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

OFFICE OF THE
CITY COUNCIL

RECEIVED
2020 JUN -8 AM 11:31
CITY CLERK'S OFFICE
GARDNER, MA

June 8, 2020

FINANCE COMMITTEE MEETING NOTICE

Date: Wednesday, June 10, 2020
Time: 12:00 P.M.
Location: Remotely via Zoom/Broadcast on Gardner YouTube Channel

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 – June 10, 2020 – 12:00 PM
Remotely via Zoom

AGENDA

CALL TO ORDER

ANNOUNCEMENT OF OPEN MEETING RECORDINGS

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1-1 Review and Approval of the May 18, 2020 Regular Meeting Minutes.

2-1 An Order Appropriating $275,000.00 from Free Cash to Snow and Ice Removal.

2-2 An Order Appropriating $32,000.00 from Free Cash to Public Works – Street Lighting Account.

2-3 An Order Appropriating $71,000.00 from Free Cash to Fire Department Salaries, Overtime.

2-4 An Order Appropriating $8,700.00 from Free Cash to Ambulance Department Salaries, Overtime.

2-5 An Order Appropriating $6,800.00 from Free Cash to Ambulance Department Operating Expenses.

2-6 An Order Appropriating $10,000.00 from Free Cash to Human Resources Department, Medical Exams Account.

2-7 An Order Appropriating $17,500.00 from Free Cash to Termination Leave Account.

2-8 An Order Appropriating $1,260.00 from Free Cash to Planning Board Communications Account.

2-9 An Order Appropriating $80,853.00 from Free Cash to School E-Rate Expenses Account.

2-10 An Order Rescinding Order No. 12874, An Order Appropriating $100,000.00 from Golf Enterprise Fund to Golf Indirect Cost Expense.

2-11 An Order Appropriating $95,380.00 from Golf Enterprise Fund to Golf, Various Expenditures.

FINANCE COMMITTEE
AGENDA

2-12 An Order Appropriating $50,000.00 from Free Cash to Golf Revenue Deficit Account.

2-13 Referral from Councillor Graves regarding the FY2021 Budget.

5-1 A Measure Authorizing a Five-Year Contract Period for On-call Professional Engineering & Environmental Consulting Services.

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

6-2 A Measure Authorizing an Easement Relocation Agreement Between the City of Gardner and Massachusetts Electric Company *(Ref: Finance Committee Agenda Item No. 6-1).*

6-3 A Measure Authorizing a Grant of Easement to Massachusetts Electric Company for an "OVERHEAD SYSTEM" and "UNDERGROUND ELECTRIC DISTRIBUTION SYSTEM" at 200 Catherine Street (Gardner High School).

7-1 Referral from Councillor Graves regarding Public Records Requests to the City Council.

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 MAY 18, 2020

The Finance Committee meeting was called to order remotely by Council President Elizabeth Kazinskas at 7:00 p.m. Finance Committee Members Councillors Ronald Cormier and James Walsh were also present via Zoom.

President Kazinskas announced that 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 on Zoom. 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 and the meeting is being broadcast live on Gardner's YouTube Channel.

Also participating remotely was City Clerk Alan Agnelli.

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 29, 2020 Regular Meeting, as printed.

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 as no new information has been received from Attorney Phillips.

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 communicated with Atty. Deb Phillips and was advised that the proposed changes to the Easement are under review by National Grid's Legal Department and that "the ball is in their court." The Committee postponed action.

6-3 **A Measure Authorizing a Grant of Easement to Massachusetts Electric Company and Verizon New England, Inc. for an "Overhead System" on City-owned property on the northerly side of Pleasant Street.**
Citing correspondence from National Grid and City Solicitor John Flick, President Kazinskas noted that National Grid seeks to install an anchor and 2 guy wires on City-owned land off Pleasant Street.

Councillors James Walsh and Ronald noted that the Easement is needed to install the appurtenances on the parcel to support the Pleasant Street Bridge replacement project.

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 recommend to the City Council that the following Order be granted:

GRANT OF EASEMENT

The CITY OF GARDNER, a municipal corporation with a mailing address at 95 Pleasant Street, Gardner, Massachusetts 01440 (hereinafter referred to as the Grantor), for consideration of One ($1.00) Dollar, grants to MASSACHUSETTS ELECTRIC COMPANY, 40 Sylvan Road, Waltham, Massachusetts 02451, a Massachusetts corporation, and VERIZON NEW ENGLAND INC., a New York corporation, having a local address of 125 High Street – Oliver Tower, 07 Floor, Boston, MA 02110 (hereinafter referred to as the Grantees) with quitclaim covenants, the perpetual right and easement to construct, reconstruct, repair, maintain, operate and patrol, for the transmission of high and low voltage electric current and for the transmission of intelligence and telephone use, lines to consist of, but not limited to, one (1) pole, (which may be erected at different times) with wires and cables installed thereon, and all necessary foundations, anchors, guys, braces, fittings, equipment and appurtenances (hereinafter referred to as the "OVERHEAD SYSTEM") over, across, under and upon the Grantor's land in Gardner, Worcester County, Massachusetts, to serve Grantor's property and others.
Said "OVERHEAD SYSTEM" is to be located in, through, under, over, across and upon Grantor's property, which is located on the northerly side of Pleasant Street, to consist of Pole P.34, to become established by and upon the final installation thereof by the Grantees.

Also with the further perpetual right and easement from time to time without further payment therefore to pass and repass, over, across and upon Grantor's land, as is reasonable and necessary, in order to renew, replace, repair, remove, add to, maintain, operate and patrol and otherwise change said "OVERHEAD SYSTEM" and each and every part thereof and to make such other excavation or excavations as may be reasonably necessary in the opinion and judgment of the Grantees, their successors and assigns, and to clear and keep cleared the portions and areas of the premises wherein the "OVERHEAD SYSTEM" is specifically located of such trees, shrubs, bushes, above ground and below ground structures, objects and surfaces, as may, in the opinion and judgment of the Grantees, interfere with the efficient and safe operation and maintenance of the "OVERHEAD SYSTEM".

It is agreed that the "OVERHEAD SYSTEM" shall remain the property of the Grantees, their successors and assigns, and that the Grantees, their successors and assigns, shall pay all taxes assessed thereon. Grantor agrees that the rights and easement herein granted are for the purpose of providing service to Grantor's property and the further right to service others from said "OVERHEAD SYSTEM". The Grantor, for itself, its successors and assigns, covenant and agrees with the Grantees, for themselves, their successors and assigns, that this Grant of Easement and the location of the "OVERHEAD SYSTEM" may not be changed or modified without the written consent of the Grantees, their successors and assigns, which consent may be withheld by the Grantees in their sole discretion. The rights and easement herein granted are over, across and upon a certain parcel of land being more particularly described in an Instrument of Taking dated December 17, 1956, recorded with the Worcester South District Registry of Deeds in Book 3833, Page 584.

UNACCEPTED/UNCORRECTED PROOF

And further, said "OVERHEAD SYSTEM" (locations of the electrical equipment and other facilities on the hereinbefore referred to premises of the Grantor) is approximately shown on a sketch entitled: "EASEMENT SKETCH; Exhibit A – Not to Scale; Designer: David Terk Date: 5/1/20; Address: Pleasant Street Gardner, MA Work Order: 28579845; nationalgrid", a reduced copy of said sketch is attached hereto as "Exhibit A", copies of which are in the possession of the Grantor and Grantees herein, but the final definitive locations of said "OVERHEAD SYSTEM" shall become established by and upon the installation and erection thereof by the Grantees.

It is the intention of the Grantor to grant to the Grantee, its successors and assigns, all the rights and easements aforesaid and any and all additional and/or incidental rights needed to install, erect, maintain and operate within a portion of the Grantor's land an "OVERHEAD SYSTEM" for the transmission of intelligence and for supplying electric service for the building, buildings or proposed buildings shown on the last herein referred to sketch or amended sketch and the right to service others from said "OVERHEAD SYSTEM".

For Grantor's title, see Instrument of Taking dated December 17, 1956, recorded with the Worcester South District Registry of Deeds in Book 3833, Page 584.

ADJOURNMENT

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on call of the roll, it was voted three (3) yeas, President Kazinskas and Councillors Ronald Cormier and James Walsh, to adjourn.

UNACCEPTED/UNCORRECTED PROOF

CITY of GARDNER

Office of the City Auditor

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

To: City Council

Re: Money Orders for consideration on June 10, 2020

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

These balances are as of June 8, 2020:

		Money Order	Balance
Free Cash	10000-35400		$1,078,117.93
to PW Dept for Snow and Ice Expenditures	14421-52210	275,000.00	$803,117.93
to HR Dept for Medical Exams Expenditures	11152-52192	10,000.00	$793,117.93
to Fire Dept for Salary & Wages/OT	12220-51030	71,000.00	$722,117.93
to Amb Dept for Salary & Wages/OT	12231-51030	8,700.00	$713,417.93
to Amb Dept for Professional Services Expenditures	12231-52190	6,800.00	$706,617.93
to PW Dept for Street Lighting Expenditures	14421-52120	32,000.00	$674,617.93
to Mayor's Unclassified Dept for Termination Leave Salary	11199-51551	17,500.00	$657,117.93
to Planning Board Dept for Communications Expenditures	11175-52150	1,260.00	$655,857.93
to Golf Dept for Various Expenditure to Cover Revenue Shortfall	63640-5****	50,000.00	$605,857.93
to School Dept for E-Rate Expenditures	13960-56800	80,853.00	$525,004.93
			$525,004.93

The Snow & Ice account currently has available ($271,652.47)
14421-52210

Sincerely

John Richard

John Richard
City Auditor

copies: Acting Mayor
City Clerk

AN ORDER APPROPRIATING FROM FREE CASH TO SNOW AND ICE REMOVAL.

ORDERED:

That there be and is hereby appropriated the sum of Two Hundred Seventy Five Thousand Dollars and No Cents ($275,000.00) from Free Cash to Snow and Ice Removal.

AN ORDER APPROPRIATING FROM FREE CASH TO PUBLIC WORKS – STREET LIGHTING.

ORDERED:

That there be and is hereby appropriated the sum of Thirty Two Thousand and No Cents ($32,000.00) from Free Cash to Public Works – Street Lighting.

2-2

Department of Public Works
CITY OF GARDNER

Dane E. Arnold, Director
416 West Broadway
Gardner, MA 01440-2687
Telephone (978) 632-7661
Fax (978) 630-4029

Acting Mayor Kazinskas
City Hall
95 Pleasant Street
Gardner, MA 01440

May 20, 2020

Dear Acting Mayor Kazinskas:

The Department of Public Works is requesting **$32,000** from available funds to the Department of Public Works **Street Lighting** line item **(14420-52120).** The Street Lighting line item has a current deficit of approximately -$11,200 and we still need to pay months of May and June. It is estimated that the Street Lights cost about $9,000 +/- per month. The total amount of **$32,000** should be adequate funding for the remainder of the fiscal year.

Background:
The Street Lighting line Item in previous years was funded between $110,000 and $120,000 per year. In Fiscal Year 2020 it was reduced to $90,000 because the City was in the middle of changing over to LED lights. The assumption was there would be a reduction in costs during the current fiscal year. The issue became National Grid did not have a rate established for cities and towns for LED lighting until later in the Fiscal Year. The City has been paying the old rate (S2) the entire year. At some point the City will be receiving a reimbursement or credit from National Grid based on the new rate (S5), but until then, we have a deficit in the Street Lighting Line Item.

If you have any questions regarding this matter please do not hesitate to call.

Sincerely,

Dane E. Arnold, Director

Pc: Finance Committee
Public Service Committee
John Richard, City Auditor

2-3, 2-4, 2-5

CITY OF GARDNER

FIRE HEADQUARTERS
70 CITY HALL AVENUE
GARDNER, MA 01440-2671

OFFICE OF FIRE CHIEF
Richard P. Ares

Telephone (978) 630-4051
Fax (978) 630-4028

May 29, 2020

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

Dear Acting Mayor Kazinskas,

I am requesting an appropriation from free cash to make up for the following shortfalls:
$71,000.00 to FD Salary & Wages.
$8700.00 to Ambulance Salary & Wages.
$6800.00 to Ambulance Operating Expenses.

The largest deficits in the FD salary account are in Overtime, Collateral Jobs and Lieutenants Salary & Wages. As of May 25th, $127,305.21 has been spent in Overtime as a direct result of resignations and the long term injury leave of a Lieutenant.

I would like to point out that the average annual Fire overtime over the last ten fiscal years is $324,922.40.

The Collateral Job deficit is due to a lot of work having to be done to put the new Engine 3 and Car 2 in service, as well as major repairs to Tower 1.

On the Ambulance side the largest deficits in Salary & Wages is again in Overtime and Collateral Jobs. As of May 25th, $27,529.98 in Overtime has been spent as a direct result of resignations.

The deficit in Ambulance Collateral Jobs is due to many hours of extra work by the EMS Coordinator and Assistant Coordinator regarding the current COVID-19 pandemic.

The deficit in the Ambulance Operating budget is in the Professional Services line. This line item is used to pay for our billing service and ALS service. While it is budgeted, the amount we pay is

based on what we receive in revenue, so it is basically a pass through amount. We pay ALS 50% of what we collect and our billing service 3% of what we collect.

Through the end of April our gross revenue for the ambulance is $847,744.82 or an average of $84,744.48 per month. This projects out to $1,017,287.78 at the end of the fiscal year.

I am hopeful that a good portion of our Overtime and our Ambulance Repair and Maintenance expenses after March 13th will be eligible for a 75% FEMA re-imbursement in the future.

Please contact me with any questions.

Thank you.

Respectfully,

Richard P. Ares
Fire Chief

AN ORDER APPROPRIATING FROM FREE CASH TO FIRE – SALARIES/OVERTIME.

ORDERED:

That there be and is hereby appropriated the sum of Seventy-One Thousand Dollars and No Cents ($71,000.00) from Free Cash to Fire Department Salaries/Overtime.

2-3, 2-4, 2-5

CITY OF GARDNER

FIRE HEADQUARTERS
70 CITY HALL AVENUE
GARDNER, MA 01440-2671

OFFICE OF FIRE CHIEF
Richard P. Ares

Telephone (978) 630-4051
Fax (978) 630-4028

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Gardner City Hall
95 Pleasant Street
Gardner, MA 01440

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Please contact me with any questions.

Thank you.

Respectfully,

Richard P. Ares
Fire Chief

AN ORDER APPROPRIATING FROM FREE CASH TO AMBULANCE – SALARIES/OVERTIME.

ORDERED:

That there be and is hereby appropriated the sum of Eight Thousand Seven Hundred Dollars and No Cents ($8,700.00) from Free Cash to Ambulance Department Salaries/Overtime.

2-3, 2-4, 2-5

CITY OF GARDNER

FIRE HEADQUARTERS
70 CITY HALL AVENUE
GARDNER, MA 01440-2671

OFFICE OF FIRE CHIEF
Richard P. Ares

Telephone (978) 630-4051
Fax (978) 630-4028

May 29, 2020

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

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Please contact me with any questions.

Thank you.

Respectfully,

Richard P. Ares
Fire Chief

2-5

AN ORDER APPROPRIATING FROM FREE CASH TO AMBULANCE – OPERATING EXPENSES.

ORDERED:

That there be and is hereby appropriated the sum of Six Thousand Eight Hundred Dollars and No Cents ($6,800.00) from Free Cash to Ambulance Operating Expenses.

2-3, 2-4, 2-5

CITY OF GARDNER

FIRE HEADQUARTERS
70 CITY HALL AVENUE
GARDNER, MA 01440-2671

OFFICE OF FIRE CHIEF
Richard P. Ares

Telephone (978) 630-4051
Fax (978) 630-4028

May 29, 2020

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

Dear Acting Mayor Kazinskas,

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Please contact me with any questions.

Thank you.

Respectfully,

Richard P. Ares
Fire Chief

AN ORDER APPROPRIATING FROM FREE CASH TO HR MEDICAL EXAMS ACCOUNT.

ORDERED:

That there be and is hereby appropriated the sum of Ten Thousand Dollars and No Cents ($10,000.00) from Free Cash to the HR Medical Exams Account.

2-16

John Richard

From: Debra Pond
Sent: Wednesday, May 27, 2020 2:02 PM
To: Mayor; John Richard
Subject: Medical Exam Account - Free Cash Request

Acting Mayor Kazinskas:

As we near the end of the fiscal year, I note that I currently have a deficit amount of funds in the Medical Exam account. With the most recent invoices processed, the total deficit as of today's date is $9,152.00. This account covers pre-placement physicals and drug tests, random drug and alcohol tests and DOT physicals. Last fiscal year we spent $23,445.00. This fiscal year $15,000.00 was budgeted for this account.

Due to an unexpected surge in hiring for the School Department for the 2019-20 school year (for both the City and School Department we hired approximately 140 individuals for this fiscal year), we have exceeded the budgeted amount for this fiscal year. As such, I respectfully request that an additional $10,000.00 be transferred to this account from free cash.

Thank you for your time and consideration. If you have any questions, please contact me.

Debra A. Pond

Director of Human Resources
City of Gardner
95 Pleasant Street, Rm. 14
Gardner, MA 01440
(Office) (978) 630-4001
(Cell) (978) 870-8483
(Fax) (978) 630-4025

2-7

AN ORDER APPROPRIATING FROM FREE CASH TO TERM LEAVE ACCOUNT.

ORDERED:

That there be and is hereby appropriated the sum of Seventeen Thousand Five Hundred Dollars and No Cents ($17,500.00) from Free Cash to the Term Leave Account.

John Richard

From: John Richard
Sent: Wednesday, June 3, 2020 2:35 PM
To: Mayor
Subject: Term Leave Reserve

Hi Lizzy

Looking at the term leave reserve account $17,500 will be needed to cover the year end deficit in this account.

Description	2020 Original Budget	2020 Available
TERMINATION LEAVE - RESERVE	$ 200,000.00	$ 28,292.95
UPCOMMING RETIREMENT EXPENSES		
TREASURER/COLLECT DEPT		$ 26,150.00
POLICE DEPT		$ 19,640.00
REMAINING BUDGET		**$ (17,497.05)**

Thank you

John Richard
City Auditor

95 Pleasant Street, Room 114
Gardner, MA 01440
978-632-1900 ext 8020

2-7

AN ORDER APPROPRIATING FROM FREE CASH TO PLANNING BOARD COMMUNICATIONS ACCOUNT.

ORDERED:

That there be and is hereby appropriated the sum of One Thousand Two Hundred Sixty Dollars and No Cents ($1260.00) from Free Cash to the Planning Board Communications Account.

2-8

CITY OF GARDNER

DEPARTMENT OF COMMUNITY DEVELOPMENT AND PLANNING

May 28, 2020

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

Dear Elizabeth,

I'm requesting a transfer of $1,257.02 from Free Cash to the Planning Board Communications account. The reason for this request is we had more advertisements published for the Planning Board then we originally budgeted for.

If you have any questions, please don't hesitate to ask.

Thank you,

Trevor Beauregard
Director
Community Development & Planning

City Hall Annex, 115 Pleasant Street, Room 201, Gardner, Massachusetts 01440
Telephone: (978) 630-4011 ◊ Facsimile: (978) 632-1905 ◊ CDBG (978) 632-3800
www.gardner-ma.gov

AN ORDER APPROPRIATING FROM FREE CASH TO THE SCHOOL E-RATE EXPENSES ACCOUNT.

ORDERED:

That there be and is hereby appropriated the sum of Eighty Thousand Eight Hundred Fifty-Three Dollars and No Cents ($80,853.00) from Free Cash to the School E-Rate Expenses Account.

2-9

Gardner Public Schools

April Yu, *Business Administrator, MBA, MCPPO*

www.gardnerk12.org 70 Waterford Street, Gardner, MA 01440 (978) 632-1000

June 4th, 2020

Ms. Elizabeth J. Kazinskas
Acting Mayor
Gardner City Hall
95 Pleasant Street
Gardner, MA 01440

Dear Ms. Kazinskas,

The E-rate program reimburses school districts for certain expenses related to telecommunication in the schools. The reimbursement is deposited in the City's free cash account. Certain expenses are paid from the School Department's budget lines and must be supported by the reimbursements.

FY20 E-Rate budget line is $0, and we expected to get the reimbursement to close the budget gap. Please have this year's reimbursement of $80,852.90 recorded as the FY20 budget for account 13960-56800-37000, E-rate expenses. Please see the attached MUNIS screenshot for the amount of reimbursement.

The City Auditor is waiting for your sign-off to make the adjustment.

Thank you very much for your support.

Sincerely,

April Yu

Cc: Mark Pellegrino, Superintendent
Bob O'Keefe, Director of Technology

Account Inquiry - Munis [GARDNER, MA]

My File Edit Tools Help

Detail
Months
Seg Find
Totals
User Defined Fields

Account

Fund	100	GENERAL FU	Acct	100 -000-003-43100 -37000	
Org	10003	STATE REVE	Acct name	E-RATE REVENUE FUNDING	Account Notes
Object	43100	SCH GR REV	Type	Revenue	Status Active
Project	37000	E-RATE FUNDS	Rollup		
			Sub-Rollup		
			MultiYr Fund		

4 Year Comparison History

Yr/Per 2020/03	Fiscal Year 2020	Fiscal Year 2019	Fiscal Year 2018	Fiscal Year 2021
Original Budget	-70,000.00	.00	.00	.00
Transfers In	.00	.00	.00	.00
Transfers Out	.00	.00	.00	.00
Revised Budget	-70,000.00	.00	.00	.00
Actual (Memo)	-80,852.90	-73,876.06	-167,442.65	.00
Encumbrances	.00	.00	.00	.00
Requisitions	.00			.00
Available	10,852.90	73,876.06	167,442.65	.00
Percent used	115.50	.00	.00	.00

3 of 5 Attachments (0)

Display detail information for current account.

FY20 Actual (Memo) : $80,852.90

AN ORDER RESCINDING AN APPROPRIATION ORDER NO. 12874 GOLF INDIRECT COST EXPENSE

ORDERED:

To rescind the vote taken on June 17, 2019, under Calendar Item #10128, Order No. 12874, ordering that the City of Gardner appropriates the sum of $100,000 from Golf Enterprise Fund to Golf Indirect Cost Expense, as the funds were not needed.

Ref: 2-10

10128

AN ORDER APPROPRIATING A SUM OF MONEY FROM GOLF ENTERPRISE FUND ACCOUNT TO GOLF INDIRECT COST EXPENSE

ORDERED:

That there be and is hereby appropriated the sum of One Hundred Thousand Dollars and No Cents ($100,000.00) from Golf Enterprise Fund to Golf Indirect Cost Expense.

Bud 2019-12-242 SR 6/18/19

Gen 2019-12-243 SR 6/18/19

Need to rescind order did not

need funds.

Order No. 12874

Order

In City Council

June 17, 2019

Order Passed

June 17, 2019

10 yeas, 1 absent.

Clerk

Presented to Mayor for approval

June 18, 2019

Approved on June 18, 2019

Mayor

Mayor's Signature

AN ORDER APPROPRIATING A SUM OF MONEY FROM GOLF ENTERPRISE FUND ACCOUNT TO GOLF VARIOUS EXPENDITURES

ORDERED:

That there be and is hereby appropriated the sum of Ninety-Five Thousand Three Hundred Eighty Dollars and No Cents ($95,380.00) from Golf Enterprise Fund to Golf Various Expenditures.

2-11

CITY OF GARDNER
GOLF COURSE COMMISSION

Golf Commission Office:

Gardner City Hall
95 Pleasant Street, Rm 226
Gardner, MA 01440
(978) 630-4004
ckumar@gardner-ma.gov
www.gardner-ma.gov

William Frank, Superintendent
100 Eaton St., Gardner, MA 01440

Daniel Berry, Golf Pro Manager
152 Eaton St., Gardner, MA 01440

(978) 632-9703
www.gardnergolfcourse.com

June 4, 2020

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

Dear Acting Mayor Elizabeth Kazinskas:

Due to CODIV-19, the Golf Commission is anticipating a shortfall of revenue because of late opening and restrictions on limited play and cart use. The Golf Commission is projecting a shortfall of revenue over actual expenses not to exceed $50,000.00 over our certified cash reserve. The Golf Commission is requesting that the City Council consider absorbing this shortfall with the City's certified cash reserve. The Golf Commission is monitoring and managing these expenses for the remainder of the fiscal year to minimize the impact.

Thank you for your consideration in this matter and if you have any concerns or questions, please contact me.

Respectively submitted,

Jeffrey J. Gallant, Chairman

Cc: William Frank, Golf Course Superintendent

CITY OF GARDNER
GOLF COURSE COMMISSION

Golf Commission Office:

Gardner City Hall
95 Pleasant Street, Rm 226
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Daniel Berry, Golf Pro Manager
152 Eaton St., Gardner, MA 01440

(978) 632-9703
www.gardnergolfcourse.com

June 4, 2020

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

Dear Acting Mayor Elizabeth Kazinskas:

The Golf Commission is requesting a transfer of our entire certified cash reserve to cover any revenue shortfalls caused by COVID-19.

Thank you for your consideration in this matter and if you have any questions, please contact me.

Respectively submitted,

Jeffrey J. Gallant, Chairman

Cc: William Frank, Golf Course Superintendent

AN ORDER APPROPRIATING FROM FREE CASH TO GOLF REVENUE DEFICIT ACCOUNT.

ORDERED:

That there be and is hereby appropriated the sum of Fifty Thousand Dollars and No Cents ($50,000.00) from Free Cash to the Golf Revenue Deficit Account.

2-12

CITY OF GARDNER
GOLF COURSE COMMISSION

Golf Commission Office:

Gardner City Hall
95 Pleasant Street, Rm 226
Gardner, MA 01440
(978) 630-4004
ckumar@gardner-ma.gov
www.gardner-ma.gov

William Frank, Superintendent
100 Eaton St., Gardner, MA 01440

Daniel Berry, Golf Pro Manager
152 Eaton St., Gardner, MA 01440

(978) 632-9703
www.gardnergolfcourse.com

June 4, 2020

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

Dear Acting Mayor Elizabeth Kazinskas:

Due to CODIV-19, the Golf Commission is anticipating a shortfall of revenue because of late opening and restrictions on limited play and cart use. The Golf Commission is projecting a shortfall of revenue over actual expenses not to exceed $50,000.00 over our certified cash reserve. The Golf Commission is requesting that the City Council consider absorbing this shortfall with the City's certified cash reserve. The Golf Commission is monitoring and managing these expenses for the remainder of the fiscal year to minimize the impact.

Thank you for your consideration in this matter and if you have any concerns or questions, please contact me.

Respectively submitted,

Jeffrey J. Gallant, Chairman

Cc: William Frank, Golf Course Superintendent

2-13

Alan Agnelli

From:	Scott Joseph Graves <sgraveslawoffice37@gmail.com>
Sent:	Sunday, May 24, 2020 7:49 PM
To:	John Richard; Alan Agnelli
Subject:	Fwd: Budget Due by June 26th?
Attachments:	City Budgets March 2019.pdf; BUL-2020-6.pdf

Rule 13 Referral by Scott J. Graves, WELFARE COMMITTEE, to the Finance Committee.

To the Finance Committee: Please consider this a City Council Rule 13 Referral. We are in the midst of a City Budget crisis. The Citizenry elected a CEO/Mayor on November 5, 2019 and also a City Council (Legislative Body). The Elected Mayor quit, so that the City has no Elected Mayor.

I am forwarding here, an email from our City Auditor. He has helped me by answering some questions, and fielding some comments, I have made regarding the City's unusual Budget process. The attachments from our DLS rep, Patricia Hunt, obviously was not pertinent to our particularly unique situation of not having an Elected Mayor.

This is my Referral to the Finance Committee, in the form of questions. I trust that the FinCom will take these up in timely fashion pursuant to the City Council Rules, and provide written answers (or otherwise public answers) to the questions:

1. With respect to M.G.L. c. 44, sec, 32's option of a "continuing appropriation budget . . . on a month to month basis" for up to 3 months, is that option available to a City with no Elected Mayor?

2. Because the statute places sole and exclusive authority with the Elected Mayor, is this option available to the City when we have no Elected Mayor?

3. If the Acting Mayor were to approve that Section 32 "continuing appropriation budget" (1/12th) authority of an Elected Mayor, would she not, as with any Elected Mayoral authority, need the "***e***"mergency that Flick has subjectively explicated in various evolutions since his first inception of that topic on November 14, 2019?

4. Given that the statute gives *express and unconditional authority* to the City Council to prepare and vote the Budget itself whenever the Elected Mayor does not do so within 170 days from Jan. 6, 2020, can there be a Charter Section 32 "***e***"mergency here? [It seems to me that if there is such an "***e***"mergency to justify the Acting Mayor's implementation of the continuing appropriation budget (1/12th) option, then that would also give her the authority to submit the FY Budget as well - an "***e***"mergency is an "***e***"mergency, after all].

5. The Elected Mayor did not submit the Budget within the 170 days, so the City Council's express and unconditional authority to prepare and vote the Budget is ripe, correct?

Thank you.

Scott J. Graves, At Large

---------- Forwarded message ---------
From: **John Richard** <jrichard@gardner-ma.gov>
Date: Thu, May 21, 2020 at 12:00 PM
Subject: RE: Budget Due by June 26th?
To: Councillor S Graves <sgraveslawoffice37@gmail.com>

My DOR rep send me the below email and attached DLS docs.

Good Morning John –

Bulletin 20-6 does not apply to cities. Cities already have a process for a monthly continuing appropriation under G.L. c. 44, s. 32. DLS is not involved in the approval of a city's continuing appropriation budget.

I am enclosing a set of FAQs on the city budget process for your information.

Please also note that there is legislation pending regarding extension of the 170-day deadline for submission of a city budget by the mayor in 44:32. Here is the link to that legislation – S2680.

Hope this helps.

Patricia F. Hunt

Chief, Bureau of Municipal Finance Law

Division of Local Services

Mass. Dept. Of Revenue

100 Cambridge St., 7th Floor

Boston, MA 02114

617-626-2400

11. If the city does not have an operating budget on July 1, can it spend based upon 1/12 of the prior fiscal year's budget?

If the city does not have an operating budget for the fiscal year on July 1 due to circumstances beyond its control, the mayor may submit a "continuing appropriation budget … on a month to month basis for a period not to exceed three months." G.L. c. 44, § 32. This means the mayor may submit a budget for July if the annual budget is not approved by June 30, a budget for August if the annual budget is not approved by July 31 and a budget for September if the annual budget is not approved by August 31. However, there is no requirement that a continuing budget for any of those months be equal to 1/12 of the previous fiscal year's operating budget. Each continuing budget can provide for all expenses that may be incurred for that particular month. The tax rate will be based upon the actual budget that is adopted for the entire fiscal year, which would include the amounts approved in continuing budgets.

From: Scott Joseph Graves <sgraveslawoffice37@gmail.com>
Sent: Thursday, May 21, 2020 11:45 AM
To: John Richard <jrichard@gardner-ma.gov>
Subject: Re: Budget Due by June 26th?

Hi again. Sorry. Did DLS tell you that in writing, or did it point to some literature or section of the Law which just permits that, willy-nilly? That does not make any sense at all to me.

SG

On Thu, May 21, 2020 at 9:53 AM John Richard <jrichard@gardner-ma.gov> wrote:

It's the previous year's budget which was approved by CC. That is how the DOR explain it to me. I do have to report the 1/12 amounts to DOR online.

JR

From: Scott Joseph Graves <sgraveslawoffice37@gmail.com>
Sent: Thursday, May 21, 2020 9:50 AM
To: John Richard <jrichard@gardner-ma.gov>
Subject: Re: Budget Due by June 26th?

You answered my next question (who approves that?). But, that gives me another question. If the CC is not approving it, who is?

SG

On Thu, May 21, 2020 at 9:37 AM John Richard <jrichard@gardner-ma.gov> wrote:

Hi Scott

Yes you are correct. That is where the 1/12 budget comes in. Basically taking FY20 approved budget and dividing it by twelve months and using those amounts until FY21 budget is approved. I confirmed with DOR and our outside auditors that the 1/12 budget does not have to be approved by City council (Towns do).

JR

From: Scott Joseph Graves <sgraveslawoffice37@gmail.com>
Sent: Thursday, May 21, 2020 8:24 AM
To: John Richard <jrichard@gardner-ma.gov>
Subject: Budget Due by June 26th?

Hi John: under section 32 of c. 44, the Mayor has 170 days after our swearing-in to submit the Budget, correct? That brings that date to June 26th, correct? That seems crazy, since the FY begins on July 1st. Am I missing something?

SG

CITY BUDGET PROCESS FREQUENTLY ASKED QUESTIONS (FAQS)

Frequently asked questions (FAQs) published by the Division of Local Services (DLS) within the Department of Revenue provide general information about Massachusetts municipal tax and finance laws and DLS policies and procedures in effect when published. They do not answer all questions or address complex issues about their topics. FAQs are not public written statements of the Department. They are informational only as described in 830 CMR 62C.3.1(10)(c), and do not supersede, alter or otherwise change any Massachusetts General Law, Department public written statement or other source of law.

1. What are the budget approval requirements for cities?

Assuming there are no relevant city charter provisions or special acts establishing a different process, approval of a city's annual budget is governed by G.L. c. 44, § 32. The answers that follow assume no contrary charter or special act provisions.

2. What information must be included in a proposed budget submitted by a mayor to the city council?

Within 170 days after the annual organization of the city government in any city (other than Boston), the mayor must submit the annual budget to the city council in the form of line-items for the proposed spending purposes of the city for the next fiscal year. Specifically, G.L. c. 44, § 32 requires that the annual budget show separately, at a minimum, for each office, department or purpose, amounts for the following:

1) Ordinary maintenance, including debt service, and subdivided into
   a) Salaries and wages of officers, officials and employees other than laborers or persons performing the duties of laborers; and
   b) Ordinary maintenance not included under (a); and
2) Other expenditures, including additional equipment estimated to cost over $1,000.

3. Is the mayor required to include the amount requested by the school committee for the operation of the schools in the budget submitted to the city council?

No, the amount recommended by the mayor for the operation of the city school department, or for a regional school district assessment, needs to meet the minimum school spending requirements of G.L. c. 70, but it may be less than requested by city or regional school committee. See *Superintendent of Schools of Leominster v. Mayor of Leominster*, 386 Mass 114 (1982).

4. What is the procedure after the mayor's submission of the budget to the city council?

The city council may "by majority vote make appropriations for the purposes recommended and may reduce or reject any amount recommended in the annual budget." The council has 45 days from receipt of the annual budget to act on each and every amount recommended by the mayor. If the council has not acted on any recommended amount, "either by approving, reducing or rejecting" it, within that 45 day period, that amount becomes part of the appropriations for the year without any further action of the city council. G.L. c. 44, § 32.

5. **If the city council wishes to reduce the budget, what is the procedure?**

Under G.L. c. 44, § 32, any item in the mayor's proposed annual budget that the city council has not voted, within 45 days of its receipt of the budget, to approve, reduce or reject takes effect as the appropriation for that purpose for the fiscal year. Therefore, a vote purporting to reduce the entire budget, or to reduce categories of spending, by a total amount or percentage without actually voting to reduce particular line-items by specific dollar amounts is ineffective. Without that specificity in individual line-items, a city council reduction in the budget would make all the appropriations ambiguous. The city auditor would have no basis for deciding which line-items should be reduced, and therefore no authority to refuse to pay bills from any of the line-items on the grounds that they were incurred in excess of appropriation. See G.L. c. 41, § 52 and G.L. c. 44, § 31. If the city council wishes to reduce the budget by a particular amount or percentage in total or for certain purposes, it must vote to reduce each and every applicable line-item by specific dollar amounts, as necessary to achieve that end.

6. **May the city council increase an appropriation in the annual budget without a recommendation of the mayor?**

A city council cannot increase any amount recommended by the mayor in the annual budget on its own initiative, with one exception that only applies in cities that have accepted it. G.L. c. 44, § 32; Section 2 of Chapter 329 of the Acts of 1987. If that option has been accepted, a city council may, by two-thirds vote, increase the amount recommended by the mayor for the city school department or regional school district assessment provided that (1) the city or regional school committee has recommended the increase, and (2) the increase does not make the total budget exceed the property tax limitations imposed in G.L. c. 59, § 21C, i.e., does not result in a budget that cannot be funded within the city's Proposition 2½ levy limit. That means the city council must reduce other items in the mayor's budget by the amount of the increased school items unless the mayor agreed that the overall budget, as increased, can be funded within the levy limit.

7. **May the city council add items to the annual budget without a recommendation of the mayor?**

A city council may only add an item when there is no recommendation of any kind for that particular spending purpose in the mayor's budget and it follows the procedure found in G.L. c. 44, § 33. A recommendation of zero funding constitutes a "recommendation."

If no recommendation of any kind has been made for an item or purpose the city council considers necessary, the council must vote to request that the mayor make a recommendation for an appropriation for that purpose. Only if the mayor does not make a recommendation within seven days of that vote may the city council, by two-thirds vote, make an appropriation for that purpose. G.L. c. 44, § 33. See *Daly v. Mayor of Medford*, 241 Mass. 336 (1922) (appropriation by alderman for clerk of committees salary omitted by mayor lawful) and *Flood v. Hodges*, 231 Mass. 252 (1918) (appropriation by city council for wage increases for police and fire employees void).

8. **May the city council vote to reject the mayor's proposed budget, or vote to reduce the total proposed budget by a specified percentage or amount?**

No. Unless the city's charter provides otherwise, the mayor's proposed budget will take effect if no other action is taken within 45 days of the date budget was submitted. The mayor submits a proposed annual budget to the city council (or board of aldermen) that must contain a minimum level of line-item detail for each department's appropriations. Any item in the mayor's proposed budget that has not

been approved, reduced or rejected by vote of the council within the 45 day period takes effect as the appropriation for that purpose.

9. What happens if the mayor does not submit an annual budget to the city council within the required 170 days?

If the mayor does not submit an annual budget within the statutory time period, G.L. c. 44, § 32 provides for the city council to prepare an annual budget by June 30. The council's budget is generally subject to the same requirements as a budget submitted by the mayor, *e.g.*, it must contain the same minimum detail required for each office, department or purpose. Within 15 days of preparing a proposed budget, the city council must vote on it. As with the items in the mayor's proposed budget, any item that the council has not voted to approve, reduce or reject within that 15 day period takes effect as the appropriation for the stated purposes for the fiscal year.

10. Can the mayor veto a city council vote on the budget under G.L. c. 44, § 32 or city council appropriations under G.L. c. 44, § 33?

No. Under G.L. c. 39, § 4, city council action on budgets submitted under G.L. c. 44, § 32 and appropriations by a city council under G.L. c. 44, § 33 are not subject to veto by the mayor. Also see G.L. c. 43, §§ 55 and 63.

11. If the city does not have an operating budget on July 1, can it spend based upon 1/12 of the prior fiscal year's budget?

If the city does not have an operating budget for the fiscal year on July 1 due to circumstances beyond its control, the mayor may submit a "continuing appropriation budget … on a month to month basis for a period not to exceed three months." G.L. c. 44, § 32. This means the mayor may submit a budget for July if the annual budget is not approved by June 30, a budget for August if the annual budget is not approved by July 31 and a budget for September if the annual budget is not approved by August 31. However, there is no requirement that a continuing budget for any of those months be equal to 1/12 of the previous fiscal year's operating budget. Each continuing budget can provide for all expenses that may be incurred for that particular month. The tax rate will be based upon the actual budget that is adopted for the entire fiscal year, which would include the amounts approved in continuing budgets.

12. Can a city council vote to approve all or part of the annual budget contingent upon passage of a Proposition 2½ override?

No. Under G.L. c. 59, § 21C(m), only towns with town meetings may make appropriations contingent on passage of a Propositions 2½ ballot question. The election at which a question to make a contingent appropriation effective must take place within a certain time following the "town meeting" at which the appropriation was voted.

5-1

AUTHORIZING FIVE-YEAR CONTRACT PERIOD FOR ON-CALL PROFESSIONAL ENGINEERING & ENVIRONMENTAL CONSULTING SERVICES

VOTE: To authorize the City to enter into contracts not to exceed five (5) years for On-Call Professional Engineering and Environmental Consulting Services, pursuant to the provisions of Massachusetts General Law, Chapter 30B, section 12 and under the terms outlined in the Purchasing Agent's letter dated June 3, 2020.

5-1

CITY OF GARDNER
PURCHASING DEPARTMENT

Room 217 - City Hall
95 Pleasant Street
Gardner, MA 01440-2687

Joshua Cormier, Director
jcormier@gardner-ma.gov
Telephone (978) 632-0426

TO: Gardner City Council
Acting Mayor Elizabeth Kazinskas

FROM: Joshua Cormier, Purchasing Agent

DATE: June 3rd, 2020

SUBJECT: Request for 5-year contracts

According to MGL c 30B, any contract that exceeds three years must be approved by a majority vote by the City Council.

I respectfully request permission from the Gardner City Council to seek up to a five year contract (including renewals) for the below listed project. The project listed below is in the fifth year of its existing contract. This contract will be placed out to bid and will continue only if the contracted vendor is in good standing.

- On-Call Professional Engineering and Environmental Consulting Services

My intention to seek a longer term contract is to attract more competitive rates from vendors and to conduct more effective contract management.

If you have any questions or concerns, please feel free to contact me for additional details.

5-1

Alan Agnelli

From: Joshua Cormier
Sent: Wednesday, June 3, 2020 12:29 PM
To: Alan Agnelli; Mayor
Cc: Trevor Beauregard
Subject: 5-Year Contract Request - On Call Engineering and Environmental
Attachments: FY20 - 5 year contract request_On_Call Engineering and Environmental.pdf

Please find the attached request to seek a five-year contract for On-Call Engineering and Environmental Services. Per MGL c. 30B, any contract that exceeds three years must be approved by a majority vote of the City Council prior to execution.

If there are any questions, please do not hesitate to contact me.

Thank you.

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

Ref: 6-1 & 6-2

RECEIVED
2020 FEB 10 AM 10: 17
CITY CLERK'S OFFICE
GARDNER, MA

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

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

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

February 7, 2020

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

Re: Green Street Parking Lot Land Lease

Dear Mr. Brown:

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

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

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

Please do not hesitate to contact me with [illegible]

Very truly yours,

C. Deborah Phillips /ST

C. Deborah Phillips

CDP/st

cc: Acting Mayor

RECEIVED
F: 10
By

6-1 & 6-2

RECEIVED
2020 JAN 28 PM 12: 00
CITY CLERK'S OFFICE
GARDNER, MA

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

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

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

January 28, 2020

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

Re: City of Gardner and Heywood Memorial Hospital

Dear Committee Members:

I am writing to summarize the conclusions set forth in a detailed letter to the Mayor in September of 2019 regarding the lengthy history of a lease arrangement between the City and Heywood Memorial Hospital (the hospital). At that time, the Mayor wanted to know; 1) if the hospital is occupying City-owned land not covered by the current iteration of the lease and if so, 2) how it may be remedied.

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

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

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

unable to reconcile the hospital's current view that the City intended to allow it to retain a leasehold in 3.13 acres, or that the hospital did not realize it was retaining only 2.16 acres with these documents.

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

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

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

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

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

If you have any further questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,

C. Deborah Phillips

C. Deborah Phillips

CDP/st
Enclosure

EIGHTH AMENDMENT TO LEASE

THIS EIGHTH AMENDMENT TO LEASE made this _____ day of _____, 2020, by and between the CITY OF GARDNER, a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, acting by and through its Acting Mayor, as Mayor and as successor to the rights, privileges, duties and liabilities of the CITY OF GARDNER'S former Public Works Board and its Director of Public Works (the "City" or "Lessor") and HENRY HEYWOOD MEMORIAL HOSPITAL, a charitable corporation organized under the laws of the Commonwealth of Massachusetts and having a principal office at 242 Green Street, Gardner, Massachusetts 01440 (the "Hospital" or "Lessee").

Recitals

WHEREAS the City is the Lessor and the Hospital is the Lessee of a certain parcel of land situated on the westerly side of Green Street in Gardner, as further described in a Lease Agreement dated April 9, 1968, and recorded in Worcester District Registry of Deeds, Book 4869, Page 185, (the "Lease"), as amended by: 1) an agreement dated October 21, 1980, recorded in said Registry in Book 7135, Page 310 (First Amendment to Lease), 2) an amendment dated December 2, 1980, recorded in said Registry in Book 7135, Page 314 (Second Amendment to Lease), 3) by an agreement dated January, 1986, also called an amendment and certified by the city clerk as being signed January 21, 1986 (Third Amendment to Lease, unrecorded), 4) by an amendment entitled "Amendment to Lease Agreement," endorsed by the Mayor on January 26, 1998 (Fourth Amendment to Lease, unrecorded; see Deed also signed by the Mayor on January 26, 1998, recorded in said Registry in Book 19750, Page 159), 5) by amendment entitled "Second Amendment," dated May 11, 2000, recorded in said Registry in Book 22705 Page 320 (Fifth Amendment to Lease), 6) by amendment entitled "Third Amendment to Lease," dated July 25, 2016, recorded in said Registry in Book 55817 Page 392 (Sixth Amendment to Lease), and by 7) amendment entitled "Fourth Amendment to Lease," dated September 14, 2017, and recorded in said Registry in Book 57862 Page 98 (Seventh Amendment to Lease);

WHEREAS, in 1997, the City and the Hospital negotiated the sale of certain land by the City to the Hospital, including Parcel Two leased to the Hospital under the Lease, and the release of a portion of the Hospital's leasehold in Parcel One;

WHEREAS, on October 14, 1997, the Hospital's Board of Trustees resolved to pay the City Twenty-Four Thousand Five Hundred ($24,500) Dollars for the purchase of said property and to release the Hospital's leasehold in approximately 5.86 acres of said Parcel One;

WHEREAS, the Amendment to Lease Agreement endorsed on January 26, 1998 (Fourth Amendment to Lease), specifically reduced the area being leased by the Hospital to a parcel containing 2.16 acres, more or less;

WHEREAS, the City did convey said property to the Hospital by a Deed signed by the Mayor on January 26, 1998 (the same day the Fourth Amendment was endorsed), and recorded in said Registry in Book 19750, Page 159;

WHEREAS, in 2007, the City's Planning Board granted the Hospital a Special Permit dated October 9, 2007, to expand the Hospital's parking facilities, said permit being recorded in said Registry in Book 42418, Page 1;

WHEREAS, the Hospital did thereafter expand its parking facilities to an area that exceeds the 2.16 acres leased by the City to the Hospital as part of the 1997 negotiations, as commemorated in the Deed and the Fourth Amendment; and

WHEREAS the Parties now desire to resolve this pretermission;

NOW THEREFORE, in exchange for the mutual promises contained herein, and other good and valuable consideration, the sufficiency of which the Parties affirm, the City and Hospital agree as follows:

Article 1 of the Lease Agreement dated April 9, 1968 be amended to read as follows:

1. The Lessor leases to the Lessee the premises in the City of Gardner, County of Worcester, Commonwealth of Massachusetts, described as follows:

A certain parcel of land situated in the City of Gardner, County of Worcester, Commonwealth of Massachusetts bounded and described as follows:

BEGINNING at a point on the westerly sideline of Green Street at the northeasterly comer of land now or formerly of Henry Heywood Memorial Hospital;

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

THENCE Northerly over land of the City of Gardner along a curve concave to the east having a radius of eight hundred twelve and 50/100 (812.50') feet, an arc length of three hundred sixteen and 37/100 (316.37') feet to a point;

THENCE N03°01'05"E over land of the City of Gardner two hundred twenty six and 86/100 (226.86') feet to a point;

THENCE northerly over land of the City of Gardner along a curve concave to the west having a radius of one thousand seven hundred eighty-seven and 50/100 (1,787.50') feet, an arc length of two hundred thirty-eight and 84/100 (238.84') feet to a point;

THENCE N85°21'45"E over land of the City of Gardner one hundred eighty and 00/100 (180.00') feet to a Worcester County highway bound on the westerly sideline of Green Street;

THENCE Southerly by the westerly sideline of Green Street along a curve concave to the west having a radius of one thousand nine hundred sixty-seven and 50/100 (1,967.50')

feet, an arc length of two hundred sixty-two and 89/100 (262.89') feet to a Worcester County highway bound;

THENCE S03°01'05"W by the westerly sideline of Green Street two hundred twenty six and 86/100 (226.86') feet to a point;

THENCE southeasterly by the westerly sideline of Green Street along a curve concave to the east having a radius of six hundred thirty-two and 50/100 (632.50') feet, an arc length of two hundred forty-one and 24/100 (241.24') feet to the point of beginning.

CONTAINING 3.13 Acres.

The remaining land in PARCEL ONE, as previously described in Article 1 of the April 9, 1968 Agreement, is released by the Lessee to the full ownership and control of the City of Gardner (Lessor).

This description of the leased area set forth herein shall be binding on the parties notwithstanding any prior revisions, agreements, or amendments to the Lease.

All other terms of the original Lease agreement, as amended from time to time, shall remain in full force and effect until the end of the original lease term, which remains April 8, 2067.

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

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

CITY OF GARDNER

_____

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

HENRY HEYWOOD MEMORIAL
HOSPITAL

_____

By: Winfield S. Brown, CEO/President

_____

Robert Crosby, CFO
As auth. (See Book 58824, Page 305)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss _____, 2019

Then personally appeared the above named, James M. Walsh, Esq., Acting Mayor, duly authorized and declared that he executed the foregoing instrument as the free act and deed of the City of Gardner, before me,

_____
Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss _____, 2019

Then personally appeared the above named, Winfield S. Brown, President of Henry Haywood Memorial Hospital, duly authorized and declared that he executed the foregoing instrument as the free act and deed of the City of Gardner, before me,

_____
Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss _____, 2019

Then personally appeared the above named, Robert Crosby, CFO, duly authorized and declared that he executed the foregoing instrument as the free act and deed of the City of Gardner, before me,

_____
Notary Public
My Commission Expires:

AMENDMENT TO LEASE BETWEEN CITY OF GARDNER AND HENRY HEYWOOD MEMORIAL HOSPITAL

VOTE: That the City of Gardner, acting through its Mayor and its Director of Public Works, amend its lease with Henry Heywood Memorial Hospital dated April 9, 1968, and recorded in Worcester District Registry of Deeds, Book 4869, Page 185, to correct and confirm the land description subject to the Lease, the same being shown on a plan titled "Easement Plan of Land in Gardner, Massachusetts" which is attached hereto and recorded herewith; and

To further authorize the Mayor and the Director of Public Works, as successor to the rights, privileges, duties and liabilities of its former Public Works Board to further to sign, seal and deliver an agreement or amendment to said lease and to do any other thing deemed necessary or advisable to give full effect to this vote, his signature on such instrument to be conclusive that its execution is within the authority conferred by this vote.

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EIGHTH AMENDMENT TO LEASE

THIS EIGHTH AMENDMENT TO LEASE made this _____ day of _____, 2019, by and between the CITY OF GARDNER, a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, acting by and through its Mayor and by and through its Director of Public Works, successor to the rights, privileges, duties and liabilities of its former Public Works Board (the "City" or "Lessor") and HENRY HEYWOOD MEMORIAL HOSPITAL, a charitable corporation organized under the laws of the Commonwealth of Massachusetts and having a principal office at 242 Green Street, Gardner, Massachusetts 01440 (the "Hospital" or "Lessee").

Recitals

WHEREAS the City is the Lessor and the Hospital is the Lessee of a certain parcel of land situated on the westerly side of Green Street in Gardner, as further described in a Lease Agreement dated April 9, 1968, and recorded in Worcester District Registry of Deeds, Book 4869, Page 185, (the "Lease"), as amended by: 1) an agreement dated October 21, 1980 recorded in said Registry in Book 7135, Page 310 (First Amendment to Lease), 2) an amendment dated December 2, 1980 recorded in said Registry in Book 7135, Page 314, (Second Amendment to Lease), 3) by an agreement dated January, 1986, also called an amendment and certified by the city clerk as being signed January 21, 1986 (Third Amendment to Lease, unrecorded), 4) by an amendment entitled "Amendment to Lease Agreement," endorsed by the Mayor on January 26, 1998 (Fourth Amendment to Lease, unrecorded; see Deed also signed by the Mayor on January 26, 1998, recorded in said Registry in Book 19750, Page 159), 5) by amendment entitled "Second Amendment" dated May 11, 2000 (Fifth Amendment to Lease) recorded in said Registry in Book 22705 Page 320, 6) by amendment entitled "Third Amendment to Lease" dated July 25, 2016, recorded in said Registry in Book 55817 Page 392 (Sixth Amendment to Lease), and by 7) amendment entitled "Fourth Amendment to Lease" dated September 14, 2017 and recorded in said Registry in Book 57862 Page 98 (Seventh Amendment to Lease);

WHEREAS, in 1997, the City and the Hospital negotiated the sale of certain land by the City to the Hospital, including Parcel Two leased to the Hospital under the Lease agreement, and the release of a portion of the Hospital's leasehold in Parcel One;

WHEREAS, on October 14, 1997 the Hospital's Board of Trustees resolved to pay the City Twenty-Four Thousand Five Hundred ($24,500) Dollars for the purchase of said property and to release the Hospital's leasehold in approximately 5.86 acres of said Parcel One;

WHEREAS, the Amendment to Lease Agreement endorsed on January 26, 1998 (Fourth Amendment to Lease) specifically reduced the area being leased by the Hospital to a parcel containing 2.16 acres, more or less;

WHEREAS, the City did convey said property to the Hospital by a Deed signed by the Mayor on January 26, 1998 (the same day the Fourth Amendment was endorsed) and recorded in said Registry in Book 19750, Page 159;

WHEREAS, in 2007 the City's Planning Board granted the Hospital a Special Permit dated October 9, 2007 to expand the Hospital's parking facilities, said permit being recorded in said Registry in Book 42418, Page 1;

WHEREAS, the Hospital did thereafter expand its parking facilities to an area that exceeds the 2.16 acres leased by the City to the Hospital as part of the 1997 negotiations, as commemorated in the Deed and the Fourth Amendment; and

WHEREAS the Parties now desire to resolve this pretermission;

NOW THEREFORE, in exchange for the mutual promises contained herein, and other good and valuable consideration, the sufficiency of which the Parties affirm, the City and Hospital agree as follows:

Article 1 of the Lease Agreement dated April 9, 1968 be amended to read as follows:

1. The Lessor leases to the Lessee the premises in the City of Gardner, County of Worcester, Commonwealth of Massachusetts, described as follows:

A certain parcel of land situated in the City of Gardner, County of Worcester, Commonwealth of Massachusetts bounded and described as follows:

BEGINNING at a point on the westerly sideline of Green Street at the northeasterly comer of land now or formerly of Henry Heywood Memorial Hospital;

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

THENCE Northerly over land of the City of Gardner along a curve concave to the east having a radius of eight hundred twelve and 5011 00 (812.50') feet, an arc length of three hundred sixteen and 37/100 (316.37') feet to a point;

THENCE N03°0 1 '05" E over land of the City of Gardner two hundred twenty- six and 86/100 (226.86') feet to a point;

THENCE northerly over land of the City of Gardner along a curve concave to the west having a radius of one thousand seven hundred eighty-seven and 50/100 (1,787.50') feet, an arc length of two hundred thirty-eight and 84/100 (238.84') feet to a point;

THENCE N85°21 '4S" E over land of the City of Gardner one hundred eighty and 00/1 00 (180.00') feet to a Worcester County highway bound on the westerly sideline of Green Street;

THENCE Southerly by the westerly sideline of Green Street along a curve concave to the west having a radius of one thousand nine hundred sixty-seven and 50/100 (1,967.50')

feet, an arc length of two hundred sixty-two and 89/100 (262.89') feet to a Worcester County highway bound;

THENCE S03°01 '05" W by the westerly sideline of Green Street two hundred twenty-six and 86/100 (226.86') feet to a point;

THENCE southeasterly by the westerly sideline of Green Street along a curve concave to the east having a radius of six hundred thirty-two and 50/100 (632.50') feet, an arc length of two hundred forty-one and 24/100 (241.24 ') feet to the point of beginning.

CONTAINING 3.13 Acres.

The remaining land in PARCEL ONE, as previously described in Article 1 of the April 9, 1968 Agreement, is released by the Lessee to the full ownership and control of the City of Gardner (Lessor).

This description of the leased area set forth herein shall be binding on the parties notwithstanding any prior revisions, agreements, or amendments to the Lease.

All other terms of the original Lease agreement, as amended from time to time, shall remain in full force and effect until the end of the original lease term, which remains April 8, 2067.

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

CITY OF GARDNER

_____

By: Mark P. Hawke, Manager

HENRY HEYWOOD MEMORIAL
HOSPITAL

_____

By: Winfield S. Brown, CEO/President

_____

Robert Crosby, CFO
As auth. (See Book 58824, Page 305

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss _____, 2019

Then personally appeared the above named, Mark P. Hawke, Mayor, duly authorized and declared that he executed the foregoing instrument as the free act and deed of the City of Gardner, before me,

_____
Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss _____, 2019

Then personally appeared the above named, Winfield S. Brown, President of Henry Haywood Memorial Hospital, duly authorized and declared that he executed the foregoing instrument as the free act and deed of the City of Gardner, before me,

_____
Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss _____, 2019

Then personally appeared the above named, Robert Crosby, CFO, duly authorized and declared that he executed the foregoing instrument as the free act and deed of the City of Gardner, before me,

_____
Notary Public
My Commission Expires:

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

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CLERK'S OFFICE
GARDNER, MA

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

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

September 17, 2019

Mark P. Hawke, Mayor
City of Gardner
95 Pleasant Street
Gardner, MA 01440

Re: City of Gardner and Heywood Memorial Hospital

Dear Mayor Hawke:

I am writing to report on my review of the various leases and related documents between the City of Gardner and Henry Heywood Memorial Hospital (the "hospital") over the past 50 years. You have provided me with a letter from the hospital, including the hospital's proposed Amendment Eight, the original 1968 Lease giving rise to the current situation, seven documents labeled Amendment One through Amendment Seven, a 2007 Special Permit granted by the City's Planning Board, a 1998 deed whereby the City conveyed certain land to the hospital, and various easements relating to portions of the same land involving Mass Electric (succeeded by National Grid). In addition to a comprehensive history of the lease arrangements with the hospital over the years since the 1968 Lease was authorized, you would like to know: 1) if the hospital is occupying city-owned land not covered by the current iteration of the lease and if so, 2) how it may be remedied.

In my opinion, the hospital is currently occupying land that is not included in the current version of the lease arrangement. The 2007 Special Permit granted by the Planning Board has no effect on the hospital's leasehold with the City. The occupation of city-owned land not governed by the lease may be remedied on terms as agreed to by and between the parties. Given that there is a third party (National Grid) holding one or more easements over the same land previously or currently leased to the hospital, any amendments to the leasehold may require the involvement of that third party. In light of my review and conclusion, I cannot recommend that the hospital's proposed Eighth Amendment be endorsed by the City. However, I offer an alternative as set forth in the enclosed draft entitled "Eighth Amendment to the Lease." For your reference, all the documents mentioned in this letter are organized in chronological order in the enclosed Appendix, labelled and tabbed 1-10.

In 1968, the hospital leased two parcels of land from the City. See Appendix, at 1. According to that lease, Parcel One consisted of 8.02 acres and is located on the north side of the

hospital. This is the parcel that has become problematic over time. Parcel Two consisted of 1.40 acres and is located on the south side of the hospital.[1]

Thereafter, beginning in 1980, a series of amendments to the 1968 lease were negotiated and agreed to by and between the parties. However, there is no signed copy of one of these amendments, and not all of them were recorded. For purposes of this letter, I refer to every amendment in chronological order, regardless of whether it was signed or recorded.

Amendment 1: signed in October 1980 and recorded in the registry in December 1980, permits the hospital to erect a building on the south side of the hospital. This amendment relates to Parcel Two as described in the 1968 Lease. (Book 7135, Page 310). Appendix, at 2.

Amendment 2: signed in December 1980 and recorded in the registry on the same day as Amendment 1, provides that the hospital shall pay an additional $600 per year in rent to the City. (Book 7135, Page 314). Appendix at 3.

Amendment 3: dated January 1986, is an Agreement between the City and the hospital whereby the City permitted the hospital to mortgage and assign its interests in land described as Parcel Two in the 1968 Lease. While I have not been able to locate a signed version of this agreement, the City clerk certified the unanimous vote of the city council on January 23, 1986, to so amend the lease. Regardless, it has no import with respect to the other amendments and is recited here to provide a complete picture of the interactions between the City and the hospital concerning the leased premises. (Not recorded in registry). Appendix at 4.

Amendment 4: entitled "Amendment to Lease Agreement (Dated April 9, 1968) Between the City of Gardner and Henry Heywood Memorial Hospital," was prepared in connection with the sale of three (3) parcels of city-owned land to the hospital. It sets forth the terms of the resulting lease arrangement after the sale. The parcels being sold include all of Parcel Two as referenced in the 1968 Lease (the 1.40 acres) and other land as depicted on a plan recorded with the deed (see below). This Amendment amends the 1968 Lease so that the hospital may continue to lease a portion of Parcel One consisting of 2.16 acres following the conveyance. In conjunction with this Amendment the hospital released back to the City its interest in the remaining portion of Parcel One (5.86 acres) effective upon execution of the contract granting title of the three city-owned

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[1] In 1969, the City granted Mass Electric an easement along Parcel Two recorded in Book 4955, Page 101, and shown on a plan recorded in Plan Book 328, Page 1; the hospital also granted Mass Electric an easement on its property along the southern and eastern boundary of Parcel Two, as recorded in Book 4955, Page 97. See 1969 Plan Book 327 Page 125 for location of this easement.

In 1973, the City granted another easement to Mass Electric, recorded in Book 5396, Page 226, commencing at the westerly side of the easement conveyed in 1969 and extending generally on the west and north side of Parcel One as shown on a plan recorded in Plan Book 389, Page 38; the hospital consented to this further easement, see Book 5396, Page 228.

In 1980, Mass Electric released its rights in the 1969 Easement to the hospital. That release is recorded in Book 6976, Page 118. However, this release does not include a release of the 1973 easement from the city to Mass Electric. See Appendix 11-15.

parcels to the hospital.[2] This Amendment was signed January 26, 1998, but not recorded. Appendix at 5.

On March 26, 1998, a deed conveying three parcels (A, B, and C) to the hospital was recorded in the registry at Book 19750, Page 159. This Deed was also signed on January 26, 1998. It refers to a plan prepared for the City by Szoc Surveyors, recorded in Book 726, Plan 2. Parcel B is the same as Parcel Two in the 1968 Lease. Appendix at 6.

Amendment 5: signed in May of 2000 and recorded in June of 2000, is entitled "Second Amendment," and refers to the "first amendment" which is Amendment 2 (found in Appendix at 3) herein. (Book 22705, Page 320). Appendix at 7.

Amendment 5 does not recognize Amendment 4, or the hospital's acquisition of three parcels from the City. It refers to Parcel One as containing 8.02 acres. However, this Amendment was much like Amendment 3. It was prepared to permit the hospital to grant a mortgage for purposes of borrowing money. It was the lender's responsibility to determine if the document prepared and recorded at that time was sufficient for its purposes. It cannot be considered conclusive between the City and the hospital as to the size of the area the hospital was then leasing from the City.

Amendment 6: signed in July of 2016 and recorded in August of 2016. It is entitled "Third Amendment." We now know that this amendment is the sixth time that the 1968 Lease was "amended." In this Amendment 6, the City grants the hospital a right to construct and maintain a solar carport system on a portion of "Parcel 1," presumably referring to Parel One in the 1968 Lease. There is no acreage or legal description in this amendment. The carport system is to be located on the "existing parking lot," and the system is to be built on all or a portion of Parcel 1. (Book 55817, Page 392). Appendix at 8.

Amendment 7: signed in September of 2017 and recorded in October of 2017. It is entitled "Fourth Amendment," but as we have learned from the above recited history, it is the seventh time the 1968 Lease between the City and the hospital was amended. It specifically permits a charitable project prohibited by the original Lease. It refers to Parcel One as consisting of 2.16 acres and includes a legal description consistent with the legal description in the 1998 amendment (Amendment 4 herein). In my opinion this is instructive, if not conclusive, as it indicates that the parties recently recognized the 1998 transactions. (Book 57862, Page 98). Appendix at 9.

The hospital's letter of May 2019 asserts that a 2007 Special Permit (Appendix at 10) granted by the Planning Board may inform us as to what the hospital and the City actually agreed to in 1998. The letter explains that in 2007 the hospital applied for and was granted a Special

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[2] Notwithstanding the view expressed in the hospital's letter to the City Council of May 20, 2019, I do not agree that the description of the leased land in the 1998 Amendment whereby the acreage of the hospital's leasehold was reduced to 2.16 acres was an error. Indeed, the hospital's own Resolution, set forth in its Clerk's Certificate of vote specifies that, "[i]n consideration of a grant by the City….of title to certain land… the Hospital … shall release to the City the Hospital's leasehold interest in approximately 5.86 acres of land…." Parcel One in the 1968 Lease contained 8.02 acres. Amendment 4 specifies that the reduced size of Parcel One (the portion that will continue to be leased by the hospital) will thereafter contain 2.16 acres. 5.86 + 2.16 = 8.02; the original size of Parcel One.

Permit to expand the northern parking lot, resulting in its present configuration. According to the hospital, the expansion includes land that was included in the 1968 Lease, "with the exception of the slope from the ridgeline down the wooded hillside," and the hospital states that it includes a portion of land omitted from the 1998 amendment of approximately 3.13 acres. The hospital further states, "[i]t appears that the City's grant of the Special Permit in 2007 relied on the leased land description from the original 1968 lease, less the wooded hillside."

The Planning Board relied in this case, as it does in all cases, on the information provided by the applicant, or its representative, when the application is submitted. The applicant is responsible for supplying the Board with ownership information or otherwise demonstrating its right to use land for which it seeks the Special Permit. The Planning Board is not responsible for examining the nature or quality of the title asserted by an applicant. This Board has no authority and does not purport to authorize a use on property in which an applicant has no legal interest. Unless or until an applicant's right to use property is questioned through the public hearing process, the Board proceeds on the material and information submitted by the applicant. Typically, if a question is raised, the Board will require the applicant to produce further evidence of its right to seek the permit. I reviewed the minutes of the public meetings at which the Planning Board conducted its public hearing on this application. It is fair to conclude that no one questioned whether the size of the area designated for the expansion of the parking lot exceeded the area the hospital was entitled to use at that time. The Planning Board granted the Special Permit as requested. The hospital's subsequent reliance on the Special Permit to construct parking on 3.13 acres of Parcel One does not shed light on whether the City and/or the hospital made an error in 1998. Nor does it otherwise authorize the hospital's use of nearly an acre of the City's land that was not included in the lease that was in effect in 2007.

To date, no documentation has been presented or located suggesting that the City and/or the hospital made a mistake, mutual or otherwise, in 1998. In fact, the documents support the opposite conclusion. The hospital board's resolution voted on October 14, 1997, specifically states that the consideration for its acquisition of title to certain city-owned land is $24,500 <u>and</u> the release of its interest in 5.86 acres of Parel One. See Resolution attached to Amendment 4. The 5.86 acres released by the hospital, added to the 2.16 acres specifically described in Amendment 4, and more recently in Amendment 7, total 8.02 acres, the same as Parcel One in the 1968 Lease. I cannot reconcile the hospital's view that the City intended to allow it to retain a leasehold in 3.13 acres, or that the hospital did not realize it was retaining only 2.16 acres with these documents. Therefore, I cannot recommend the language in the hospital's proposed eight amendment.

I understand that the City and the hospital are amenable to rectifying the situation at this time so that the hospital may move forward with its current plans. It must be noted that National Grid (successor in interest to Mass Electric) continues to have an easement over the City's land that was previously leased by the hospital. See Note 1. Any successful arrangement providing the hospital with the rights necessary for it to move forward with its plans must include National Grid's

cooperation and agreement. With that in mind, I propose the enclosed Eighth Amendment to the Lease.

I recommend that the city's engineering department review the plan submitted by the hospital with its proposed eighth amendment to ensure that the location of the 3.13 acres is clearly and accurately delineated to the city's satisfaction.

If you have any further questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,

C. Deborah Phillips

C. Deborah Phillips

CDP/st

Enclosures

6-2

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CITY CLERK

EASEMENT RELOCATION AGREEMENT

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

RECITALS:

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

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

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

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

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

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

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

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

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

SECTION I - RELOCATION AGREEMENT

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

SECTION 2 - COSTS AND EXPENSES; PAYMENT

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

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

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

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

SECTION 3 - CONDITIONS TO MEC'S OBLIGATIONS

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

SECTION 4 - PARTIAL RELEASE OF EASEMENT RIGHTS

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

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

SECTION 5 - DEFAULT

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

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

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

SECTION 6-MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

MASSACHUSETTS ELECTRIC COMPANY

By: _____
Title:
Name:

CITY OF GARDNER

By: _____
Name:
Title:

Mayor RECEIVED

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

From: Chris Coughlin
Sent: Thursday, November 7, 2019 1:43 PM
To: Debbie Phillips
Cc: Mayor
Subject: RE: Hospital Easement

Debbie,

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

If you need anything else just let me know.
Thanks,
-Chris

From: Debbie Phillips <dphillips@NPOlegal.com>
Sent: Wednesday, October 30, 2019 12:22 PM
To: Chris Coughlin <ccoughlin@gardner-ma.gov>
Subject: Hospital Easement

Chris,
The plan showing the hospital's proposed correction of the easement is attached as the last page to this PDF (also Hannigan). The legal description starts on the 5th page of this PDF-its page 2 of their proposed amendment. If you can check those for accuracy, it would be great as well. Thanks again. Debbie

NICKLESS, PHILLIPS and O'CONNOR

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

6-3

Alan Agnelli

From:	Morancy, Nadine <Nadine.Morancy@nationalgrid.com>
Sent:	Friday, May 29, 2020 11:26 AM
To:	Alan Agnelli
Cc:	Mayor
Subject:	200 Catherine Street, Gardner Easement & Sketch WR# 28733033
Attachments:	1-28733033 200 Catherine Street, Gardner, Ma (2).doc; Sketch 200 Catherine Street, Gardner.pdf
Importance:	High

nationalgrid

May 30, 2020

Alan L. Agnelli,

Attached herewith please find a Distribution Easement, along with a National Grid Sketch, "Exhibit A," showing the relocated pole line and the transformer feeding the pole line for your review covering property located on 200 Catherine Street, Gardner, Massachusetts. This easement grants National Grid the right to install, operate, and properly maintain the lines and equipment upon and/or beneath property.

IMPORTANT:**When printing the attachment, please use single sided printing.

Kindly have Mayor Elizabeth Kazinskas sign the enclosed easement in the presence of a Notary and return the original signed and notarized document to me at your earliest convenience.

Once complete please mail the entire original signed and notarized document, along with the sketch, to me at: Nadine J. Morancy, National Grid, 939 Southbridge Street, Worcester, MA 01610. ****It is very important that you return the document, only to the address cited above.

Please be advised that we are unable to schedule this important work until this document has been returned to us. The documents' timely return is very important.

It has come to my attention that you have requested the easement be sent to you in Word. Please note our easement language is approved by the Department of Public Utilities and it is very important that we stay as close to its current language as possible. We thank you for your understanding.

I thank you in advance for your time and attention. Should you have any questions, please do not hesitate to contact me at 1-508-860-6455. (Covid19 additional contact number

between the hours of 6:30 a.m. and 2:30 p.m. Monday through Friday, 508-341-3366, personal cell number).

PLEASE ACKNOWLEDGE RECEIPT OF THIS EMAIL WITH A RETURN EMAIL. THANK YOU!

Respectfully,

Nadine J. Morancy
Real Estate Representative
Attachment: Easement & Sketch

Nadine J. Morancy
Real Estate Representative
Right of Way and Survey Engineering
nationalgrid | Business Services

1-508-860-6455
Nadine.morancy@nationalgrid.com

939 Southbridge Street, 2nd Floor, Worcester, Ma 01610
nationalgrid.com | Twitter | LinkedIn | Facebook

Please visit https://ngus.force.com/electric/s/ to enter or check the status of your National Grid Work Request online!

Please consider the environment before printing this email.

Advance notice of vacation: No vacation days booked

This e-mail, and any attachments are strictly confidential and intended for the addressee(s) only. The content may also contain legal, professional or other privileged information. If you are not the intended recipient, please notify the sender immediately and then delete the e-mail and any attachments. You should not disclose, copy or take any action in reliance on this transmission.

You may report the matter by contacting us via our UK Contacts Page or our US Contacts Page (accessed by clicking on the appropriate link)

Please ensure you have adequate virus protection before you open or detach any documents from this transmission. National Grid plc and its affiliates do not accept any liability for viruses. An e-mail reply to this address may be subject to monitoring for operational reasons or lawful business practices.

For the registered information on the UK operating companies within the National Grid group please use the attached link: https://www.nationalgrid.com/group/about-us/corporate-registrations

6-3

Property Address: 200 Catherine Street, Gardner, MA (Southern Worcester County)

GRANT OF EASEMENT

CITY OF GARDNER, a municipal corporation having a mailing address of 95 Pleasant Street, Gardner, Massachusetts 01440, (hereinafter referred to as the Grantor), for consideration of One ($1.00) dollar, grants to **MASSACHUSETTS ELECTRIC COMPANY**, a Massachusetts corporation with its usual place of business at 40 Sylvan Road, Waltham, Massachusetts 02451 (hereinafter referred to as the Grantee) with quitclaim covenants, the perpetual right and easement to install, construct, reconstruct, repair, replace, add to, maintain and operate for the transmission of high and low voltage electric current and for the transmission of intelligence, lines to consist of, but not limited to, three (3) poles and one (1) anchor, (which may be erected at different times) with wires and cables strung upon and from the same and all necessary anchors, guys, and appurtenances (hereinafter referred to as the "OVERHEAD SYSTEM") and "UNDERGROUND ELECTRIC DISTRIBUTION SYSTEM" (hereinafter referred to as the "UNDERGROUND SYSTEM") located in Gardner, Worcester South County, Massachusetts, consisting of lines of buried wires and cables and lines of wires and cables installed in underground conduits, together with all equipment and appurtenances thereto for the transmission of intelligence and for the furnishing of electric service to the herein described premises and others, and without limiting the generality of the foregoing, but specifically including the following equipment, namely: manholes, manhole openings, bollards, handholes, junction boxes, transformers, transformer vaults, padmounts, padmount transformers and all housings, connectors, switches, conduits, cables and wires all located within the easement area of the hereinafter described property.

Said "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" are located in, through, under, over, across and upon a certain parcel of land situated off the easterly side of Blanchard Street, being more particularly shown as "PARCEL 2" shown on a Plan of Land recorded with the Worcester South County Registry of Deeds in Plan Book 399, Plan 67.

WR #28733033

Address of Grantees:
Mass El. – 40 Sylvan Road, Waltham, Massachusetts 02451

Return to:
Nadine J. Morancy
National Grid USA
Service Company, Inc.
939 Southbridge Street
Worcester, MA 01610

05 GARDMA GEN

Said "OVERHEAD SYSTEM" is to be installed on Grantor's property, which is located off the easterly side of Blanchard Street, to consist of Pole p9-5, Pole p9-42, Pole P9-41, Pole p9-4 and an anchor to be affixed to Pole p9.

And further, said "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" (locations of the electrical equipment and other facilities on the hereinbefore referred to premises of the Grantor) are approximately shown on a sketch entitled: "Exhibit "A" Not Drawn To Scale; The exact location of said facilities to be established by and upon the installation and erection of the facilities thereof.; Easement Sketch For New Poles, Anchors & Overhead Wires At 200 Catherine St, Gardner, Ma (Gardner High School); Date: 05/21/2020; Designer: S.W. Soucy; Work Req# 28733033; national**grid**," a reduced copy of said sketch is attached hereto as "Exhibit A", copies of which are in the possession of the Grantor and Grantee herein, but the final definitive locations of said "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" shall become established by and upon the installation and erection thereof by the Grantee.

Also with the further perpetual right and easement from time to time without further payment therefore to pass and repass over, across and upon said land of the Grantor as is reasonable and necessary in order to renew, replace, repair, remove, add to, maintain, operate, patrol and otherwise change said "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" and each and every part thereof and to make such other excavation or excavations as may be reasonably necessary in the opinion and judgment of the Grantee, its successors and assigns, and to clear and keep cleared the portions and areas of the premises wherein the "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" are specifically located, as shown on the sketch herein referred to, of such trees, shrubs, bushes, above ground and below ground structures, objects and surfaces, as may, in the opinion and judgment of the Grantee, interfere with the efficient and safe operation and maintenance of the "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" and other related electrical equipment. However, said Grantee, its successors and assigns, will properly backfill said excavation or excavations and restore the surface of the land to as reasonably good condition as said surface was in immediately prior to the excavation or excavations thereof.

If said herein referred to locations as approximately shown on the sketch herein also referred to are unsuitable for the purposes of the Grantee, its successors and assigns, then said locations may be changed to areas mutually satisfactory to both the Grantor and the Grantee herein; and further, said newly agreed to locations shall be indicated and shown on the sketch above referred to by proper amendment or amendments thereto. The Grantor, for itself, its successors and assigns, covenant and agrees with the Grantee, for itself, its successors and assigns, that this Grant of Easement and the location of the Overhead System and Underground System may not be changed or modified without the written consent of the Grantee, its successors and assigns, which consent may be withheld by the Grantee in its sole discretion.

It is the intention of the Grantor to grant to the Grantee, its successors and assigns, all the rights and easements aforesaid and any and all additional and/or incidental rights needed to install, erect, maintain and operate within the Grantor's land an "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" for the transmission of intelligence and for the purpose of supplying electric service for the building, buildings or proposed buildings shown on the last herein referred to sketch or amended sketch and the right to service others from said "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM".

It is agreed that the "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM" shall remain the property of the Grantee, its successors and assigns, and that the Grantee, its successors and assigns, shall pay all taxes assessed thereon. Grantor agrees that the rights and easement herein granted are for the purpose of providing service to Grantor's property and the further right to service others from said "OVERHEAD SYSTEM" and "UNDERGROUND SYSTEM".

For Grantor's title, see an Order of Taking by the City of Gardner dated June 4, 1974, recorded with the Worcester South District Registry of Deeds Book 5534, Page 255.

IN WITNESS WHEREOF, the City of Gardner has caused its corporate seal to be hereto affixed and these presents to be signed in its name and behalf by, Elizabeth Kazinskas its Mayor, being thereto duly authorized this _____ day of _____, 2020.

CITY OF GARDNER
Acting by and through its
Mayor

_____
By: Elizabeth Kazinskas
Its: Mayor

WR #28733033

The provisions of Massachusetts
General Laws, Chapter 183
Section 6B, are not applicable.

Commonwealth of Massachusetts

County of _____} ss.

On this the _____day of _____, 2020, before me,
Day Month

_____the undersigned Notary Public,
Name of Notary Public

personally appeared ELIZABETH KAZINSKAS, proved to me through satisfactory evidence of identity, which was

_____,
Description of Evidence of Identity

to be the person whose name is signed on the preceding Grant of Easement and acknowledged to me that she signed it voluntarily for its stated purpose, as the Mayor of the CITY OF GARDNER.

_____
Signature of Notary Public

_____
Printed Name of Notary

My Commission Expires_____

Place Notary Seal and/or Any Stamp Above

WR #28733033

The provisions of Massachusetts
General Laws, Chapter 183
Section 6B, are not applicable.

05 GARDMA GEN

CITY OF GARDNER

TO

MASSACHUSETTS
ELECTRIC COMPANY

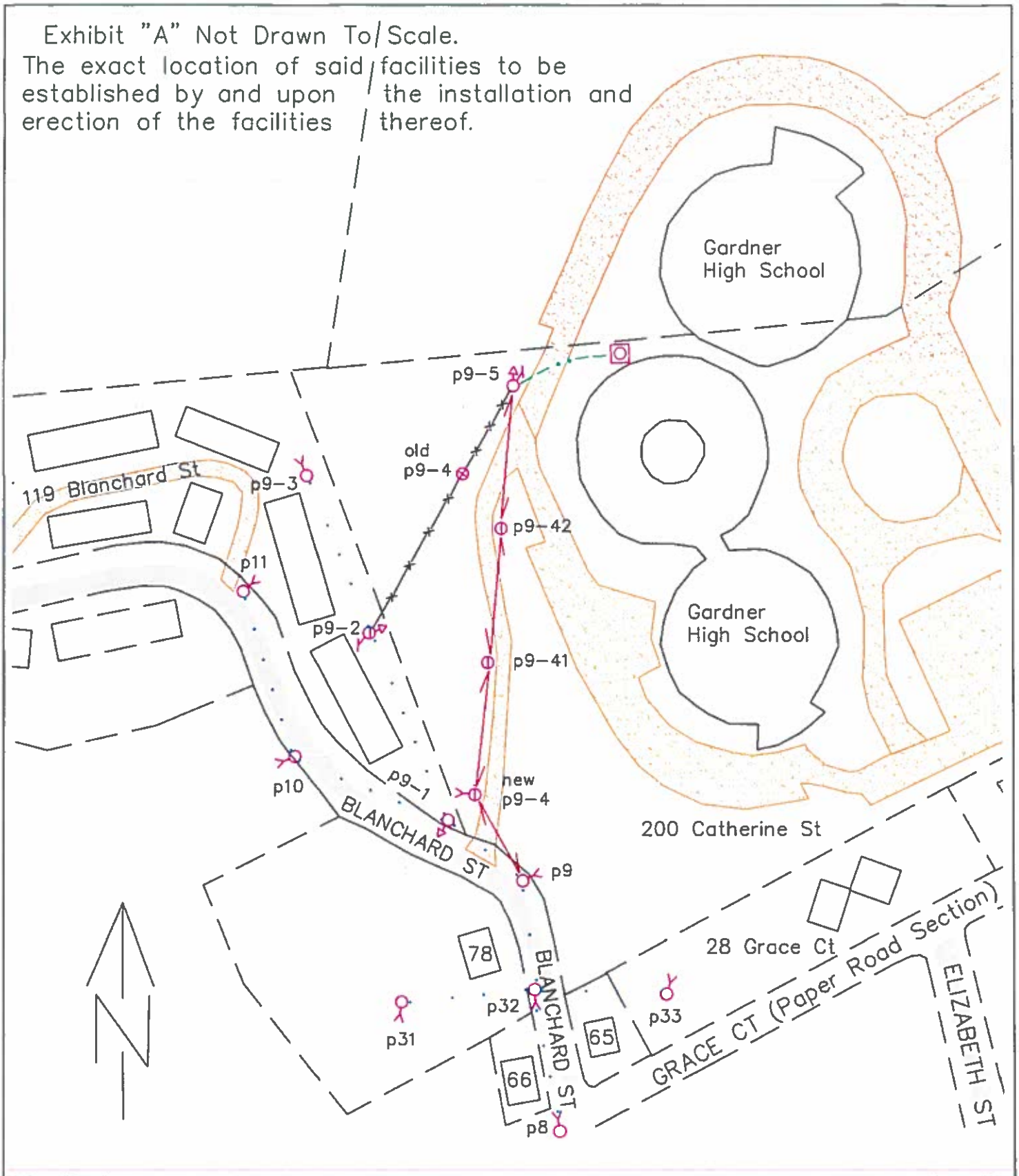
GRANT OF EASEMENT

RETURN TO:

NADINE J. MORANCY
NATIONAL GRID USA
SERVICE COMPANY, INC.
939 SOUTHBRIDGE STREET
WORCESTER, MA 01610

Approved By: _____

Exhibit "A" Not Drawn To Scale.
The exact location of said facilities to be established by and upon the installation and erection of the facilities thereof.



LEGEND

- EXISTING JOINTLY OWNED POLE
- EXISTING JO ANCHOR & GUY
- PROPOSED JO POLE
- PROPOSED JO ANCHOR & GUY
- EXISTING POLE BEING REMOVED
- ANCHOR BEING REMOVED
- UNDERGROUND TRANSFORMER
- EXISTING UG WIRES
- LOT LINE & STREET R.O.W.
- EXISTING OVERHEAD WIRES
- PROPOSED OVERHEAD WIRES
- OH WIRES TO BE REMOVED
- STREET PAVEMENT
- DRIVEWAY
- BUILDING

Easement Sketch Forl New Poles, Anchors, & Overhead Wires At 200 Catherine St, Gardner, MA (Gardner High School)

Date: 05/21/2020
Designer: S.W. Soucy
Work Request:

Work Req# 28733033

nationalgrid

7-1

RECEIVED
2020 MAY 15 AM 9: 13
CITY CLERK'S OFFICE
GARDNER, MA

Scott J. Goguen Graves, City Councillor at Large

5/12/20

City Council Rule 13 Referral to The Committee on Finance

To: The Government, c/o The Committee on Finance, City Council Standing Committee
Re: City Council Policy Regarding Public Records Requests

"The founding fathers of our nation strove to develop an open government formed on the principles of democracy and public participation. An informed citizen is better equipped to participate in that process." William F. Galvin, Secretary of the Commonwealth.

Pursuant to City Council Rule 13, I am directing this referral to the attention of the Committee on Finance, as an Item to be taken up by it and within its jurisdiction – as provided in said Rule 13. Specifically, this referral has to do with the Committee on Finance's jurisdiction of the City Clerk, Claims ("damages to persons"), Law Dept. and Rules (see Rule 13), and generally.

There is an ongoing issue in this Government concerning Open Government. The Law Dept. seems to understand that it has dominion over Public Records Requests made by Citizens. The Law Dept. has dominion over nothing. The Law Dept.'s authority is executory only upon an *affirmative request* to become involved by either Branch of Government. This Legislative Body, the City Council, has made no such request – which, obviously, would have had to have been by majority vote in an open, noticed public meeting.

Under the said Law, the City Council is the "entity" and the "Custodian." There are about 30 different Records Access Officers in this Government. As to the City Council, that is the City Clerk. Under the Law, the City Clerk may only assist the City Council in complying with the Law, neither he nor the City Solicitor has any independent authority to respond on behalf of the Body. By the Law Dept's actions in this regard, the City Council has been deprived of its responsibility and duty to ensure Open Government in relation to Public Records Requests made by Citizens pursuant to M.G.L. c. 66, sec. 1, et seq (especially sec. 10). As a result, at least one Citizen has been deprived his rights to Open Government under the said Law.

Under the Law, the City Council (again, the "entity," and the "Custodian") has no express discretion to have some other person or entity respond in its behalf. Apart from that, the City Council has never delegated its authority and duty to some other person or entity. In fact, the City Council has never even been asked to respond - never mind to deliberate and vote as to how it will respond.

The City Council must address this situation, and take such action as it deems necessary in order that Public Records Requests from a Citizen be addressed in accordance with the City Council's duties and authority. The City Council must give the Citizenry confidence that it believes in Open Government.

Scott J. Graves, Councillor at Large

5/12/20
AT LARGE