick to appear and negotiate on behalf of the City. I was unable to attend but was available to speak with the City's negotiating team by phone. During that mediation I spoke to Attorney Flick on several occasions and ultimately approved the resolution that had been reached as a result of the December 16, 2019 mediation.

All the best,

Mark Hawke

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

ORDERED:

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

REVISED

CITY of GARDNER
Office of the City Auditor
John Richard, City Auditor
95 Pleasant Street, Room 114
Gardner, MA 01440
Phone: 978-632-1900 ext. 8020 • Fax: 978-630-3778
Email: jrichard@gardner-ma.gov

Date: 03/19/2020

To: Acting Mayor James M. Walsh

Re: Revise Free Cash requested amount for Fire Fighters FY20 Retro Payment.

My initial estimated FY20 retro payment calculation only accounted for a 2% rate increase for FY20 and should have been 4%. The new estimated amount needed is **$113,159.74** which I have attached a detailed calculation. In the new estimate I used FY19 hours worked for each employee with current rates paid vs FY20 new contract rates. I apologize for the oversite.

Sincerely

John Richard
City Auditor

FIREFIGHTERS FY20 RETRO PAY FROM 7-1-19 THRU 6-30-20 ESTIMATE

Emp #	Pay	Desc	Grade	Step	Old Rate	New Rate	Diff	Hrs	Amount
137	100	REG	4	3	$ 22.7824	$ 23.7029	$ 0.92	2,184.0	$ 2,010.28
137	200	REG OT 1.5	4	3	$ 34.4483	$ 35.8290	$ 1.38	327.5	$ 452.18
137	205	REG OT AMB	4	3	$ 34.4483	$ 35.8290	$ 1.38	134.0	$ 185.02
137	500	HOLIDAY	4	3	$ 4,809.14	$ 5,001.50	$ 192.37	1.0	$ 192.37
138	100	REG	4	3	$ 22.7824	$ 23.7029	$ 0.92	2,184.0	$ 2,010.32
138	200	REG OT 1.5	4	3	$ 35.6846	$ 37.0653	$ 1.38	178.5	$ 246.46
138	500	HOLIDAY	4	3	$ 4,809.14	$ 5,001.50	$ 192.37	1.0	$ 192.37
138	725	COLLATERAL	4	3	$ 0.6256	$ 0.6506	$ 0.03	28.5	$ 0.71
491	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	84.0	$ 74.34
491	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	462.0	$ 408.87
491	105	REG AMB	4	3	$ 21.9071	$ 22.7921	$ 0.88	1,638.0	$ 1,449.63
491	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	436.5	$ 579.45
491	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	200.5	$ 266.16
491	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	72.0	$ 95.58
491	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	34.0	$ 45.13
491	500	HOLIDAY	4	3	$ 4,506.18	$ 4,686.42	$ 180.25	1.0	$ 180.25
491	540	EDUC INCENTIVE	4	3	$ 21.9071	$ 22.7921	$ 0.88	63.0	$ 55.75
491	725	COLLATERAL	4	3	$ 33.1354	$ 34.4629	$ 1.33	81.0	$ 107.53
491	725	COLLATERAL	4	3	$ 33.1354	$ 34.4629	$ 1.33	57.0	$ 75.67
494	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	273.0	$ 241.60
494	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	147.0	$ 130.10
494	105	REG AMB	4	3	$ 21.9071	$ 22.7921	$ 0.88	1,764.0	$ 1,561.14
494	200	REG OT 1.5	4	3	$ 32.9981	$ 34.3256	$ 1.33	316.0	$ 419.49
494	200	REG OT 1.5	4	3	$ 32.9981	$ 34.3256	$ 1.33	64.0	$ 84.96
494	205	REG OT AMB	4	3	$ 32.9981	$ 34.3256	$ 1.33	51.0	$ 67.70
494	500	HOLIDAY	4	3	$ 4,438.86	$ 4,616.41	$ 177.55	1.0	$ 177.55
611	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	1,281.0	$ 1,133.69
611	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	903.0	$ 799.15
611	200	REG OT 1.5	4	2	$ 33.1354	$ 34.4629	$ 1.33	61.0	$ 80.98
611	200	REG OT 1.5	4	2	$ 33.1354	$ 34.4629	$ 1.33	100.0	$ 132.75
611	205	REG OT AMB	4	2	$ 33.1354	$ 34.4629	$ 1.33	33.5	$ 44.47
611	205	REG OT AMB	4	2	$ 33.1354	$ 34.4629	$ 1.33	20.0	$ 26.55
611	500	HOLIDAY	4	2	$ 4,199.74	$ 4,367.73	$ 167.99	1.0	$ 167.99
612	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	1,281.0	$ 1,133.69
612	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	903.0	$ 799.15
612	200	REG OT 1.5	4	2	$ 33.1354	$ 34.4629	$ 1.33	120.5	$ 159.96
612	200	REG OT 1.5	4	2	$ 33.1354	$ 34.4629	$ 1.33	213.0	$ 282.76
612	205	REG OT AMB	4	2	$ 33.1354	$ 34.4629	$ 1.33	88.0	$ 116.82
612	205	REG OT AMB	4	2	$ 33.1354	$ 34.4629	$ 1.33	188.0	$ 249.57
612	500	HOLIDAY	4	2	$ 4,199.74	$ 4,367.73	$ 167.99	1.0	$ 167.99
613	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	1,281.0	$ 1,133.69
613	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	903.0	$ 799.15
613	200	REG OT 1.5	4	2	$ 33.1354	$ 34.4629	$ 1.33	235.0	$ 311.96
613	200	REG OT 1.5	4	2	$ 33.1354	$ 34.4629	$ 1.33	193.0	$ 256.21
613	205	REG OT AMB	4	2	$ 33.1354	$ 34.4629	$ 1.33	130.5	$ 173.24
613	205	REG OT AMB	4	2	$ 33.1354	$ 34.4629	$ 1.33	69.3	$ 91.93
613	500	HOLIDAY	4	2	$ 4,199.74	$ 4,367.73	$ 167.99	1.0	$ 167.99
621	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	1,359.0	$ 1,202.72
621	105	REG AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	819.0	$ 724.81
621	150	INJ PAY AMB	4	2	$ 21.9071	$ 22.7921	$ 0.88	6.0	$ 5.31

Emp #	Pay	Desc	Grade	Step	Old Rate	New Rate	Diff	Hrs	Amount
621	200	REG OT 1.5	4	2	$ 32.9981	$ 34.3256	$ 1.33	54.0	$ 71.69
621	200	REG OT 1.5	4	2	$ 32.9981	$ 34.3256	$ 1.33	98.0	$ 130.10
621	205	REG OT AMB	4	2	$ 32.9981	$ 34.3256	$ 1.33	54.0	$ 71.69
621	205	REG OT AMB	4	2	$ 32.9981	$ 34.3256	$ 1.33	48.0	$ 63.72
621	500	HOLIDAY	4	2	$ 4,199.74	$ 4,367.73	$ 167.99	1.0	$ 167.99
790	105	REG AMB	4	1	$ 18.7226	$ 19.4790	$ 0.76	2,184.0	$ 1,652.04
790	200	REG OT 1.5	4	1	$ 28.0839	$ 29.2186	$ 1.13	200.0	$ 226.93
790	205	REG OT AMB	4	1	$ 28.0839	$ 29.2186	$ 1.13	200.0	$ 226.93
790	500	HOLIDAY	4	1	$ 4,080.00	$ 4,243.20	$ 163.20	1.0	$ 163.20
885	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	399.0	$ 353.11
885	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	2,184.0	$ 1,932.84
885	150	INJ PAY AMB	4	3	$ 21.9071	$ 22.7921	$ 0.88	-	$ -
885	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	82.0	$ 108.85
885	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	14.0	$ 18.58
885	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	10.0	$ 13.27
885	500	HOLIDAY	4	3	$ 4,775.48	$ 4,966.50	$ 191.02	1.0	$ 191.02
885	540	EDU INC	4	3	$ 21.9071	$ 22.7921	$ 0.88	46.0	$ 40.71
885	725	COLLATERAL	4	3	$ 33.1354	$ 34.4629	$ 1.33	9.0	$ 11.95
885	725	COLLATERAL	4	3	$ 33.1354	$ 34.4629	$ 1.33	2.0	$ 2.65
969	105	REG AMB	4	1	$ 20.2202	$ 21.0371	$ 0.82	2,184.0	$ 1,784.12
969	200	REG OT 1.5	4	1	$ 30.3304	$ 31.5557	$ 1.23	380.0	$ 465.64
969	500	HOLIDAY	4	1	$ 4,080.00	$ 4,243.20	$ 163.20	1.0	$ 163.20
1180	100	REG	5	5	$ 33.2036	$ 34.5448	$ 1.34	1,953.0	$ 2,619.35
1180	100	REG	5	5	$ 33.2036	$ 34.5448	$ 1.34	231.0	$ 309.82
1180	200	REG OT 1.5	5	5	$ 51.4537	$ 53.4655	$ 2.01	246.0	$ 494.90
1180	200	REG OT 1.5	5	5	$ 51.4537	$ 53.4655	$ 2.01	41.0	$ 82.48
1180	205	REG OT AMB	5	5	$ 51.4537	$ 53.4655	$ 2.01	4.0	$ 8.05
1180	500	HOLIDAY	5	5	$ 7,034.08	$ 7,315.45	$ 281.36	1.0	$ 281.36
1668	100	REG	5	3	$ 30.7171	$ 31.9581	$ 1.24	2,184.0	$ 2,710.24
1668	200	REG OT 1.5	5	3	$ 47.4493	$ 49.3108	$ 1.86	229.8	$ 427.66
1668	500	HOLIDAY	5	3	$ 6,743.13	$ 7,012.85	$ 269.73	1.0	$ 269.73
1668	540	EDUC INCENTIVE	5	3	$ 30.7171	$ 31.9581	$ 1.24	21.0	$ 26.06
1790	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	399.0	$ 353.11
1790	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	1,785.0	$ 1,579.73
1790	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	38.0	$ 50.44
1790	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	183.5	$ 243.60
1790	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	32.0	$ 42.48
1790	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	126.0	$ 167.26
1790	500	HOLIDAY	4	3	$ 4,775.48	$ 4,966.50	$ 191.02	1.0	$ 191.02
2147	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	693.0	$ 613.30
2147	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	1,491.0	$ 1,319.54
2147	200	REG OT 1.5	4	3	$ 34.5091	$ 35.8366	$ 1.33	182.0	$ 241.60
2147	200	REG OT 1.5	4	3	$ 34.5091	$ 35.8366	$ 1.33	274.0	$ 363.73
2147	205	REG OT AMB	4	3	$ 34.5091	$ 35.8366	$ 1.33	82.5	$ 109.52
2147	205	REG OT AMB	4	3	$ 34.5091	$ 35.8366	$ 1.33	172.5	$ 228.99
2147	500	HOLIDAY	4	3	$ 4,741.82	$ 4,931.49	$ 189.67	1.0	$ 189.67
2735	100	REG	4	5	$ 23.6740	$ 24.6307	$ 0.96	2,184.0	$ 2,089.36
2735	200	REG OT 1.5	4	5	$ 35.6484	$ 37.0834	$ 1.44	158.0	$ 226.73
2735	500	HOLIDAY	4	5	$ 5,197.01	$ 5,404.89	$ 207.88	1.0	$ 207.88
2735	530	OUT OF GRADE	4	5	$ 12.0800	$ 12.56	$ 0.48	1.0	$ 0.48
2805	100	REG	4	5	$ 23.6740	$ 24.6307	$ 0.96	2,184.0	$ 2,089.36
2805	200	REG OT 1.5	4	5	$ 35.7858	$ 37.2208	$ 1.44	1,454.3	$ 2,086.85
2805	205	REG OT AMB	4	5	$ 35.7858	$ 37.2208	$ 1.44	55.0	$ 78.93

Emp #	Pay	Desc	Grade	Step	Old Rate	New Rate	Diff	Hrs	Amount
2805	500	HOLIDAY	4	5	$ 5,197.01	$ 5,404.89	$ 207.88	1.0	$ 207.88
2805	522	TRAINOR STIPH	4	5	$ 35.7858	$ 37.2208	$ 1.44	3.0	$ 4.31
2805	530	OUT OF GRADE	4	5	$ 95.73	$ 99.56	$ 3.83	1.0	$ 3.83
2805	540	EDUC INCENTIVE	4	5	$ 35.7858	$ 37.2208	$ 1.44	4.0	$ 5.74
2805	725	COLLATERAL	4	5	$ 35.7858	$ 37.2208	$ 1.44	497.8	$ 714.27
2807	100	REG	4	4	$ 22.7824	$ 23.7029	$ 0.92	2,184.0	$ 2,010.32
2807	200	REG OT 1.5	4	4	$ 35.8219	$ 37.2026	$ 1.38	364.0	$ 502.58
2807	205	REG OT AMB	4	4	$ 35.8219	$ 37.2026	$ 1.38	106.0	$ 146.36
2807	500	HOLIDAY	4	4	$ 5,001.27	$ 5,201.33	$ 200.05	1.0	$ 200.05
2807	530	OUT OF GRADE	4	4	$ 446.89	$ 464.77	$ 17.88	1.0	$ 17.88
2807	725	COLLATERAL	4	4	$ 35.8219	$ 37.2026	$ 1.38	44.0	$ 60.75
2815	100	REG	4	5	$ 23.6740	$ 24.6307	$ 0.96	2,184.0	$ 2,089.36
2815	200	REG OT 1.5	4	5	$ 35.7858	$ 37.2208	$ 1.44	447.0	$ 641.45
2815	205	REG OT AMB	4	5	$ 35.7858	$ 37.2208	$ 1.44	3.0	$ 4.31
2815	500	HOLIDAY	4	5	$ 5,197.01	$ 5,404.89	$ 207.88	1.0	$ 207.88
2815	530	OUT OF GRADE	4	5	$ 1,193.58	$ 1,253.26	$ 59.68	1.0	$ 59.68
2815	725	COLLATERAL	4	5	$ 35.7858	$ 37.2208	$ 1.44	34.0	$ 48.79
2834	100	REG	4	4	$ 23.6740	$ 24.6307	$ 0.96	2,184.0	$ 2,089.36
2834	200	REG OT 1.5	4	4	$ 35.7858	$ 37.2208	$ 1.44	240.0	$ 344.40
2834	205	REG OT AMB	4	4	$ 35.7858	$ 37.2208	$ 1.44	27.0	$ 38.75
2834	500	HOLIDAY	4	4	$ 5,001.27	$ 5,201.33	$ 200.05	1.0	$ 200.05
2834	530	OUT OF GRADE	4	4	$ 65.75	$ 68.38	$ 2.63	1.0	$ 2.63
2875	100	REG	4	5	$ 23.6740	$ 24.6307	$ 0.96	2,184.0	$ 2,089.36
2875	200	REG OT 1.5	4	5	$ 35.7858	$ 37.2208	$ 1.44	223.8	$ 321.08
2875	500	HOLIDAY	4	5	$ 5,197.01	$ 5,404.89	$ 207.88	1.0	$ 207.88
2875	530	OUT OF GRADE	4	5	$ 95.73	$ 99.56	$ 3.83	1.0	$ 3.83
2911	100	REG	4	4	$ 22.7824	$ 23.7029	$ 0.92	2,184.0	$ 2,010.32
2911	200	REG OT 1.5	4	4	$ 35.8219	$ 37.2026	$ 1.38	52.0	$ 71.80
2911	500	HOLIDAY	4	4	$ 5,001.27	$ 5,201.33	$ 200.05	1.0	$ 200.05
2911	530	OUT OF GRADE	4	4	$ 65.75	$ 68.38	$ 2.63	1.0	$ 2.63
2911	540	EDUC INCENTIVE	4	4	$ 22.7824	$ 23.7029	$ 0.92	161.5	$ 148.66
2911	725	COLLATERAL	4	4	$ 35.8219	$ 37.2026	$ 1.38	153.0	$ 211.25
2922	100	REG	5	2	$ 29.5545	$ 30.7486	$ 1.19	2,184.0	$ 2,607.80
2922	200	REG OT 1.5	5	2	$ 45.9801	$ 47.7712	$ 1.79	174.5	$ 312.54
2922	205	REG OT AMB	5	2	$ 45.9801	$ 47.7712	$ 1.79	28.0	$ 50.15
2922	500	HOLIDAY	5	2	$ 6,487.89	$ 6,747.41	$ 259.52	1.0	$ 259.52
2922	540	EDUC INCENTIVE	5	2	$ 29.5545	$ 30.7486	$ 1.19	12.5	$ 14.93
2922	725	COLLATERAL	5	2	$ 45.9801	$ 47.7712	$ 1.79	393.0	$ 703.89
2923	100	REG	4	4	$ 22.7824	$ 23.7029	$ 0.92	1,008.0	$ 927.84
2923	100	REG	4	4	$ 22.7824	$ 23.7029	$ 0.92	1,176.0	$ 1,082.48
2923	200	REG OT 1.5	4	4	$ 37.1955	$ 38.5763	$ 1.38	150.0	$ 207.11
2923	200	REG OT 1.5	4	4	$ 37.1955	$ 38.5763	$ 1.38	226.5	$ 312.73
2923	205	REG OT AMB	4	4	$ 37.1955	$ 38.5763	$ 1.38	41.0	$ 56.61
2923	205	REG OT AMB	4	4	$ 37.1955	$ 38.5763	$ 1.38	42.0	$ 57.99
2923	500	HOLIDAY	4	4	$ 4,896.47	$ 5,092.33	$ 195.86	1.0	$ 195.86
2924	100	REG	4	4	$ 22.7824	$ 23.7029	$ 0.92	1,008.0	$ 927.84
2924	100	REG	4	4	$ 22.7824	$ 23.7029	$ 0.92	1,166.0	$ 1,073.28
2924	200	REG OT 1.5	4	4	$ 34.4483	$ 35.8290	$ 1.38	208.5	$ 287.88
2924	200	REG OT 1.5	4	4	$ 34.4483	$ 35.8290	$ 1.38	59.0	$ 81.46
2924	205	REG OT AMB	4	4	$ 34.4483	$ 35.8290	$ 1.38	39.0	$ 53.85
2924	205	REG OT AMB	4	4	$ 34.4483	$ 35.8290	$ 1.38	58.0	$ 80.08
2924	500	HOLIDAY	4	4	$ 4,896.47	$ 5,092.33	$ 195.86	1.0	$ 195.86
3125	100	REG	4	5	$ 23.6740	$ 24.6307	$ 0.96	2,184.0	$ 2,089.36

Emp #	Pay	Desc	Grade	Step	Old Rate	New Rate	Diff	Hrs	Amount
3125	200	REG OT 1.5	4	5	$ 37.1594	38.5944	$ 1.44	184.0	$ 264.04
3125	205	REG OT AMB	4	5	$ 37.1594	38.5944	$ 1.44	106.0	$ 152.11
3125	500	HOLIDAY	4	5	$ 5,197.01	$ 5,404.89	$ 207.88	1.0	$ 207.88
3125	509	OUT OF GRADE	4	5	$ 211.98	$ 220.46	$ 8.48	1.0	$ 8.48
3170	100	REG	6	5	$ 35.9293	$ 37.3807	$ 1.45	2,184.0	$ 3,169.92
3170	200	REG OT 1.5	6	5	$ 56.6412	$ 58.8183	$ 2.18	79.5	$ 173.08
3170	500	HOLIDAY	6	5	$ 7,886.82	$ 8,202.30	$ 315.47	1.0	$ 315.47
3170	530	OUT OF GRADE	6	5	$ 1,121.24	$ 1,166.09	$ 44.85	1.0	$ 44.85
3170	600	SICK INCENTIVE	6	5	$ 1,342.99	$ 1,396.71	$ 53.72	1.0	$ 53.72
3360	100	REG	5	4	$ 33.2036	$ 34.5448	$ 1.34	2,184.0	$ 2,929.16
3360	200	REG OT 1.5	5	4	$ 49.8054	$ 51.8171	$ 2.01	390.5	$ 785.60
3360	205	REG OT AMB	5	4	$ 49.8054	$ 51.8171	$ 2.01	5.5	$ 11.06
3360	500	HOLIDAY	5	4	$ 7,008.59	$ 7,288.94	$ 280.34	1.0	$ 280.34
3360	540	EDUC INCENTIVE	5	4	$ 33.2036	$ 34.5448	$ 1.34	60.5	$ 81.14
3360	725	COLLATERAL	5	4	$ 49.8054	$ 51.8171	$ 2.01	75.0	$ 150.88
3444	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	2,184.0	$ 1,932.84
3444	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	213.8	$ 283.75
3444	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	19.0	$ 25.22
3444	500	HOLIDAY	4	3	$ 4,809.14	$ 5,001.50	$ 192.37	1.0	$ 192.37
3444	725	COLLATERAL	4	3	$ 33.1354	$ 34.4629	$ 1.33	266.5	$ 353.78
3446	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	2,101.0	$ 1,859.39
3446	150	INJ PAY	4	3	$ 21.9071	$ 22.7921	$ 0.88	20.0	$ 17.70
3446	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	160.0	$ 212.40
3446	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	18.0	$ 23.89
3446	500	HOLIDAY	4	3	$ 4,809.14	$ 5,001.50	$ 192.37	1.0	$ 192.37
3449	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	2,184.0	$ 1,932.84
3449	200	REG OT 1.5	4	3	$ 32.9981	$ 34.3256	$ 1.33	387.0	$ 513.74
3449	205	REG OT AMB	4	3	$ 32.9981	$ 34.3256	$ 1.33	84.0	$ 111.51
3449	500	HOLIDAY	4	3	$ 4,809.14	$ 5,001.50	$ 192.37	1.0	$ 192.37
3449	522	TRAINOR STIPH	4	3	$ 32.9981	$ 34.3256	$ 1.33	10.0	$ 13.28
3640	100	REG	5	4	$ 31.9264	$ 33.2162	$ 1.29	2,184.0	$ 2,816.84
3640	200	REG OT 1.5	5	4	$ 49.5380	$ 51.4726	$ 1.93	66.0	$ 127.69
3640	500	HOLIDAY	5	4	$ 6,743.13	$ 7,012.85	$ 269.73	1.0	$ 269.73
3640	725	COLLATERAL	5	4	$ 49.5380	$ 51.4726	$ 1.93	669.0	$ 1,294.28
3645	100	REG	5	4	$ 31.9264	$ 33.2162	$ 1.29	2,184.0	$ 2,816.84
3645	200	REG OT 1.5	5	4	$ 49.5380	$ 51.4726	$ 1.93	365.0	$ 706.14
3645	205	REG OT AMB	5	4	$ 49.5380	$ 51.4726	$ 1.93	31.0	$ 59.97
3645	500	HOLIDAY	5	4	$ 6,743.13	$ 7,012.85	$ 269.73	1.0	$ 269.73
4786	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	399.0	$ 353.11
4786	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	1,785.0	$ 1,579.73
4786	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	10.0	$ 13.27
4786	200	REG OT 1.5	4	3	$ 33.1354	$ 34.4629	$ 1.33	44.0	$ 58.41
4786	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	14.0	$ 18.58
4786	205	REG OT AMB	4	3	$ 33.1354	$ 34.4629	$ 1.33	14.0	$ 18.58
4786	500	HOLIDAY	4	3	$ 4,775.48	$ 4,966.50	$ 191.02	1.0	$ 191.02
5992	105	REG AMB	4	1	$ 18.72	$ 19.48	$ 0.76	1,680.0	$ 1,270.80
5992	205	REG OT AMB	4	1	$ 28.08	$ 29.22	$ 1.13	180.0	$ 204.24
5992	500	HOLIDAY	4	1	$ 3,509.20	$ 3,649.57	$ 140.37	1.0	$ 140.37
6774	105	REG AMB	4	1	$ 18.72	$ 19.48	$ 0.76	1,680.0	$ 1,270.80
6774	205	REG OT AMB	4	1	$ 28.08	$ 29.22	$ 1.13	100.0	$ 113.46
6774	500	HOLIDAY	4	1	$ 3,509.20	$ 3,649.57	$ 140.37	1.0	$ 140.37
7600	100	REG	4	6	$ 24.6019	$ 25.5957	$ 0.99	2,184.0	$ 2,170.48
7600	200	REG OT 1.5	4	6	$ 37.1776	$ 38.6683	$ 1.49	400.5	$ 597.03

Emp #	Pay	Desc	Grade	Step	Old Rate	New Rate	Diff	Hrs	Amount
7600	205	REG OT AMB	4	6	$ 37.1776	$ 38.6683	$ 1.49	14.0	$ 20.87
7600	500	HOLIDAY	4	6	$ 5,400.68	$ 5,616.70	$ 216.03	1.0	$ 216.03
7600	530	OUT OF GRADE	4	6	$ 993.48	$ 1,033.22	$ 39.74	1.0	$ 39.74
8096	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	399.0	$ 353.11
8096	100	REG	4	3	$ 21.9071	$ 22.7921	$ 0.88	1,785.0	$ 1,579.73
8096	200	REG OT 1.5	4	3	$ 32.0407	$ 32.9981	$ 0.96	104.5	$ 100.04
8096	205	REG OT AMB	4	3	$ 32.0407	$ 32.9981	$ 0.96	25.5	$ 24.41
8096	500	HOLIDAY	4	3	$ 4,775.48	$ 4,966.50	$ 191.02	1.0	$ 191.02
8096	540	EDUC INCENTIVE	4	3	$ 21.9071	$ 22.7921	$ 0.88	5.0	$ 4.42
8096	540	EDUC INCENTIVE	4	3	$ 21.9071	$ 22.7921	$ 0.88	33.5	$ 29.65
8096	725	COLLATERAL	4	3	$ 32.0407	$ 32.9981	$ 0.96	74.0	$ 70.84
8306	105	REG AMB	4	2	$ 20.2202	$ 21.0371	$ 0.82	2,184.0	$ 1,784.12
8306	200	REG OT 1.5	4	2	$ 30.4677	$ 31.6931	$ 1.23	100.0	$ 122.54
8306	500	HOLIDAY	4	2	$ 3,509.20	$ 3,649.57	$ 140.37	1.0	$ 140.37
8306	540	EDUC INCENTIVE	4	2	$ 20.2202	$ 21.0371	$ 0.82	16.0	$ 13.07
							ESTIMATE FY20 FIREFIGHTS RETO PAY		
							TOTAL		**$ 113,159.74**

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

/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

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

2-1 & 2-2

CITY OF GARDNER
LAW DEPARTMENT

John M. Flick
City Solicitor

Priya Gandbhir
Assistant City Solicitor

144 Central Street, Suite 201
Gardner, MA 01440

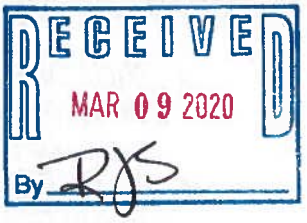
Telephone (978) 632-7948
Fax (978) 630-3703

Writer's Email:

March 2, 2020

VIA HAND DELIVERY

James M. Walsh, Esq.
Acting Mayor
City of Gardner
95 Pleasant Street
Gardner, MA 01440



Re: Fire Department Negotiations Timeline:

Dear Acting Mayor Walsh:

As requested, I am responding to your request for detailed information regarding the City's negotiations with the Gardner Fire Fighters, Local 2215 (the "Union"). In response to your request Debra Pond, the City's Human Resources Director prepared the following history of the negotiations for the June 2018 to June 2021 collective bargaining agreement (the "CBA").

In 2016 Mayor Mark Hawke negotiated an impact bargaining agreement with the Union without the assistance of Ms. Pond or legal counsel. This negotiation resulted in an agreement with the Union containing specific ambulance related language and the following wage terms.

- Ambulance Agreement (negotiations with Mayor, Steve Roy, Robert Jacques and Anthony Alario) – signed on 05/12/2016.
  - Included the following wage increases for EMT's:
    - ✓ 01/01/2017 – 1%
    - ✓ 07/01/2018 – 2%
    - ✓ 07/01/2019 – 3%
    - ✓ $1.00 ambulance stipend

Upon information and belief, the Mayor had initially proposed the above wage increases only for those employees of the Fire Department who physically worked on the ambulance. The Union countered arguing that the delivery of ambulance services increased the work of all Firefighters, therefore the wage increase should apply to all. Since all Firefighters are required to be EMT's these wage increases were applied to all Firefighters. It was the Mayor's position that these were pre-negotiated pay increases for the FY19 and FY20.

Thereafter, the Union presented proposals for 07/01/2017 – 06/30/2020 Contract negotiations. The Mayor reviewed and assigned Debra Pond as the City's representative to negotiate the terms of this CBA. In its proposal, the Union requested a 7% increase for each year of the contract, FY18, FY19 and FY20. Several meetings were held and included Steve Roy, Matt Bettez, Greg Doyle and Debra Pond. Since the end of FY18 was fast approaching The City and Union agreed to a one-year contract with a 2% increase for FY18, a CBA duration of 07/01/2017 to 06/30/2018, and certain benefit pro-rations. A Memorandum of Agreement was signed on 06/26/2018.

The next round of negotiations commenced in September 2018 to negotiate the July 1, 2018 through June 30, 2021 CBA. The series of meetings proceeded as follows:

- 09/16/2018 – Negotiation meeting with Steve Roy, Mark Bettez, Greg Doyle and Debra Pond. Discussions involved previous original proposals that were not resolved or included in the one year CBA.
- 11/28/2018 - Provided Union with formal proposal and counter-proposal document. City held to pre-negotiated raises for FY19 and FY20.
- Union had a transition in members on negotiation/executive board.
- 01/08/2019 – The City re-sent proposal document to Union and requested meeting dates.
- 02/04/2019 – Union met (with the body) to discuss City proposals.
- 02/08/2019 – City requested negotiation dates.
- 02/13/2019 – Union confirmed meeting and informed City that they were collecting dates to meet for further negotiations.
- 02/19/2019 – Union sent counter-proposals and meeting dates. In addition to language changes and requests for more time off, Union requested in addition to the increased negotiated in the ambulance agreement FY19 – 2% + 15 year step added at 5%; FY20 - 1%; FY21 – 2%; and an increase in ambulance stipend from $1.00 to $3.00.
- 03/13/2019 – City sent response/counter-proposals to Union prior to negotiation meeting.
- 03/15/2019 – Negotiation meeting – Jeremy Salo, Greg Doyle, Mark Bettez, Mayor Hawke & Debra Pond
- 03/28/2019 – Negotiation meeting – Jeremy Salo, Greg Doyle, Mark Bettez, Mayor Hawke & Debra Pond. Agreed upon all items with the exception of wages and ambulance stipend. City offered two different wage proposals. One included no other increase for FY19 or FY20 (other than pre-negotiated increases), with an increase in the ambulance stipend and for FY21 the addition of a 15 year step at 4% and a 2% increase; the second included no increase in ambulance stipend and an additional .5% the first two years of the contract. FY21 the addition of a 15 year step at 4% and a 2% increase.
- 04/16/2019 – Union notified City that proposals were presented to Union body and requested another negotiation meeting.
- 04/26/2019 – Negotiation meeting – Jeremy Salo, Mark Bettez, Mayor Hawke & Debra Pond. Union informed City that City's wage proposals for FY19 and FY20 were both rejected. Last negotiation meeting attended by Mayor.
- 04/26/2019 – Received additional wage proposal from Jeremy Salo via email with the following for FY19 – an additional 1%; FY20 – an additional 1%, plus additional $1.00 for ambulance stipend; FY21 the addition of a 15 year step at 4% and a 2% increase.

- 05/03/2019 – Debra Pond informed Jeremy Salo via email that new wage proposal was rejected and that the proposals made by the Mayor in the 04/26/2019 negotiation meeting were the City's best and final.
- 06/03/2019 – Debra Pond sent reminder to the Union that the fiscal year end was fast approaching (for contract completion purposes).
- 06/04/2019 – Union requested another meeting via email.
- 06/10/2019 – Debra Pond emailed Union (included Mayor on email) and sent another counter-proposal for wages adding an additional .5% but also requesting some "give backs."
- 06/20/2019 – Union declined City proposals and provided a counter-proposal.
- 06/20/2019 – Debra Pond responded informing Union that counter-proposals put City and Union even further apart.
- 07/18/2019 – Union filed petition with the JLMC.
- 08/02/2019 – Union sent City request for documents.
- 08/12/2019 – Investigative Committee Level Mediation at City Hall with Robert Dickson, Daniel Morgado, Priya Gandbhir, Mayor Hawke and Debra Pond. No progress.
- 09/17/2109 – Second meeting Investigative Committee Level Mediation with Robert Dickson, Daniel Morgado, John Flick, Priya Gandbhir, Mayor Hawke and Debra Pond. No progress.
- 11/07/2019 – Third and final meeting Investigative Committee Level Mediation with Robert Dickson, Daniel Morgado, John Flick, and Debra Pond. City made two offers (an additional .5% in the first two years of the contract; second proposal was an additional 1% for the first two years of the contract and Union declined. Move to formal mediation.
- 11/26/2019 – Mayor Hawke's last actual physical day in City Hall. Also HR Administrative Coordinator's last day with the City HR Department (position vacant for 2 months).
- 12/16/2019 – Mediation – 3(a) Hearing in Boston. Debra Pond and John Flick. Memorandum of Agreement ("MOA") reached and executed.

The final City Council meeting of 2019 was held on December 16, 2019. Whereas 2019 was an election year for the City's government, this final Council meeting of 2019 was the final meeting of this Council as there were three new councilors elected to the City Council. It was also expected that Mayor Hawke would be resigning from office although his planned date of resignation was not known. Nevertheless, the City continued to work with the Union to complete the process of establishing the CBA as negotiated. The progress was as follows:

- 12/19/2019 (@9:14 PM) – Union (Jeremy Salo) sent email to Debra Pond informing City that Union voted to ratify the MOA. *(12/19/2019 email was received long after closing hours for City Hall. Email was viewed on Friday.)*
- 12/20/2019 (@1:49 PM) – Union (Jeremy Salo) sent email to Debra Pond informing City that Union voted to ratify the MOA. *(Time frame after receipt of email included half day and full days of closing due to holidays.)*

Following the ratification the MOA by the Union, the progression of the CBA to final approval is as follows:

- 01/03/2020 – Debra Pond completed contract document changes and sent them to John Flick and Mayor Hawke for review.

Mayor Hawke and the members of the new City Council were sworn into a new term of office on January 6, 2020. It was expected that Mayor Hawke would resign imminently as he had accepted a position as Town Administrator in Westminster, MA. January 6, 2020 was also the inaugural meeting of the new City Council. The only order of business before the City Council was the election of a Council President.

- 01/13/2020 – Received communication from Dan Morgado inquiring on status.
- 01/13/2020 – Debra Pond emailed John Flick and Mayor Hawke regarding status of the contract review.
- 01/13/2020 – John Flick responded via email that contract document looked good.
- 01/17/2020 – After no response from Mayor Hawke on the status of contract review, Debra Pond spoke with John Flick and they decided to forward the documents to the Union for final review.
- 01/17/2020 – Contract with changes marked was sent to Union (Jeremy Salo) with wage schedule via email.

The next regular meeting of the City Council was Tuesday January 21, 2020. Mayor Hawke resigned that same day effective at 4:30 PM. The City Council convened at their normally scheduled time of 7:30 PM. At the time of the Council meeting Gardner had no Mayor. City Council President James Walsh, thereafter, assumed the duties of Acting Mayor.

Following the resignation of Mayor Hawke, discussions with the Union continued in order to reach a final agreement, as follows.

- 01/24/2020 (@ 3:11 PM – after City Hall closed) – Received email from Union with issues requiring review, which included minor language changes. Also notified City that there was a change in one Union officer: Matthew Bettez replaced Greg Doyle.
- 01/24/2020 (@ 3:25 PM from mobile device) – Debra Pond requested a meeting with the Union to review in person.
- Last week of January (not sure of exact date) Jeremy Salo and Matt Bettez stopped by Debra Pond's office. Questions were discussed, including wage schedule. Debra Pond informed Union she would make some language modifications and discuss the wage schedule with John Flick. The wage schedule was originally drafted with the ambulance agreement for each fiscal year plus the additional percentage agreed to tin the MOA – FY19 – 4%, FY20 – 5% AND FY21 – 2%. The Union wanted the percentages calculated out as follows: FY19 2% (ambulance), FY19 2% (MOA); FY20 3% (ambulance), FY20 2%, FY21 2% - for EMT wage schedule. This change resulted in a slight increase in the appropriation needed.

- 02/07/2020 – Jeremy Salo emailed Debra Pond inquiring about status of wage schedule. Debra Pond informed Jeremy Salo that it was all set and that all changes would be completed and sent over the following week.
- 02/11/2020 Debra Pond emailed language changes to Jeremy Salo. Language changes were approved by Union.
- 02/11/2020 The Union requested a format change to the wage schedule. Debra Pond revised and emailed a new wage schedules to the Union for review per the Union's request.
- 02/12/2020 Jeremy Salo identified a few issues with wage schedule via email to Debra Pond.
- 02/12/2020 Wage schedules were further adjusted (spreadsheet formulas) and two full contract documents were prepared for execution.
- 02/12/2020 Union executed the Contract documents. Documents were presented to Acting Mayor Walsh for execution, who requested a signature block for John Flick (as to approval of form) and John Richard, City Auditor (as to availability of funds). Both signature blocks were added.
- 02/19/2020 - City Auditor, John Richard prepared retroactive pay calculations.
- 02/24/2020 – Acting Mayor Walsh requests history of CBA negotiations and mediation from the City's Law Department.
- 02/25/2020 – Leah Barrault, the attorney for the Union filed a Charge of Prohibited Practice against the City.
- 02/26/2020 – John M. Flick, Esq. sends e-mail to Acting Mayor Walsh at 1:17 PM advising that a money order should be submitted to the City Council seeking an appropriation to fund the CBA.
- 02/26/2020 – Acting Mayor Walsh submits a money order to the City Clerk's office for submission to the City Council at 2:57 PM, CBA remains unsigned by Acting Mayor Walsh while awaiting analysis from Law Department regarding the CBA negotiation history and the Acting Mayor's authority to sign the CBA.

This timeline is provided in order to facilitate the legal analysis of your authority as Acting Mayor to sign this CBA. The signing of the CBA by all parties prior to the approval of the appropriation is contemplated by M.G.L. c. 150E, §7. Technically once the CBA is signed, a request is then sent to the City Council to approve the appropriation necessary to fund the CBA. Should the Council not approve the appropriation, the CBA is sent back to the City and Union for further negotiations. *M.G.L. c. 150E, § 7(b).*

As you know Section 32 of the City's Charter only permits the acting mayor to act in matters "not admitting of delay." An acting mayor is further limited by the Charter in that an acting mayor cannot make long term appointments. Therefore, in accordance with the Charter, the acting mayor does not possess full executive authority as does a duly elected mayor. As we have discussed, there are two court cases which address the meaning of the clause "matters not admitting of delay": *Ryan v. City of Boston*, 204 Mass. 456 (1910), and *Dimick v. Barry*, 211

Mass. 165 (1912). Despite the age of these cases, they present the controlling law on the meaning of the clause "matters not admitting of delay."

In *Ryan v. City of Boston*, the Court considered the validity of a contract to construct a public sewer signed by the then acting mayor Whelton. The Court posed the question:

> "But the powers of an acting mayor are expressly limited . . . to matters requiring immediate action. If this limitation is applicable to the defendant city, the contract is invalid, as it does not appear there was any urgent public necessity for the construction of the sewer." *Ryan,* at 459.

Dimick v. Barry provides a more robust analysis of the meaning of the clause "matters not admitting of delay." In presenting its initial analysis the *Dimick* Court states:

> "While this language should not be given narrow or refined interpretation *and should be construed in view of the practical necessities of municipal administration* . . .. The words are both plain and emphatic. They express a definite conception of a necessity so importunate that it cannot be resisted with reason." *Dimick* at 166-67.

The *Dimick* Court provides concrete examples to illustrate the meaning of "matters not admitting of delay." These examples include the following:

> "Cases might arise where it would be apparent as matter of law upon the face of the papers that the approval of the order was 'a matter not admitting of delay.' Such an inference might be drawn respecting a warrant for an election or an appropriation of money to be used for a Fourth of July celebration or a corporate anniversary, or like orders where time appears to be of the essence of the subject." *Id.* at 167.
>
> "Appropriations necessary for immediate payment of fixed charges of various municipal departments would come within this rule." *Id.*

Ultimately, the *Dimick* Court concluded: "The mayor is the one designated by law to be the executive of the city. It is not a mere passing incident which enables another to supplant him, but a *pressing urgency of an unusual kind*." *Id.* at 168.

There is no case law which addresses the interpretation of this limiting language in the context of negotiating and executing a collective bargaining agreement in accordance with M.G.L. c. 150E. When considering if a matter is "not admitting of delay" other factors to consider are whether or not the matter was before, and agreed upon, by the duly elected mayor, and the amount of time a matter had been pending before the municipality. *See Id.*

In the current matter regarding the CBA with the firefighters, M.G.L. c. 150E, §7 requires that upon execution of the CBA *by both parties*, the City is obligated, within 30 days of full execution, to seek appropriations to fund the contract from the appropriate legislative body. The threshold question is whether or not you, as Acting Mayor, have the legal authority to sign the

CBA. On the one hand, and as can be seen from the above timeline, this has been a lengthy bargaining process. The length of time that passed between the initiation of negotiations and the mediation of the MOA, the fact that multiple issues were raised by the Union regarding the interpretation of the MOA and their application to the CBA's wage schedule (after Mayor Hawke had resigned), support a conclusion that the execution of the CBA by the City is not a matter "not admitting of delay" and that the execution of, and adoption of the terms of, the CBA are properly left to the new Mayor.

When considering the fact that the final terms of the CBA were negotiated during a protracted mediation process with the Joint Labor Management Commission, involved Mayor Hawke, and ultimately resulted in a signed MOA during Mayor Hawke's term of office, supports a conclusion that Mayor Hawke would have executed the CBA were he still in office. However, the fact that the Union continued to negotiate the interpretation of the MOA as it applied to the wage schedule raises a significant question regarding the former Mayor's willingness to sign the CBA and request an appropriation from the City Council to fund the CBA. One could conclude that Mayor Hawke would not have signed the CBA in that circumstance. Nevertheless, this is an argument based on speculation and as Acting Mayor, speculation as to what the previous Mayor would have done is not a basis upon which you can assert any authority as Acting Mayor.

As you know, the limitations of your authority as Acting Mayor to execute contracts and bind the City leaves any contracts you do execute open to challenge. In looking at the facts and the timeline set forth herein (in particular the Union's continued negotiations after Mayor Hawke resigned) presents a significant legal question regarding your authority to execute the CBA and, should you do so, whether the enforceability of the CBA could be successfully challenged either by a Mayor to be elected in May 2020, another collective bargaining unit, or third parties challenging your authority as Acting Mayor.

The case law clearly states that you, as Acting Mayor, have the ability to use your sound judgment in deciding in this matter, as all others, to act and execute the CBA. Nevertheless, in order to ensure that the CBA is binding on the City, should you sign it, it may be prudent to obtain a judicial determination as to your authority to act in this particular instance.

Please let the Law Department know if you require any additional information at this time.

Very truly yours,

John M. Flick

Cc: Debra Pond, Human Resources

4-1
Addenda

Alan Agnelli

From: Lyndsy Butler
Sent: Tuesday, April 28, 2020 7:28 PM
To: Alan Agnelli
Subject: FW: Fish & Gun Club CR: City Council Petitions
Attachments: Petition to Gardner City Council_Accept CR _Fish & Gun Club land.docx; Petition to Gardner City Council_Accept Grant Funding_Fish & Gun Club land.docx

Alan,

I would like to add this petition to the City Council agenda for the May 4th meeting. Please let me know if there is anything further you may need.

Best,
Lyndsy

From: Janet Morrison <janet-morrison@comcast.net>
Sent: Tuesday, April 28, 2020 12:44 PM
To: Lyndsy Butler <lbutler@gardner-ma.gov>
Subject: Fish & Gun Club CR: City Council Petitions

Hello Lyndsy:

Attached are 2 City Council Petitions, to be submitted for hearing on May 4th. One Petition requests acceptance of grant funding; one petition requests approval of the CR. I have previously provided you with a budget and maps, which should be included with these Petitions.

I understand that the City Council Finance Committee will consider the Petition concerning funding on Wednesday, April 29th at noon. Please provide me with a link to that hearing, when it is available.

Thank-you.

Best regards,

Janet H. Morrison, Esq.
Land Conservation Consulting
59 Kelton Road, Ashburnham, MA 01430
Business: 978 827-5600
Cell: 978 502-0704
E-mail: janet-morrison@comcast.net
www.jhmorrison.com

4-1
VOTE 1

TO THE HONORABLE CITY COUNCIL OF THE CITY OF GARDNER

Ladies and Gentlemen:

The undersigned Petitions your Honorable Body

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

Respectfully Submitted:

_____

Gregory Dumas, Chairman
Gardner Conservation Commission

4-1
VOTE 2

TO THE HONORABLE CITY COUNCIL OF THE CITY OF GARDNER

Ladies and Gentlemen:

The undersigned Petitions your Honorable Body

To authorize the Mayor of the City of Gardner to accept grant funds from the North American Wetlands Conservation Act, Small Grants Program, in the amount up to Thirty Three Thousand Eight Hundred and 00/100 Dollars ($33,800.00), as sub-recipient of an award to the Gardner and Winchendon Wetlands Protection Project, and to enter any necessary contracts thereto, for the purpose of purchasing a conservation restriction on 20.47 acres of land owned by the Gardner Fish & Gun Club, Inc., located on the south side of Clark Street, being a portion of Assessor's Parcels H32/ 4/ 19/ / and H37/ 23/ 1A/ /, as shown on the attached map and survey plan, to be held and monitored by the Conservation Commission for conservation and natural resource protection, pursuant to M.G.L. Chapter 40, Section 8C, and M.G.L. Chapter 184, Section 32, and to expend said funds for the purchase of said conservation restriction, and for necessary due diligence and costs, in accordance with the attached budget, the property to be permanently conserved under Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

Respectfully Submitted:

_____

Gregory Dumas, Chairman
Gardner Conservation Commission

4-1

Alan Agnelli

From: Lyndsy Butler
Sent: Wednesday, April 22, 2020 11:38 AM
To: Alan Agnelli
Cc: Jeffrey Legros
Subject: FW: Gardner City Council Meeting May 4th: Gardner Fish & Gun Club CR
Attachments: SurveyPlan_Gardner Fish & Gun Club Conservation Restriction.pdf; BUDGET_Gardner Fish & Gun CR.xlsx; F&G_Solar&CR.pdf; Petition to Gardner City Council_Accept CR on Fish & Gun Club land.docx

Hello Alan,

Could we get the attached on the May 4th agenda? The Conservation Commission will be approving the Conservation Restriction at the April 27th meeting. The CR will then need to be approved by City Council. I will be forwarding a copy of the Conservation Restriction in a separate email. Please let me know if there is anything further you will need from myself.

Lyndsy Butler

From: Janet Morrison <janet-morrison@comcast.net>
Sent: Wednesday, April 22, 2020 11:14 AM
To: Lyndsy Butler <lbutler@gardner-ma.gov>; Jeffrey Legros <jlegros@gardner-ma.gov>
Subject: Gardner City Council Meeting May 4th: Gardner Fish & Gun Club CR

Hello Lyndsy & Jeff:

Could you please work with the City Clerk to place on the Agenda of the May 4th BOS meeting, acceptance of the Gardner Fish & Gun Club CR. I have attached a proposed Petition from the Conservation Commission. Please ask Greg Dumas to sign the Petition, in connection with signing the CR.

Please provide the attached Petition and all other documents attached to Greg Dumas and the City Clerk. Please also provide them with the Conservation Restriction, which was provided to you in my previous e-mail.

Please let me know if you have any questions or concerns.

Thank-you.

Best regards,

Janet H. Morrison, Esq.
Land Conservation Consulting
59 Kelton Road, Ashburnham, MA 01430
Business: 978 827-5600
Cell: 978 502-0704
E-mail: janet-morrison@comcast.net
www.jhmorrison.com

4-1

TO THE HONORABLE CITY COUNCIL OF THE CITY OF GARDNER

Ladies and Gentlemen:

The undersigned Petitions your Honorable Body

To authorize the Mayor of the City of Gardner to accept grant funds from the North American Wetlands Conservation Act, Small Grants Program, in the amount up to Thirty Three Thousand Eight Hundred and 00/100 Dollars ($33,800.00), as sub-recipient of an award to the Gardner and Winchendon Wetlands Protection Project, and to enter any necessary contracts thereto, for the purpose of purchasing a conservation restriction on 20.47 acres of land owned by the Gardner Fish & Gun Club, Inc., located on the south side of Clark Street, being a portion of Assessor's Parcels H32/ 4/ 19/ / and H37/ 23/ 1A/ /, as shown on the attached map and survey plan, to be held and monitored by the Conservation Commission for conservation and natural resource protection, pursuant to M.G.L. Chapter 40, Section 8C, and M.G.L. Chapter 184, Section 32, and to expend said funds for the purchase of said conservation restriction, and for necessary due diligence and costs, in accordance with the attached budget, the property to be permanently conserved under Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

Respectfully Submitted:

_____

Gregory Dumas, Chairman
Gardner Conservation Commission

4-1

Alan Agnelli

From: Lyndsy Butler
Sent: Wednesday, April 22, 2020 11:39 AM
To: Alan Agnelli
Subject: FW: Gardner Fish & Gun Club CR
Attachments: Gardner&Winchendon Wetlands Protection Project_Tract#7X_Conservation Restriction.docx; Gardner_FIsh-Gun Club_ CR Plan.pdf

Attached is the Conservation Restriction for approval by City Council.

Best,
Lyndsy

From: Janet Morrison <janet-morrison@comcast.net>
Sent: Tuesday, April 21, 2020 1:23 PM
To: Lyndsy Butler <lbutler@gardner-ma.gov>
Subject: RE: Gardner Fish & Gun Club CR

Hi Lyndsy:

Would you please place this on the agenda:
"Acceptance by the Conservation Commission of a conservation restriction on 20.47 acres of land owned by the Gardner Fish and Gun Club, Inc., to provide permanent protection to the Bailey Brook riverfront area, including wetlands complex and flood plain."

A vote is needed. Greg can sign the CR as Chairman. His signature must be notarized.

Please provide the Commissioners with the CR and the survey plan, attached, before the meeting. The survey plan is also a CR Exhibit.

This CR is purchased with federal NAWCA grant funding.

I will plan to tune in to the meeting, so please provide me with information about how to do this.

Thank-you!

Best regards,

Janet H. Morrison, Esq.
Land Conservation Consulting
59 Kelton Road, Ashburnham, MA 01430
Business: 978 827-5600
Cell: 978 502-0704
E-mail: janet-morrison@comcast.net
www.jhmorrison.com

From: Lyndsy Butler <lbutler@gardner-ma.gov>
Sent: Tuesday, April 21, 2020 12:34 PM

To: Janet Morrison <janet-morrison@comcast.net>
Subject: RE: Janet H. Morrison Call Invitation: Janet H. Morrison's Conference Call

Hi Janet,

I will be posting the agenda for a meeting on the 27th. What would you like me to add?

Lyndsy

From: Janet Morrison <janet-morrison@comcast.net>
Sent: Thursday, April 16, 2020 10:01 AM
To: Lyndsy Butler <lbutler@gardner-ma.gov>
Cc: Jeffrey Legros <jlegros@gardner-ma.gov>
Subject: RE: Janet H. Morrison Call Invitation: Janet H. Morrison's Conference Call

Hi Lyndsy:

It was a productive call. Jeff and Erik will work on a list of shooting range improvements due next week. So we should have an agreement with the Club in time for the Cons. Comm. meeting on April 27th. Could you give me an update about this meeting?

Thank-you.

Best regards,

Janet Morrison
978 827-5600

From: Lyndsy Butler <lbutler@gardner-ma.gov>
Sent: Thursday, April 16, 2020 9:21 AM
To: Janet Morrison <janet-morrison@comcast.net>
Subject: RE: Janet H. Morrison Call Invitation: Janet H. Morrison's Conference Call

Janet,

This came through as spam, not sure why. I am sorry I missed the call yesterday.

From: Janet Morrison <janet-morrison@comcast.net>
Sent: Wednesday, April 15, 2020 9:28 AM
To: Lyndsy Butler <lbutler@gardner-ma.gov>
Subject: FW: Janet H. Morrison Call Invitation: Janet H. Morrison's Conference Call

Conference call

From: FreeConference.com <support@freeconference.com>
Sent: Monday, April 13, 2020 5:03 PM
To: Janet H. Morrison <janet-morrison@comcast.net>
Subject: Janet H. Morrison Call Invitation: Janet H. Morrison's Conference Call

FOR REGISTRY USE ONLY

N
W E
S

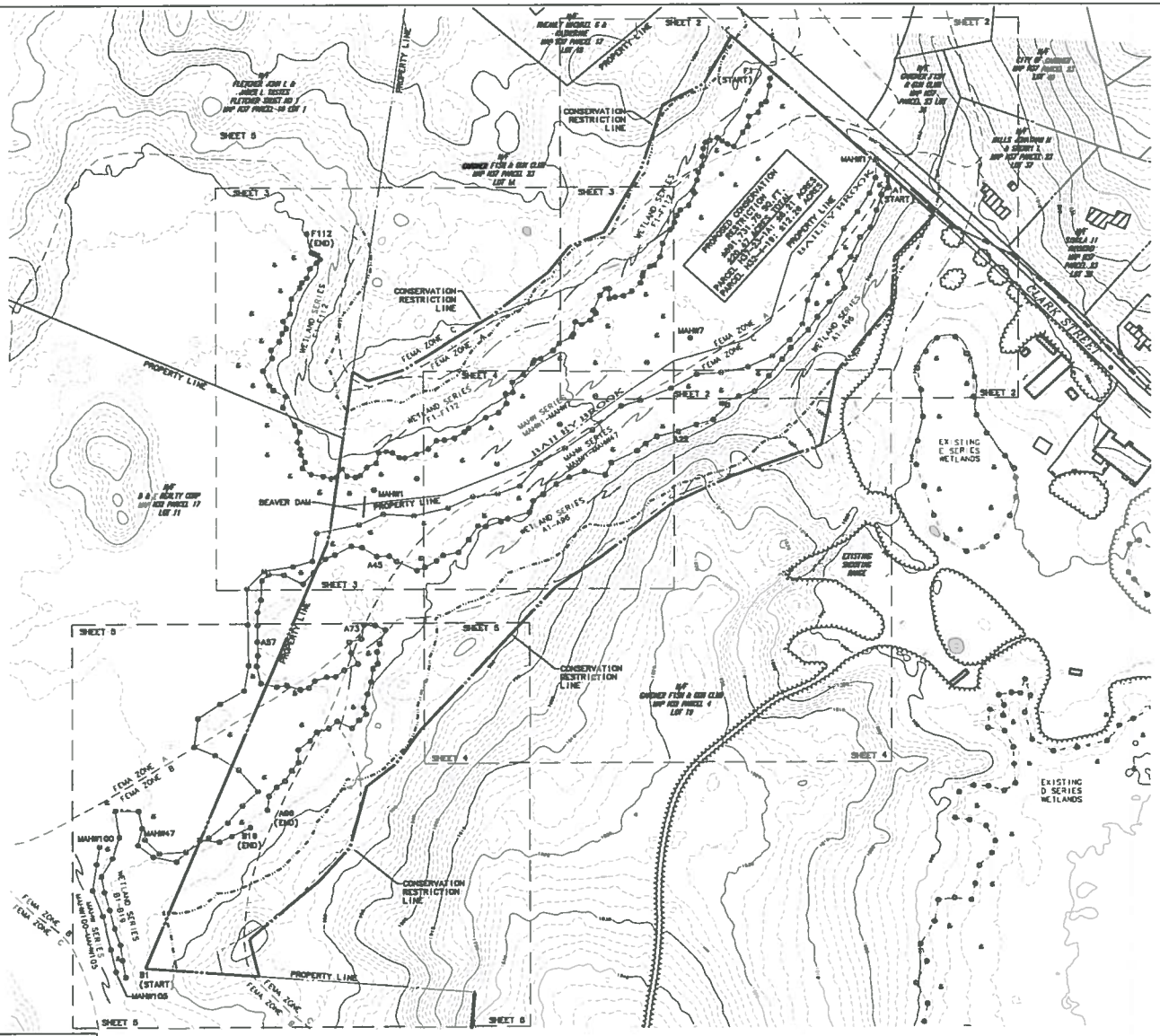
LEGEND

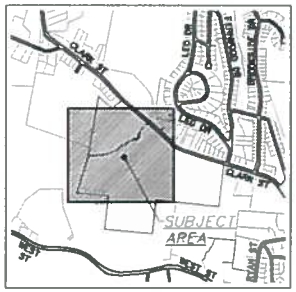
- = WETLAND LINE
- = 100' WETLAND BUFFER
- = MEAN ANNUAL HIGH WATER LINE
- = 200' RIVERFRONT AREA
- FEMA ZONE A / FEMA ZONE B = FEMA FLOOD ZONE
- = WETLAND FLAG
- = MEAN ANNUAL HIGH WATER FLAG
- = CONSERVATION RESTRICTION

CITY OF GARDNER CONSERVATION COMMISSION PLAN APPROVAL

APPROVED (DATE:) _____

ENDORSED (DATE:) _____





LOCUS PLAN
1" = ±1,200'

GENERAL NOTES

1. RECORD OWNER
GARDNER FISH & GUN CLUB
538 CLARK STREET
GARDNER, MASSACHUSETTS 01440
DB.2837 PG.203

2. PROPERTIES ARE SHOWN AS PARCEL H32-4-18 AND PARCEL H37-83-1A AND APPEAR TO LIE WITHIN THE RURAL RESIDENTIAL (R-2) AND SOLAR OVERLAY ZONING DISTRICT PER THE CITY OF GARDNER ZONING MAP AND AVAILABLE ASSESSORS INFORMATION.

3. PROPERTY LINES SHOWN ARE COMPILED FROM AN ON THE GROUND SURVEY CONDUCTED BY EXISTING GRADE, INC IN JUNE OF 2017 AND NOVEMBER OF 2018. LINES OF OCCUPATION, FOUND MONUMENTATION, AND RECORDED INFORMATION.

4. PARCEL APPEARS TO PARTIALLY LIE WITHIN FLOOD ZONE A, B, AND C AS COMPILED HEREON PER FIRM MAPS 25033C0005B, 25033C0006B, AND 25033C0007B LAST REVISED JULY 02, 1981, AS SHOWN ON THE FEMA WEBSITE.

5. EXISTING CONDITIONS SHOWN HEREON WERE COMPILED FROM AN ON THE GROUND SURVEY CONDUCTED IN JUNE OF 2017 AND NOVEMBER OF 2018 BY EXISTING GRADE, INC. AND FROM AERIAL IMAGERY PROVIDED BY THE STATE OF MASSACHUSETTS.

6. ORIGIN OF BEARINGS IS MASSACHUSETTS STATE PLANE (NAD83), DETERMINED FROM A GPS SURVEY CONDUCTED BY EXISTING GRADE, INC. IN JUNE OF 2017.

7. ORIGIN OF ELEVATIONS IS NAVD 88, DETERMINED FROM A GPS SURVEY CONDUCTED BY EXISTING GRADE, INC.IN JUNE OF 2017.

8. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS,OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.

9. WETLAND FLAG SERIES (F1-F112) SHOWN FIELD DELINEATED BY DAVID GORDON OF PEER CONSULTANTS, P.C., 99 SOUTH BEDFORD STREET, SUITE 200, BURLINGTON MA IN NOVEMBER OF 2018 AND FIELD SURVEYED BY EXISTING GRADE, INC. IN NOVEMBER OF 2018. ALL OTHER RESOURCE AREAS SHOWN DELINEATED AND LOCATED BY BRAD HOLMES OF ENVIRONMENTAL CONSULTING & RESTORATION, LLC., P.O. BOX 1318, PLYMOUTH MA.

I CERTIFY THAT THE PROPERTY LINES SHOWN ARE THE LINES DIVIDING EXISTING OWNERSHIPS AND THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIPS OR FOR NEW WAYS ARE SHOWN.

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.

PROFESSIONAL LAND SURVEYOR DATE

Existing Grade Inc.
Surveyors & Civil Engineers
62 Riedell Road
Douglas, MA. 01516
508-694-6501 Ph/Fax

SCALE
SCALE 1" = 100'
0 50 100 200

NO.	DATE	BY	REVISIONS

CLIENT
CITY OF GARDNER
CONSERVATION COMMISSION
115 PLEASANT STREET
GARDNER, MASSACHUSETTS 01440

CONSERVATION RESTRICTION PLAN
FOR/OWNER
GARDNER FISH & GUN CLUB
538 CLARK STREET
GARDNER, MASSACHUSETTS 01440

1895_CR-RESTRICTION
PROJECT NO. 1895
DATE: 02/25/20
SHEET NO. 1 OF 5

A-1

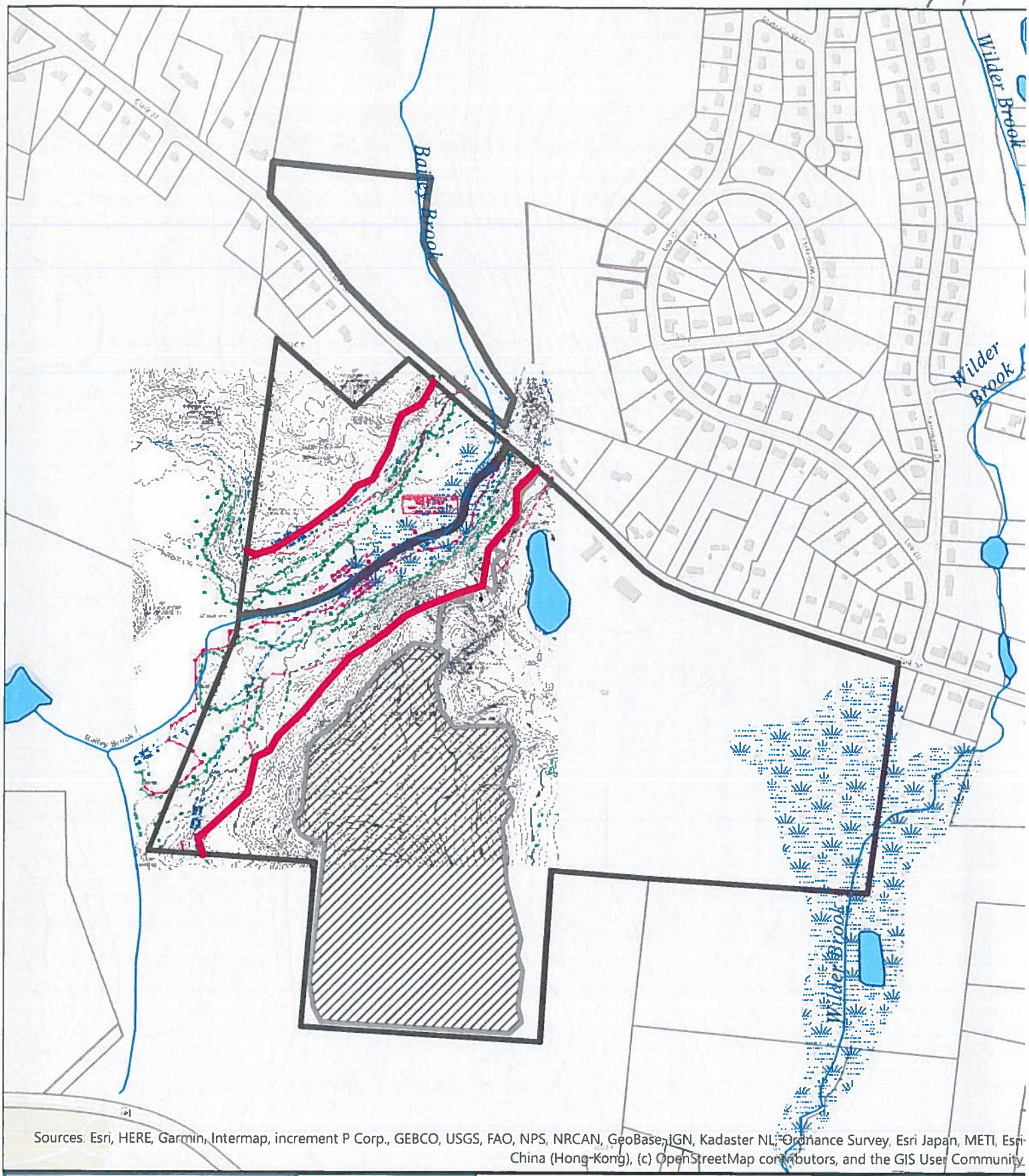
Gardner Fish & Gun Club
Conservation Restriction
BUDGET

Expenses

CR Acquisition	$16,000
Due Diligence & Costs	$17,705
TOTAL	**$33,705**

Revenues

NAWCA Grant Funds	$33,705
TOTAL	**$33,705**



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

Janet H. Morrison, Esq.
Land Conservation Consulting
59 Kelton Road, Ashburnham, MA 01430
978 827-5600; Cell: 978 502-0704
janet-morrison@comcast.net
JHMORRISON.COM

Source Credit: MassGIS

Gardner Fish & Gun Club

DEP Wetlands
- Marsh/Bog
- Open Water

GARDNER FISH & GUN CLUB

Solar Project and Conservation Restriction (20.47 acres)

- Conservation Restriction_boundary
- Solar Project_extent cleared

0 0.05 0.1 Miles

N

41

GRANTOR: Gardner Fish & Gun Club, Inc.
GRANTEE: City of Gardner
ADDRESS OF PREMISES: Clark Street, Gardner, MA
FOR GRANTOR'S TITLE SEE: Worcester County
Registry of Deeds at Book 2642, Page 362

CONSERVATION RESTRICTION

The GARDNER FISH & GUN CLUB, INC., a Massachusetts non-profit corporation, with an address of 538 Clark Street, Gardner, MA 01440, acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, and for its successors and assigns (hereinafter, "Grantor"),

GRANTS WITH QUITCLAIM COVENANTS TO

The CITY OF GARDNER, a Massachusetts municipal corporation with an address of 95 Pleasant Street, Gardner, MA 01440, under the care, custody and control of its Conservation Commission, for conservation purposes, by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, and under the protection of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, its permitted successors and assigns, (hereinafter, "Grantee"),

FOR CONSIDERATION OF EIGHTEEN THOUSAND AND 00/100 ($18,000.00) DOLLARS,

IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located on the south side of Clark Street in the City of Gardner, Massachusetts, comprised of 20.47 acres of open land, (hereinafter, "Premises"), which Premises is more particularly described in Exhibit A and shown in a plan prepared for the City of Gardner, dated _____ and recorded with the Worcester County Registry of Deeds at Plan Book _____ Plan _____, a reduced copy of which is attached hereto as Exhibit B.

I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic

and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values ("conservation values").

Conservation of the Premises, Tract #7X in the Gardner and Winchendon Wetlands Protection Project, is funded by the US Fish and Wildlife Service (USFWS), North American Wetlands Conservation Act (NAWCA), Small Grants Program, to carry out the purposes of the NAWCA Small Grants Program, which purposes include: to retain the Premises predominantly in its natural, scenic, and open condition; to protect and promote the conservation of biological diversity, forests, soils, natural watercourses, ponds, wetlands, water supplies, and wildlife thereon; to protect the natural resources of the Premises; to protect and enhance the natural resource value of abutting and nearby conservation areas; to protect the scenic qualities of the open space resources of the Premises; to allow passive recreational use; to allow for sustainable and sound management of the forest resources, and to encourage the long-term professional stewardship of these resources in a manner consistent with Best Management Practices (BMPs) and applicable local, state and federal law.

The conservation values to be protected by this conservation restriction include the following:

- Open Space. The Premises contributes to the protection of the scenic and natural character of the landscape around Bailey Brook, augmenting a conserved landscape of approximately 3900 acres running south from 19th Hill in Winchendon to recently conserved municipal land in Gardner, including the recently conserved Bailey Brook Park and Conservation Area which abuts the Premises to the north. Protection of the Premises will enhance the open-space value of these and nearby lands.

- Water Resources. The Premises include the Bailey Brook Riverfront, associated wetlands and the 100 year flood plain. Bailey Brook is a cold water stream that flows through a mostly protected, undeveloped landscape from its headwaters at 19th Hill in Winchendon to the Otter River in Gardner. The associated wetlands complex supports natural hydrologic conditions which filter and store water, maintaining water quality and quantity.

- Wildlife Habitat. The Premises include the river corridor of Bailey Brook, a state-designated Cold-water Fisheries Resource (SARIS ID 3523925) which flows through Premises for 1/3rd mile and provides habitat for cold water fish species such as Native Brook Trout (*Salvelinus fontinalis)*. The associated wetlands complex provides habitat for diverse aquatic species such as the Wood Turtle (*Glyptemys insculpta)* and wetland birds such as the Grasshopper Sparrow (*Ammodramus savannarum*).

- Floodplain and Climate Change Resiliency. Conservation of the Premises will ensure the protection of the floodplain and the continued availability of flood storage during major storm events, which are likely to increase as a result of climate change. The Premises are an extension of a mostly protected landscape in the Bailey Brook corridor, whose north/south orientation and varied topography will provide increased climate resiliency for flora and fauna, migrating in response to climate change.

- Soils. The Premises includes 18.5 acres (75% of the Premises) of Prime Forest Soils, including Prime 2, Prime 3, and soils of statewide and local importance.

- Public Access. Public access to the Premises will be allowed for hunting, fishing and passive recreational activities, subject to Grantor's safety rules related to its use of its property as a firing range.

- Furtherance of Governmental Conservation Policy. The Premises are Tract #7X in the Gardner and Winchendon Wetlands Protection Project, funded by the US Fish and Wildlife Service (USFWS), North American Wetlands Conservation Act (NAWCA), Small Grants Program. This Project is administered by the USFWS Atlantic Coast Migratory Bird Joint Venture. The objectives of this project include the protection of wetland birds typical of the northern Worcester Plateau, including the Endangered American Bittern, (*Botaurus lentiginosus*) and the Threatened Grasshopper Sparrow (*Ammodramus savannarum*). The 2015 State Wildlife Action Plan lists, Brook Trout (*Salvelinus fontinalis)* and Wood Turtle (*Glyptemys insculpta)* as species of Greatest Conservation Need which can be found in small streams such as Bailey Brook. Conservation of the Premises also furthers goals of the City of Gardner's 2015 Open Space and Recreation Plan to: 1) Protect water resources and improve water quality; and 2) Increase public awareness and stewardship of the City's water resources.

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report ("Baseline Report") prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. Prohibited Acts and Uses

Subject to the exceptions set forth herein, the Grantor shall not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

(1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel,

solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;

(2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;

(3) Archeological surveys or investigations except under an Archeological Field Investigation Permit issued by the Massachusetts Historic Commission (or appropriate successor agency) State Archeologist (or appropriate successor official) authorized pursuant to MGL Chapter 9, Section 26A and associated regulations, as further described in Paragraph II(B)(6);

(4) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;

(5) Storage, stockpiling, or use of hazardous materials, petroleum products, pesticides and herbicides, non-organic fertilizers, or any other such materials;

(6) Cutting, removing or otherwise destroying trees, grasses or other vegetation;

(7) Commercial Forestry, as defined by the Massachusetts Forest Cutting Practices Act, MGL Chapter 132 or successor law.

(8) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;

(9) Planting or release of any non-native species of plant, fungus or animal;

(10) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;

(11) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;

(12) The use of the Premises for business, residential or industrial use, or for more than *de minimis* commercial recreation;

(13) The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises;

(14) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

B. Reserved Rights and Exceptions

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not significantly impair the conservation values or purposes of this Conservation Restriction.

(1) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph II(B) shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.

(2) Vegetation Management. The selective minimal removing of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, including vistas as documented in the Baseline Report, woods roads, fence lines and trails and meadows;

(3) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;

(4) Composting. The stockpiling and composting of stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not impair the conservation values (including scenic values) of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody or stream. All exercise of this reserved right shall take into account sensitive areas and avoid harm to nesting species during nesting season;

(5) Wildlife Habitat Improvement. With the prior written approval of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;

(6) Archaeological Investigations. The right to conduct archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only (a) after written notification to and approval by Grantee, and (b) in accordance with an archaeological field investigation plan prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission ("MHC") State Archaeologist as required by Massachusetts General Laws. A copy of the results of any scientific investigation on the Premises is to be provided to the Grantee. Plans for restoration of the site of any archaeological activity shall be

submitted to the Grantee in advance of restoration, and such restoration shall be conducted only in accordance with a plan approved by the Grantee.

Activities detrimental to archeological and historic resources, including but not limited to earth moving and the alteration of historic stone walls/cellar holes/features, shall not be deemed to be detrimental to archeological and historic resources if a description of the proposed activity and its location is submitted in writing (e.g., on a Project Notification Form) with a plan of land (or assessors map) and a USGS map with the Premises outlined thereon, to MHC and MHC issues a letter stating that the proposed activity is not within a resource area or is determined to not have an adverse effect on said resources. Grantor and Grantee shall make every reasonable effort to prohibit any person from conducting archaeological field investigation on the Premises, including metal detecting, digging, or artifact collecting, without approval of the MHC State Archaeologist (or appropriate successor official), and shall promptly report any such prohibited activity to the MHC State Archaeologist (or appropriate successor official). Grantor and Grantee shall include the prohibition against digging, artifact collecting, or metal detecting in any list of rules for visitors to the Premises;

(7) Trails. The marking, clearing and maintenance of existing trails as shown in the Baseline Report. With prior approval of the Grantee, the construction of new trails or the relocation or alteration of existing trails, provided that any construction, relocation, or alteration results in trails that are no wider than four (4) feet;

(8) Signs. The erection, maintenance and replacement of signs with respect to trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, any gift, grant, or other applicable source of support for the conservation of the Premises, and the protected conservation values and reserved rights.

(9) Outdoor Passive Recreational Activities. Fishing, hunting and passive, non-motorized outdoor recreational and educational activities that do not materially alter the landscape, do not degrade environmental quality, and do not involve more than minimal use for commercial recreational activities;

(10) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph B shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises, including Bailey Brook and associated wetlands, that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph B, any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report.

(11) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph B shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

C. Notice and Approval.

1. Procedure for Notification and Approval. Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.

2. Deemed Approval. Failure of the Grantee to respond in writing within such sixty (60) days to a request which materially complies with the requirements of this Paragraph II(C) shall be deemed to constitute approval of the request as submitted, so long as the request sets forth the provision of this section relating to deemed approval after the passage of time, the requested activity is not prohibited herein, and the activity will not impair the purposes of this Conservation Restriction.

III. LEGAL REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief.

1. Enforcement of Violations. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations, provided Grantor ceases objectionable actions and Grantee determines there is no ongoing damage to the conservation values of the Conservation Restriction.

2. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel

fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

B. Non-Waiver.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

C. Disclaimer of Liability

By acceptance of this conservation restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

D. Acts Beyond the Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

IV. ACCESS

1. To the Grantee. The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof.

2. To the General Public. The Grantor grants access to the Premises to the general public and agrees to take no action to prohibit or discourage access to and use of the Premises by the general public for hunting and fishing, as regulated by state and federal law. Access by the public for other passive recreation, nature study, and similar activities is not explicitly conveyed herein, since use of the Grantor's firing range would negatively impact public safety. However, if the Grantor elects to discontinue the use of the firing range at specified days and times, the Grantor and Grantee may agree to allow general

public access for passive outdoor activities as described in Paragraph II(B)(9), during those dates and times, provided that such agreement is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the safety of the public and the protection of the purposes and conservation values of this Conservation Restriction. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Paragraph II(B)(9)). The Grantor's right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in the Massachusetts General Laws Chapter 21, Section 17C (Recreational Use law) and the Grantor and Grantee hereto benefit from exemption from liability to the extent provided in such law. The Grantee may require the Grantor to post the Premises against any use that may result in rutting or erosion or other damage to the natural resources of the Premises.

V. EXTINGUISHMENT

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph V(B), subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Proceeds. Grantor and Grantee agree that the donation of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the gift, bears to the value of the unrestricted property. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements, including the NAWCA Small Grants Program.

C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph V(B), after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably

allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. ASSIGNABILITY

A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the Assignee is not an owner of the fee in the Property, and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than 20 days prior to the execution of any such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable. If any such deed or other legal instrument does not reference this Conservation Restriction, the Grantee may record a Notice of Restriction referencing this Conservation Restriction in the appropriate registry.

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the

restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Worcester County Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Worcester County Registry of Deeds.

XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Gardner Fish & Gun Club, Inc.
538 Clark Street
Gardner, MA 01440

To Grantee: City of Gardner
Conservation Commission
115 Pleasant Street
Gardner, MA 01440

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

XIII. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. MISCELLANEOUS

A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the

existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. Homestead. The Grantor attests that there is no residence on the Premises, and the Premises is not occupied or intended to be occupied as a residence by the Grantor, a spouse, former spouse, or children of the Grantor, or a member of the Grantor organization, or a spouse, former spouse, or children of said member.

C. The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance, assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

D. Attached hereto and incorporated herein by reference are the following:

Signature pages:
Grantor
Grantee Acceptance
Approval by Mayor and City Council of the City of Gardner
Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:
Exhibit A: Legal Description of Premises
Exhibit B: Reduced Plan of Premises

Executed as a sealed instrument this _____ day of _____, 2020

GARDNER FISH & GUN CLUB, INC.

_____
BY: ERIK STORM, President

_____
BY: DENNIS W. COMEE, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss. Dated: _____

Then personally appeared the above-named ERIK STORM, acting as President of the Gardner Fish & Gun Club, Inc., who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the foregoing document, and acknowledged the foregoing to be the free act and deed of the Gardner Fish & Gun Club, Inc.

Notary Public: _____

My commission expires: _____.

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss. Dated: _____

Then personally appeared the above-named DENNIS W. COMEE, acting as Treasurer of the Gardner Fish & Gun Club, Inc., who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the foregoing document, and acknowledged the foregoing to be the free act and deed of the Gardner Fish & Gun Club, Inc.

Notary Public: _____

My commission expires: _____

ACCEPTANCE OF GRANT
GARDNER CONSERVATION COMMISSION

The undersigned, being the Chairman of the Conservation Commission of the City of Gardner, Massachusetts, hereby certify that at a public meeting duly held on _____2020, the Conservation Commission voted to approve and accept the foregoing Conservation Restriction from the Gardner Fish & Gun Club, Inc., pursuant to Section 32 of Chapter 184 and Section 8C of Chapter 40 of the Massachusetts General Laws and do hereby accept the foregoing Conservation Restriction.

By: _____
Greg Dumas, Chairman
Gardner Conservation Commission

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss. Dated: _____

Then personally appeared the above-named GREG DUMAS, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the foregoing document, and acknowledged to me that he signed it voluntarily for the stated purpose.

Notary Public: _____

My commission expires: _____.

(SEAL)

APPROVAL OF CITY OF GARDNER

Pursuant to a vote of the Gardner City Council on _____, 2020, to be recorded herewith, the above Conservation Restriction from the Gardner Fish & Gun Club, Inc. to the City of Gardner acting by and through its Conservation Commission, was approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws and accepted by the City of Gardner on this _____ day of _____, 2020. Further, I, _____, the undersigned, being the Mayor of the City of Gardner, hereby approve the foregoing Conservation Restriction in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

By: _____
, Mayor

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss: Dated: _____

Then personally appeared _____, Mayor of Gardner, who proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

_____
Notary Public
My Commission Expires:

VOTE OF GARDNER CITY COUNCIL

I, Alan L. Agnelli, Clerk of the City of Gardner, hereby certify that at a meeting of the Gardner City Council duly held on _____, 2020, the City Council voted to approve and accept the foregoing Conservation Restriction, in the public interest pursuant to Section 32 of Chapter 184 of the General Laws of Massachusetts.

By: _____
Alan L. Agnelli, Clerk

APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the Gardner Fish & Gun Club, Inc. to the City of Gardner acting by and through its Conservation Commission, has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 2020

_____
Kathleen A. Theoharides
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this _____ day of _____, 2020, before me, the undersigned notary public, personally appeared Kathleen A. Theoharides, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

_____
Notary Public
My Commission Expires:

EXHIBIT A

Legal Description of Premises

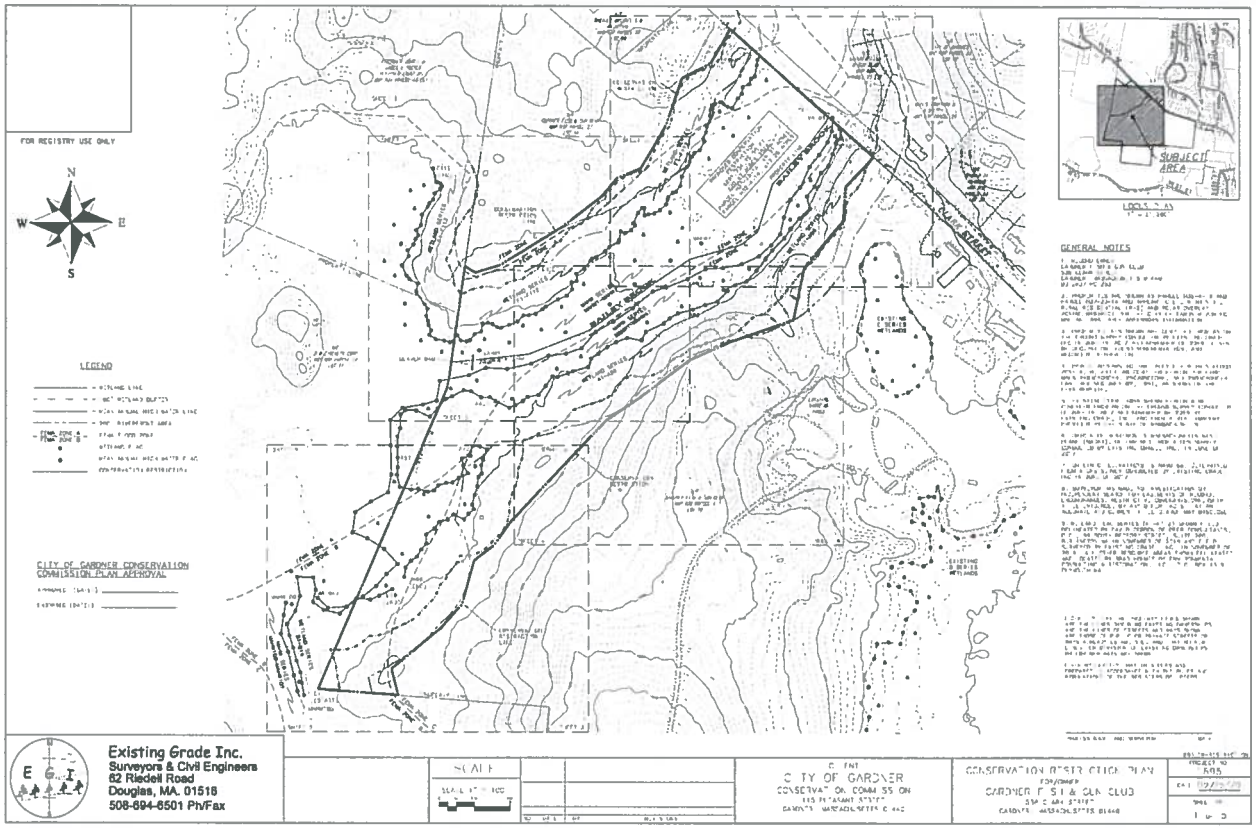


EXHIBIT B

Reduced Copy of Plan of Premises

For official full size plan see Worcester Registry of Deeds Plan Book _____ Page _____

6-1 & 6-2

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CITY CLERK'S OFFICE
GARDNER, MA

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

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

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

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

Ref: 6-1 & 6-2

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CITY CLERK'S OFFICE
GARDNER, MA

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

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

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

February 7, 2020

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

Re: Green Street Parking Lot Land Lease

Dear Mr. Brown:

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

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

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

Please do not hesitate to contact me with [illegible]

Very truly yours,

C. Deborah Phillips /ST

C. Deborah Phillips

CDP/st

cc: Acting Mayor

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By

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: