City of Gardner, Massachusetts
Office of the City Council

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CITY CLERK'S OFFICE
GARDNER, MA

CALENDAR FOR THE MEETING
of
MONDAY, SEPTEMBER 21, 2020
REMOTELY*
7:30 P.M.

ORDER OF BUSINESS

I. CALL TO ORDER

II. CALL OF THE ROLL OF COUNCILLORS

III. OPENING PRAYER

IV. PLEDGE OF ALLEGIANCE

V. ANNOUNCEMENT OF OPEN MEETING RECORDINGS

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

VI. READING OF MINUTES OF PRIOR MEETING(S)

Reading and Approval of the Minutes of the September 8, 2020 Regular Meeting.

VII. PUBLIC HEARINGS

VIII. COMMUNICATIONS FROM THE MAYOR

ORDERS

10333–An Order Authorizing the City to Borrow $250,000.00 for Route 140 Water Storage Tank Repairs *(Finance Committee).*

10334–An Order Authorizing the City to Borrow $450,000.00 for Replacing Pall Filters at Crystal Lake Water Treatment Facility *(Finance Committee).*

IX. PETITIONS, APPLICATIONS, COMMUNICATIONS, ETC.

10335–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) *(Finance Committee).*

X. REPORTS OF STANDING COMMITTEES

PUBLIC SERVICE COMMITTEE

10327–An Ordinance Relative to Stormwater and Erosion Control *(In City Council and Referred to Public Service Committee, 9/8/2020).*

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10328 – An Ordinance Relative to Illicit Connections and Discharges to the Storm Drain System *(In City Council and Referred to Public Service Committee, 9/8/2020).*

PUBLIC SAFETY COMMITTEE

10331 – A Communication from the Traffic Commission relative to Nutting Street Parking *(In City Council and Referred to Public Safety Committee, 9/8/2020).*

PUBLIC WELFARE COMMITTEE

10305 – A Petition by Traven Development LLC to renew the designation of two (2) parcels at 525 Parker Street as a Development Overlay District 1 *(In City Council and Referred to Public Welfare Committee, 8/3/2020).*

FINANCE COMMITTEE

10326 – An Order Appropriating $75,000.00 from Free Cash to Pool Filtration System *(In City Council and Referred to Finance, 9/8/2020).*

10329 – A Measure Authorizing an Eighth Amendment to the April 9, 1968 Lease Between the City and Henry Heywood Memorial Hospital *(Finance Committee).*

10330 – A Measure Authorizing an Easement Relocation Agreement Between the City of Gardner and Massachusetts Electric Company *(Finance Committee).*

XI. UNFINISHED BUSINESS AND MATTERS FOR RECONSIDERATION

10305 – A Petition by Traven Development LLC to renew the designation of two (2) parcels at 525 Parker Street as a Development Overlay District 1 *(In City Council and Referred to Planning Board for Recommendation, 8/3/2020; Planning Board Recommendation Received, 9/8/2020; Joint Public Hearing scheduled 10/5/2020 at 6:00 p.m.).*

XII. NEW BUSINESS

XIII. CLOSING PRAYER

XIV. ADJOURNMENT

Items listed on the Council Calendar are those reasonably anticipated by the Council President 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.

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 Gardner City Council will be conducted via remote participation and broadcast live on **Gardner Educational Television, Channel 8, and on the **City's YouTube Channel.** The audio or video 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 IN CITY COUNCIL

REGULAR MEETING OF SEPTEMBER 8, 2020

Regular Meeting of the City Council was held remotely on Tuesday evening, September 8, 2020.

CALL TO ORDER

Council President Elizabeth Kazinskas called the meeting to order at 7:30 o'clock p.m.

CALL OF THE ROLL

City Clerk Alan Agnelli called the Roll of Members. Eleven (11) Councillors were present including President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh.

OPENING PRAYER

President Kazinskas led the Council in reciting the Opening Prayer.

PLEDGE OF ALLEGIANCE

President Kazinskas led the Council in reciting the "Pledge of Allegiance".

OPEN MEETING RECORDING & PUBLIC RECORDS ANNOUNCEMENT

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 Gardner City Council will be conducted via remote participation and broadcast live on Gardner Educational Television, Channel 8, and on the City's YouTube Channel. The audio or video recording, transcript, or other comprehensive record of proceedings will be posted on the City's website as soon as possible after the meeting. She added that since the meeting is being conducted via **Zoom**, that all votes taken would be by roll call and asked Councillors to raise their hands to be recognized.

READING & ACCEPTANCE OF MINUTES

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, on call of the roll, it was voted eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to waive reading and to accept the Minutes of the August 3, 2020 Regular Meeting, as printed.

UNACCEPTED/UNCORRECTED PROOF

COMMUNICATIONS FROM THE MAYOR

APPOINTMENTS

#10317

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that the Committee voted favorably to recommend the Appointment.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, on recommendation of the Finance Committee, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to confirm the following Appointment received from the Mayor:

PHILLIP BUSO to the position of **VETERANS' AGENT/VETERANS' BURIAL AGENT** for the term expiring August 6, 2021.

Worcester, ss. September 10, 2020

Then personally appeared **PHILLIP BUSO** and made oath that he would faithfully and impartially perform the duties of **VETERANS' AGENT/VETERANS' BURIAL AGENT** according to law and the best of his abilities.

Before me,
/s/ Faith A. Glover, Assistant City Clerk

#10318

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that the Committee voted favorably to recommend the Appointment.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, on recommendation of the Finance Committee, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to confirm the following Appointment received from the Mayor:

PHILLIP BUSO to the position of **VETERANS' GRAVES OFFICER** for term expiring August 6, 2021.

Worcester, ss. September 10, 2020

Then personally appeared **PHILLIP BUSO** and made oath that he would faithfully and impartially perform the duties of **VETERANS' GRAVES OFFICER** according to law and the best of his abilities.

Before me,
/s/ Faith A. Glover, Assistant City Clerk

UNACCEPTED/UNCORRECTED PROOF

#10319
Reporting for the Finance Committee, Councillor James Walsh informed the Council that the Committee voted favorably to recommend the Appointment.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on recommendation of the Finance Committee, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to confirm the following Appointment received from the Mayor:

CHRISTOPHER COUGHLIN to the position of **CITY ENGINEER** for term expiring August 6, 2023.

Worcester, ss. September 14, 2020

Then personally appeared **CHRISTOPHER COUGHLIN** and made oath that he would faithfully and impartially perform the duties of **CITY ENGINEER** according to law and the best of his abilities.

Before me,
/s/ Faith A. Glover, Assistant City Clerk

#10320
Reporting for the Finance Committee, Councillor James Walsh informed the Council that the Committee voted favorably to recommend the Appointment.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on recommendation of the Finance Committee, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to confirm the following Appointment received from the Mayor:

SHAUNESY DAME to the position of **ALTERNATE INSPECTOR OF WIRES** for term expiring August 6, 2021.

#10321
Reporting for the Finance Committee, Councillor James Walsh informed the Council that the Committee voted favorably to recommend the Appointment.

Councillor Graves questioned if the appointment is for three years.

Councillor Walsh replied that he believed so.

UNACCEPTED/UNCORRECTED PROOF

Councillor Graves stated that the Mayor is authorized to make any appointment period that he wants, as he has a legal opinion advising him that he can do so.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on recommendation of the Finance Committee, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to confirm the following Appointment received from the Mayor:

DARRELL SWEENEY to the position of **INSPECTOR OF WIRES** for term expiring August 6, 2023.

Worcester, ss. September 10, 2020

Then personally appeared **DARRELL SWEENEY** and made oath that he would faithfully and impartially perform the duties of **INSPECTOR OF WIRES** according to law and the best of his abilities.

Before me,
/s/ Faith A. Glover, Assistant City Clerk

#10322

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that the Committee voted favorably to recommend the Appointment.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, on recommendation of the Finance Committee, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to confirm the following Appointment received from the Mayor:

ALANA MESERVE to the position of **ANIMAL CONTROL OFFICER** for term expiring August 6, 2021.

Worcester, ss. September 17, 2020

Then personally appeared **ALANA MESERVE** and made oath that she would faithfully and impartially perform the duties of **ANIMAL CONTROL OFFICER** according to law and the best of her abilities.

Before me,
/s/ Faith A. Glover, Assistant City Clerk

UNACCEPTED/UNCORRECTED PROOF

ORDERS

#10323

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that the Committee voted favorably to recommend the Order. He said that a portion of the appropriation represents the City's share of the grant for new SCBAs for the Fire Department and the balance is to purchase a second set of turnout gear for each firefighter.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, on recommendation of the Finance Committee, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to adopt the following Order:

> AN ORDER APPROPRIATING A SUM OF MONEY FROM FREE CASH TO FIRE DEPARTMENT - VARIOUS ACCOUNTS.
>
> ORDERED: That there be and is hereby appropriated the sum of Seventy-Four Thousand Eight Hundred Nineteen Dollars and No Cents ($74,819.00) from Free Cash to the following accounts:

Fire Department	New Equipment	$24,819.00
Fire Department	Protective FF Clothing	$50,000.00

Presented to the Mayor for Approval – September 9, 2020
Approved – September 9, 2020
MICHAEL J. NICHOLSON, Mayor

#10324

Reporting for the Finance Committee, Councillor James Walsh informed the Council that the appropriation will be used to provide the Health Department with online permitting services.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on recommendation of the Finance Committee, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to adopt the following Order:

> AN ORDER APPROPRIATING FROM FREE CASH TO INFO/TECHNOLOGY SOFTWARE ACCOUNT.
>
> ORDERED: That there be and is hereby appropriated the sum of Twenty Thousand Eight Hundred Dollars and No Cents ($20,800.00) from Free Cash to the Info/Technology Software Account.

Presented to the Mayor for Approval – September 9, 2020

UNACCEPTED/UNCORRECTED PROOF

Approved – September 9, 2020
MICHAEL J. NICHOLSON, Mayor

#10325

Reporting for the Finance Committee, Councillor Walsh informed the Council that the appropriation will be used to replace three Police vehicles this year, as the practice has been to replace three annually. He cited the Police Chief's correspondence for additional details.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on recommendation of the Finance Committee, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to adopt the following Order:

> AN ORDER APPROPRIATING FROM FREE CASH TO THE POLICE DEPARTMENT VEHICLES ACCOUNT.
>
> ORDERED: That there be and is hereby appropriated the sum of One Hundred Fifty Thousand Dollars and No Cents ($150,000.00) from Free Cash to the Police Department Vehicles Account.

Presented to the Mayor for Approval – September 9, 2020
Approved – September 9, 2020
MICHAEL J. NICHOLSON, Mayor

#10326

Reporting for the Finance Committee, Councillor James Walsh informed the Council that since the Committee lacked sufficient documentation concerning ancillary costs for the filtration system that it recommends that the Order be referred back to the Committee for further study. He added that the project could potentially be delayed until the spring when the City has a better handle on the overall budget situation.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, on recommendation of the Finance Committee, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to refer the following Order to the Finance Committee for further study and report:

> AN ORDER APPROPRIATING A SUM OF MONEY FROM FREE CASH TO POOL FILTRATION SYSTEM ACCOUNT.
>
> ORDER: That there be and is hereby appropriated the sum of Seventy-Five Thousand Dollars and No Cents ($75,000.00) from Free Cash to the Pool Filtration System Account.

UNACCEPTED/UNCORRECTED PROOF

ORDINANCES

#10327

On a motion by Councillor Nathan Boudreau and seconded by Councillor Karen Hardern, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to refer An Ordinance Relative to Stormwater and Erosion Control to the Public Service Committee for study and report.

#10328

On a motion by Councillor Nathan Boudreau and seconded by Councillor Karen Hardern, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to refer An Ordinance Relative to Illicit Connections and Discharges to the Storm Drain System to the Public Service Committee for study and report.

PETITIONS, APPLICATIONS, COMMUNICATIONS, ETC.

#10329

Reporting for the Finance Committee, Councillor James Walsh informed the Council that the matter has been before the Committee for a lengthy period of time as there were delays with responses from National Grid. Recent correspondence from Attorney Deborah Phillips outlines the issues, he added, addressing the trespass on City property and National Grid's Easement.

Councillor Walsh moved to adopt the following Measure:

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 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

UNACCEPTED/UNCORRECTED PROOF

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:

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

UNACCEPTED UNCORRECTED PROOF

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

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

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

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

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

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

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

THENCE Southerly by the westerly sideline of Green Street along a curve concave to the west having a radius of one thousand nine hundred sixty-seven and 50/100 (1,967.50') feet, an arc length of two hundred sixty-two and 89/100 (262.89') feet to a Worcester County highway bound;

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

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

CONTAINING 3.13 Acres.

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

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

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

Councillor Ronald Cormier seconded the motion.

UNACCEPTED/UNCORRECTED PROOF

Councillor Boone questioned the legal fees paid to Attorney Phillips for her work.

Councillor Walsh noted that the City required use of outside counsel due to a conflict of interest by the City Solicitor.

Councillor Graves questioned the amount paid to Attorney Phillips for her work relating to Heywood Hospital's problem and suggested that the problem is not the City's fault and [just] because the City Solicitor was conflicted. He said that the City should be reimbursed by the Hospital for legal expenses. Referencing #10330, he said that the language states that the City is responsible for costs, so he questioned whether the Hospital would reimburse the City.

Councillor Walsh stated that it is nobody's fault that the Law Department has a conflict, including the Hospital. He added that situation like this is the reason that the City budget's for outside counsel.

Councillor Judy Mack questioned the reason that the limit is $2,600.00.

Councillor Walsh noted that legal costs also include recording of various documents and that $2,600 was the original estimate.

City Auditor John Richard noted that in FY2020, the City expended $2,204.36 from the Outside Counsel Budget.

Councillor Graves stated that Councillor Walsh is complicating the issue and that it "is not the City's fault that we are conflicted" and now "have to foot the bill."

Councillor Mack questioned whether the Council could postpone action until the amount of the legal fees are known.

President Kazinskas informed the Council that she received a text message from Win Brown that advised that the Hospital would reimburse the City for all legal fees.

On a motion by Councillor Judy Mack and seconded by Councillor Nathan Boudreau, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to refer *A Measure Authorizing an Eighth Amendment to the April 9, 1968 Lease Between the City and Henry Heywood Memorial Hospital* to the Finance Committee for further study and report.

UNACCEPTED/UNCORRECTED PROOF

#10330

On a motion by Councillor James Walsh and seconded by Councillor Judy Mack, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to refer *A Measure Authorizing an Easement Relocation Agreement Between the City of Gardner and Massachusetts Electric Company* to the Finance Committee for further study and report.

#10331

On a motion by Councillor Craig Cormier and seconded by Councillor George Tyros, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to refer *A Communication from the Traffic Commission relative to Nutting Street Parking* to the Public Safety Committee for study and report.

Councillor James Walsh noted his disappointment with the Traffic Commission's correspondence, citing their "We don't do that" answer to the Council's request. He added that the Commission's response is the result of its interpretation of the Traffic Commission Ordinance and their concerns that the Council makes its decisions based on whether it meets the current Code. Councillor Graves concurred with Councillor Walsh's comments.

#10332

On a motion by Councillor Craig Cormier and seconded by Councillor James Boone, on recommendation of the Public Safety Committee, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to grant a Bowling Alley License to Brian's Bowlaway, Inc., 123 Main Street, for the period expiring April 30, 2021.

REPORTS OF STANDING COMMITTEES

PUBLIC SAFETY COMMITTEE

#10306

On a motion by Councillor Craig Cormier and seconded by Councillor Karen Hardern, on recommendation of the Public Safety Committee, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to grant the House of Peace and Education, Inc., d/b/a HOPEful Boutique, a License to Deal in Second Hand Articles at 29 Pleasant Street for the period expiring April 30, 2021.

PUBLIC WELFARE COMMITTEE

UNACCEPTED/UNCORRECTED PROOF

#10305

There being no objections, the Committee was granted more time to report on *A Petition by Traven Development LLC to renew the designation of two (2) parcels at 525 Parker Street as a Development Overlay District 1.* A joint Public Hearing with the Planning Board will be scheduled.

COUNCIL AS COMMITTEE OF THE WHOLE

#10310

Councillor Ronald Cormier moved to adopt the following Order:

> AN ORDER TO RAISE AND APPROPRIATE A SUM OF MONEY FOR THE VARIOUS DEPARTMENTS FOR THE SALARY AND LABOR BUDGET FOR THE FISCAL YEAR BEGINNING JULY 1, 2020 TO JUNE 30, 2021.
>
> *ORDER:* To raise and appropriate for the expense of the City of Gardner for the Fiscal Year beginning July 1, 2020 to June 30, 2021 sums as designated for the expenditures of the various departments, Salary and Labor budgets, according to the detailed schedule hereto annexed and made a part of this money order in the amount of TWELVE MILLION, THREE HUNDRED EIGHTY-EIGHT THOUSAND, EIGHT HUNDRED SIXTY-SIX DOLLARS 66/100 CENTS ($12,388,666.66).

Councillor James Walsh seconded the motion.

On the motion, Councillor Graves stated that when Mark Hawke was Mayor, he made interdepartmental transfers and cited G.L. Chapter 44, section 33B. He questioned the practice but DOR Local Services would not put its answer in writing so he contemplated proposing every department budget be voted separately so that the interdepartmental transfers could not occur. He added that the City Council gave up a lot of authority as a result.

On the motion, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to adopt the following Order:

> AN ORDER TO RAISE AND APPROPRIATE A SUM OF MONEY FOR THE VARIOUS DEPARTMENTS FOR THE SALARY AND LABOR BUDGET FOR THE FISCAL YEAR BEGINNING JULY 1, 2020 TO JUNE 30, 2021.
>
> *ORDERED:* To raise and appropriate for the expense of the City of Gardner for the Fiscal Year beginning July 1, 2020 to June 30, 2021 sums as designated for the expenditures of the various departments, Salary and Labor budgets, according to the detailed schedule hereto annexed and made a part of this money order in the amount of TWELVE MILLION, THREE HUNDRED EIGHTY-EIGHT THOUSAND, EIGHT HUNDRED SIXTY-SIX DOLLARS 66/100 CENTS ($12,388,666.66).

UNACCEPTED/UNCORRECTED PROOF

IN ACCORDANCE WITH SECTION 30 OF THE CITY CHARTER, APPROPRIATIONS BY THE CITY COUNCIL UNDER SECTION THIRTY-TWO OF CHAPTER FORTY-FOUR OF THE GENERAL LAWS ARE NOT PRESENTED TO THE MAYOR FOR APPROVAL.

#10311

Councillor Ronald Cormier moved to adopt the following Order:

> AN ORDER TO RAISE AND APPROPRIATE A SUM OF MONEY FOR THE VARIOUS DEPARTMENTS FOR THE EXPENSE BUDGET FOR THE FISCAL YEAR BEGINNING JULY 1, 2020 TO JUNE 30, 2021.
>
> *ORDER:* To raise and appropriate for the expense of the City of Gardner for the Fiscal Year beginning July 1, 2020 to June 30, 2021 sums as designated for the expenditures of the various departments, other than what was presented to City Council in the Salary and Labor budget, according to the detailed schedule hereto annexed and made a part of this money order in the amount of TWENTY-TWO MILLION, FOUR HUNDRED EIGHT THOUSAND, FOURTY DOLLARS 02/100 CENTS ($22,408,040.02).

Councillor James Walsh seconded the motion.

On the motion, Councillor Graves stated that during informal budget discussions, he contemplated reducing expenses from the Law Department's Budget, but decided not to in the spirit of good will.

On the motion, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to adopt the following Order:

> AN ORDER TO RAISE AND APPROPRIATE A SUM OF MONEY FOR THE VARIOUS DEPARTMENTS FOR THE EXPENSE BUDGET FOR THE FISCAL YEAR BEGINNING JULY 1, 2020 TO JUNE 30, 2021.
>
> *ORDERED:* To raise and appropriate for the expense of the City of Gardner for the Fiscal Year beginning July 1, 2020 to June 30, 2021 sums as designated for the expenditures of the various departments, other than what was presented to City Council in the Salary and Labor budget, according to the detailed schedule hereto annexed and made a part of this money order in the amount of TWENTY-TWO MILLION, FOUR HUNDRED EIGHT THOUSAND, FOURTY DOLLARS 02/100 CENTS ($22,408,040.02).

IN ACCORDANCE WITH SECTION 30 OF THE CITY CHARTER, APPROPRIATIONS BY THE CITY COUNCIL UNDER SECTION THIRTY-TWO OF CHAPTER FORTY-FOUR OF THE GENERAL LAWS ARE NOT PRESENTED TO THE MAYOR FOR APPROVAL.

UNACCEPTED/UNCORRECTED PROOF

#10312

Councillor James Walsh moved to adopt the following Order:

> AN ORDER TO RAISE AND APPROPRIATE A SUM OF MONEY FOR THE SCHOOL DEPARTMENT BUDGET FOR THE FISCAL YEAR BEGINNING JULY 1, 2020 TO JUNE 30, 2021.
>
> *ORDER:* To raise and appropriate for the expense of the City of Gardner for the Fiscal Year beginning July 1, 2020 to June 30, 2021 sums as designated for the expenditures of the School Department according to the detailed schedule hereto annexed and made a part of this money order in the amount of TWENTY-FOUR MILLION, EIGHT HUNDRED NINETY-TWO THOUSAND, NINE HUNDRED THIRTY-EIGHT DOLLARS 23/100 CENTS ($24,892,938.23).

Councillor Ronald Cormier seconded the motion.

On the motion, Councillor Graves sought clarification on remarks made the Superintendent of Schools at the May School Committee meeting, who said that the Council cut the School Budget by $1.2M. Councillor Graves said that the Council first acted today on the School Budget so that "there was no way the City Council cut it by $1.2M."

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to adopt the following Order:

> AN ORDER TO RAISE AND APPROPRIATE A SUM OF MONEY FOR THE SCHOOL DEPARTMENT BUDGET FOR THE FISCAL YEAR BEGINNING JULY 1, 2020 TO JUNE 30, 2021.
>
> *ORDERED:* To raise and appropriate for the expense of the City of Gardner for the Fiscal Year beginning July 1, 2020 to June 30, 2021 sums as designated for the expenditures of the School Department according to the detailed schedule hereto annexed and made a part of this money order in the amount of TWENTY-FOUR MILLION, EIGHT HUNDRED NINETY-TWO THOUSAND, NINE HUNDRED THIRTY-EIGHT DOLLARS 23/100 CENTS ($24,892,938.23).

IN ACCORDANCE WITH SECTION 30 OF THE CITY CHARTER, APPROPRIATIONS BY THE CITY COUNCIL UNDER SECTION THIRTY-TWO OF CHAPTER FORTY-FOUR OF THE GENERAL LAWS ARE NOT PRESENTED TO THE MAYOR FOR APPROVAL.

#10313

On a motion by Councillor Ronald Cormier and seconded by Councillor James Boone, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott

UNACCEPTED/UNCORRECTED PROOF

Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to adopt the following Order:

AN ORDER APPROPRIATING A SUM OF MONEY FROM AVAILABLE ENTERPRISE FUNDS-VARIOUS RECEIPTS RESERVED TO VARIOUS ACCOUNTS FOR THE FISCAL YEAR BEGINNING JULY 1, 2020 TO JUNE 30, 2021.

ORDERED: That there be and is hereby appropriated for the Fiscal Year beginning July 1, 2020 to June 30, 2021 the sum of NINE MILLION, NINE HUNDRED THIRTY THOUSAND, TWO HUNDRED SIXY-EIGHT DOLLARS 84/100 CENTS ($9,930,268.84) from Available Enterprise Funds-Receipts Reserved to the following accounts:

Sewer Dept	Enterprise Fund	$3,479,977.96
Water Dept	Enterprise Fund	3,668,096.86
Golf Course	Enterprise Fund	824,667.80
Landfill Closure	Enterprise Fund	75,800.00
Solid Waste	Enterprise Fund	1,881,726.22

Any unused funds will revert back to the original Enterprise Fund at year end.

IN ACCORDANCE WITH SECTION 30 OF THE CITY CHARTER, APPROPRIATIONS BY THE CITY COUNCIL UNDER SECTION THIRTY-TWO OF CHAPTER FORTY-FOUR OF THE GENERAL LAWS ARE NOT PRESENTED TO THE MAYOR FOR APPROVAL.

#10314

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to adopt the following Order:

AN ORDER APPROPRIATING A SUM OF MONEY FROM AVAILABLE FUNDS-CABLE COMMISSION FEES RESERVED TO CABLE COMMISSION BUDGET FOR THE FICAL YEAR BEGINNING JULY 1, 2020 TO JUNE 30, 2021.

ORDERED: That there be and is hereby appropriated for the Fiscal Year beginning July 1, 2020 to June 30, 2021 the sum of ONE HUNDRED EIGHTY THOUSAND, THREE HUNDRED SIXY-SEVEN DOLLARS ($180,367.77) from Available Funds-Cable Commission Fees Reserved to the Cable Commission budget. Any unused funds will revert back to the Cable Commission Fees Reserved Fund at year end.

IN ACCORDANCE WITH SECTION 30 OF THE CITY CHARTER, APPROPRIATIONS BY THE CITY COUNCIL UNDER SECTION THIRTY-TWO OF CHAPTER FORTY-FOUR OF THE GENERAL LAWS ARE NOT PRESENTED TO THE MAYOR FOR APPROVAL.

UNACCEPTED/UNCORRECTED PROOF

#10315

On a motion by Councillor Ronald Cormier and seconded by Councillor James Boone, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to adopt the following Order:

AN ORDER APPROPRIATING A SUM OF MONEY FROM AVAILABLE FUNDS -PARKING METER RECEIPTS RESERVED TO VARIOUS ACCOUNTS FOR THE FICAL YEAR BEGINNING JULY 1, 2020 TO JUNE 30, 2021.

ORDERED: That there be and is hereby appropriated for the Fiscal Year beginning July 1, 2020 to June 30, 2021 the sum of EIGHTY THOUSAND, SEVEN HUNDRED SIXTY-FIVE DOLLARS 72/100 CENTS ($80,765.72) from Available Funds-Parking Meter Receipts Reserved to the following accounts:

City Treasurer	Parking Meter Clerk Salary	$14,265.72
City Treasurer	Parking Meter Maintenance	25,000.00
Police	Parking Meter Patrol	21,500.00
Public Works	Parking Meter Maintenance	20,000.00

Any unused funds will revert back to the Parking Meter Receipts Reserved Fund at year end.

IN ACCORDANCE WITH SECTION 30 OF THE CITY CHARTER, APPROPRIATIONS BY THE CITY COUNCIL UNDER SECTION THIRTY-TWO OF CHAPTER FORTY-FOUR OF THE GENERAL LAWS ARE NOT PRESENTED TO THE MAYOR FOR APPROVAL.

#10316

On a motion by Councillor Craig Cormier and seconded by Councillor Aleksander Dernalowicz, it was voted on call of the roll, eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to adopt the following Measure:

AUTHORIZING FY2021 REVOLVING FUNDS
M.G.L. CH.44, S.53E½

VOTED: To authorize and direct the City Treasurer to establish the following revolving funds for the fiscal year beginning July 1, 2020 to June 30, 2021 in accordance with M.G.L. Chapter 44, section 53E½:

Revolving Fund	Authorized to Expend	Revenue Source	Purpose of Fund	Spending Limit
Airport Fuel	Airport Commission	Sale of airplane fuel	Purchase of fuel, airport programs, and improvements	Available balance or $20,000, whichever is less

UNACCEPTED/UNCORRECTED PROOF

Community Development Projects	Community Development/ Planning	Historic Housing Rehab Income	Salaries and expenses relating to Community Development Activities	Available balance or $20,000, whichever is less
Wetland Protection	Conservation Commission	Local wetland filing fees	Costs associated with wetland protection activities	Available balance or $20,000, whichever is less
Council on Aging Recreational Activities	Council on Aging Director	Recreation Fees	Salaries and expenses relating to recreational activities at Senior Center	Available balance or $20,000, whichever is less
Gardner's Summer Celebration	Mayor	Collections and donations	Costs associated with Gardner's Summer Celebration	Available balance or $20,000, whichever is less
Planning Board Publications	Planning Board	Sale of Planning Board publications	Preparation and production of Planning Board publications	Available balance or $3,000, whichever is less
Road Resurfacing	Public Works Director	Fees charged for cutting into newly paved roads	Costs associated with road resurfacing and road maintenance	Available balance or $20,000, whichever is less
High School Summer Football Camp	School Department	Camp fees and donations	Salaries and expenses for the High School Summer Football Camp	Available balance or $20,000, whichever is less
Summer Basketball Camp	School Department	Camp fees and donations	Salaries and expenses for the Summer Basketball Camp	Available balance or $12,000, whichever is less
Transportation	School Department	Bus passes and fees for transportation	Salaries and expenses relating to school transportation	Available balance or $20,000, whichever is less

As per M.G.L., interest earned on these funds shall be treated as general fund revenue.

The person or persons authorized to expend from each fund shall report annually to the Mayor and City Council the total amount of receipts and expenditures for the prior fiscal year and for the current fiscal year through December 31st, along with any other information that City Council may by vote require.

In the event any fund is not reauthorized for the following fiscal year or the city changes the purpose of the revolving fund, the balance in the fund shall revert to surplus revenue, unless City Council and the Mayor vote to transfer the funds to another revolving fund established in accordance with M.G.L. Chapter 44, section 53E½.

Presented to the Mayor for Approval – September 9, 2020
Approved – September 9, 2020
MICHAEL J. NICHOLSON, Mayor

UNFINISHED BUSINESS AND MATTERS FOR RECONSIDERATION

#10305

A joint Public Hearing with the Planning Board will be scheduled on A Petition by Traven Development LLC to renew the designation of two (2) parcels at 525 Parker Street as a Development Overlay District 1.

UNACCEPTED/UNCORRECTED PROOF

NEW BUSINESS

Councillor Scott Graves thanked the taxpayers of Gardner for allowing the City Council to spend $70 million of their tax dollars for the FY21 Budget.

Councillor James Walsh noted that the FY21 Budget calls for 2% cost-of-living raises for non-union employees and that he is hopeful that the Salary Ordinance to implement the changes will be submitted for the next Council meeting.

President Elizabeth Kazinskas informed the Council that she addressed the issue with the Mayor and that the Ordinance is expected for the next Council meeting.

CLOSING PRAYER

President Kazinskas led the Council in the Closing Prayer.

ADJOURNMENT

On a motion by Councillor Nathan Boudreau and seconded by Councillor James Boone, on call of the roll, it was voted eleven (11) yeas, President Elizabeth Kazinskas and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Aleksander Dernalowicz, Scott Joseph Graves, Karen Hardern, Judy Mack, George Tyros, and James Walsh, to adjourn at 8:43 p.m.

Accepted by the City Council:

UNACCEPTED/UNCORRECTED PROOF

10333

CITY OF GARDNER, MASSACHUSETTS

IN CITY COUNCIL

ORDERED:

That the City of Gardner appropriates the sum of Two Hundred Fifty Thousand Dollars ($250,000) to pay costs of repairing and repainting the elevated water storage tank located off of Route 140, including the payment of all costs incidental and related thereto; that to meet said appropriation the Treasurer, with the approval of the Mayor, is authorized to borrow said sum under M.G.L. c. 44, §8(7A), or any other enabling authority, and to issue bonds or notes of the City therefor. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

10333

CITY OF GARDNER
Department of Public Works

RECEIVED
2020 SEP 14 AM 11:53

Highway
Water
Sewer
Forestry
Parks/Playgrounds
Cemeteries

Dane E. Arnold, Director
50 Manca Drive
Gardner, MA 01440-2687
Telephone (978) 630-8195
Fax (978) 630-4029
darnold@gardner-ma.gov

Mayor Nicholson
City Hall, 95 Pleasant Street
Gardner, MA 01440

RE: Loan Order

September 3, 2020

Dear Mayor Nicholson:

The **Water Department** is requesting a **$700,000 Loan Order** for 2 Items:

Painting the Elevated Storage Tank located off Route 140
Estimated Cost $250,000

The Water Department painted the elevated storage tank in 2004. We recently inspected the exterior of the tank and found it is in need of pressure washing, minor repairs, and painting. We have since gone out to bid and had a low bid of $200,000 and will add $50,000 for contingency.

Replacing the Filters in the Crystal Lake Water Treatment Facility
Estimated Cost $350,000 - $450,000

The Pall filters located in the Crystal Lake Water Treatment Facility are approximately 14 years old and at the point where they need to be replaced. These are the main filtration filters for the City's drinking water. This estimate covers the replacement of all 177 filters at a cost of approximately $1,500 each, plus parts, and labor to install.

We will look into a short term loan (4-7 years) to pay for these improvements. We have programed this loan into our Water Forecast Budget and the existing rate structure, as voted and approved by the City Council in 2019, supports this loan <u>without</u> an additional rate increase.

If you have any questions, please feel free to contact my office.

Sincerely,

Dane E. Arnold, Director
Department of Public Works

PC: Public Service Committee
Chris Coughlin, City Engineer
Rob Oliva, Assistant Director, Department of Public Works
John Richard, City Auditor

10334

CITY OF GARDNER, MASSACHUSETTS

IN CITY COUNCIL

ORDERED:

That the City of Gardner appropriates the sum of Four Hundred Fifty Thousand Dollars ($450,000) to pay costs of replacing the Pall filters at the Crystal Lake Water Treatment Facility, including the payment of all costs incidental and related thereto; that to meet said appropriation the Treasurer, with the approval of the Mayor, is authorized to borrow said sum under M.G.L. c. 44, §8(7A), or any other enabling authority, and to issue bonds or notes of the City therefor. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

10334

CITY OF GARDNER
Department of Public Works

RECEIVED
2020 SEP 10 AM 11:53

Highway
Water
Sewer
Forestry
Parks/Playgrounds
Cemeteries

Dane E. Arnold, Director
50 Manca Drive
Gardner, MA 01440-2687
Telephone (978) 630-8195
Fax (978) 630-4029
darnold@gardner-ma.gov

Mayor Nicholson
City Hall, 95 Pleasant Street
Gardner, MA 01440

RE: Loan Order

September 3, 2020

Dear Mayor Nicholson:

The **Water Department** is requesting a **$700,000 Loan Order** for 2 Items:

Painting the Elevated Storage Tank located off Route 140
Estimated Cost $250,000

The Water Department painted the elevated storage tank in 2004. We recently inspected the exterior of the tank and found it is in need of pressure washing, minor repairs, and painting. We have since gone out to bid and had a low bid of $200,000 and will add $50,000 for contingency.

Replacing the Filters in the Crystal Lake Water Treatment Facility
Estimated Cost $350,000 - $450,000

The Pall filters located in the Crystal Lake Water Treatment Facility are approximately 14 years old and at the point where they need to be replaced. These are the main filtration filters for the City's drinking water. This estimate covers the replacement of all 177 filters at a cost of approximately $1,500 each, plus parts, and labor to install.

We will look into a short term loan (4-7 years) to pay for these improvements. We have programed this loan into our Water Forecast Budget and the existing rate structure, as voted and approved by the City Council in 2019, supports this loan without an additional rate increase.

If you have any questions, please feel free to contact my office.

Sincerely,

Dane E. Arnold, Director
Department of Public Works

PC: Public Service Committee
Chris Coughlin, City Engineer
Rob Oliva, Assistant Director, Department of Public Works
John Richard, City Auditor

10334

Alan Agnelli

From:	Dane Arnold
Sent:	Friday, September 18, 2020 12:48 PM
To:	Alan Agnelli; James M. Walsh; Elizabeth Kazinskas; Councillor R Cormier; Mayor
Cc:	Rob Oliva; Chris Coughlin
Subject:	FW: Pall Membranes
Attachments:	Pall MF Quotes for Gardner WTP 9-18-20.xlsx; Gardner Autopsy Proposal 091720.pdf; OPP1512038 GARDNER WTP SPARE PARTS QUOTE.pdf; PallWater_AriaSMARTBOX_jg.pdf; Gardner Module Replacement Proposal 3-Racks 052920 (2).pdf

Good afternoon,
Please find attached supporting documentation for the replacement of the PALL membranes at the CLWTF. We may not need every part listed within and we are discussing whether we need the Smart Box service plan. Thus the estimate at this point in time is between $350,000 - $450,000.

If you have any questions, please feel free to contact me.

Have a good weekend.

Dane E. Arnold, Director
Department of Public Works
50 Manca Drive
Gardner MA 01440
978-630-8195

From: Domingos, Darlene <darlene.domingos@veolia.com>
Sent: Friday, September 18, 2020 12:11 PM
To: Dane Arnold <darnold@gardner-ma.gov>
Subject: Re: Pall Membranes

CAUTION: This email originated from a sender outside of the City of Gardner mail system. Do not click on links or open attachments unless you verify the sender and know the content is safe.
Please see the attached documents.
The excel spreadsheet is the document that Veolia put together estimating what exactly Gardner will need for parts and services. The price quote from Pall is contingent upon the PO being received soon and the membranes shipped by the end of September. Estimated total **$452,579.54**

Pall Membrane Replacement Quote Breakdown Analysis

(Note, the exact total amount may be slifghtly different from Pall's Quote due to rounding errors in calcualtions)

18-Sep-20		Three Racks
MF Modules	$	286,363.07
Parts & Accessories, total modules	$	21,748.07
Onsite Services, Days		5.5
Onsite Services & Protocol	$	16,161.58
Freight	$	1,475.00
Module Autopsy	$	6,160.00
Subtotal	$	331,913.22
Veolia 10%	$	365,104.54
Smart Box 5 year service	$	87,475.00
Total	$	452,579.54

Note: Parts and Accessories Cost are calculated from the total quoted price and the membrane module price.

Pall Corporation

Pall Water
Pall Technology Services
839 State Route 13
Cortland New York 13045-5630
Tel: 866.475.0115 ▲ FAX: 607.758..4526
Email: pall_technology_csc@pall.com

Pall Proposal No.: OPP1512064
Date: September 17, 2020

Theping Chen
Technical Manager
Municipal & Commercial Business
VEOLIA NORTH AMERICA

Re: Module Autopsy Proposal

As a follow up to your discussion with Pall, we are pleased to offer a proposal for technical parts and services. We will arrange onsite support pending receipt of your purchase order, at which time site visit details will be confirmed.

Scope of Services

Pall Water proposes to provide Module Evaluation ("Autopsy") services for one module as an indicator of the state of microfiltration membranes. Module Evaluations are often used as a means to identify an improved operating protocol, estimate remaining microfiltration (MF) module life, or determine if modules need to be replaced.

A Pall process engineer will work with the customer to select and remove the membrane module(s) for evaluation. The customer will be required to ship the selected module(s) to designated lab facility per the process engineer's instruction. Once the module arrives at the laboratory, Pall will:

- Inspect the module housing
- Perform an integrity test the intact module
- Perform Fiber bundle inspection (pre and post cutting) to identify/locate fiber breaks and look for observable foulant identification
- Individual fiber Inspection (fibers cut out of bundle) for:
  - foulant identification
  - test tensile strength & failure modes
  - cleaning study to confirm foulants & permeability recovery (SEM/EDX (pre & post cleaning) to confirm foulant identification and fiber recoverability, as needed)
- Perform a Data Analysis & Review, the result of which may be and adjusted operating protocol to improve module performance, or it may prove modules not recoverable through operating procedure, but require replacement

Upon completion of the testing, analysis and review, Pall will present the customer with a report with recommendations for a revised operating protocol or replacement schedule, depending on the findings.

Data from the laboratory work will be analysed and reviewed the Pall Water's Process Engineering Group, who will then prepare a report with recommendations to the customer. The report will include any recommendations, such as a revised operating protocol to improve module performance, or module replacement schedule should the findings indicate they are nearing the end of their useful life. Please note that Pall Water cannot guarantee that this analysis will result in extended module life for the current set of MF modules.

Schedule: Pall Water is proposing to evaluate one module. Schedule is dependent on laboratory availability and may take from 2-6 weeks to complete after arrival of the module at the lab.

This proposal does not include a replacement UNA module. If required, please inquire Pall Water.

Pall Corporation

Pall Water
Pall Technology Services

PROPOSAL SUMMARY

Item 1: Modules and Associated Items	**$ 6,160.00**

Total amount for purchase order: $ 6,160.00

Service Reports: If service reports are required by your site to comply with your company or state regulations, please indicate on your order that service report documents are required. Service reports detailing the visit and recommendations will then be provided.

Materials: This proposal covers parts and services.

Validity: This proposal is valid for 60 days.

Terms of Sale: Standard Terms and Conditions of Sale Non-Systems - The Americas

Terms of Service:

- Regular minimum service charge is for a 10-hour day. Maximum workday is 12 hours including travel time.
-

Service Order acceptance and payment terms: Pall Advanced Separations Systems requires all accounts outstanding beyond 30 days to be paid in full prior to order acceptance. Your account status will be verified at the time of order placement, and you will be notified if you have a balance due. To avoid order processing, goods shipment or service scheduling delays, please insure your account is up to date in advance of placing your order.

Charges per the proposal will be billed automatically upon completion of the service, and sign-off of the service report, and become payable within 30 business days of receipt of the invoice.

Changes: Pall shall not implement any changes in the scope of services described in Pall's proposal unless the Customer and Pall agree to the details of the change. Any resulting price, schedule or other contractual modifications, will require a verbal change called into Pall's Customer Service Department, with a follow up written confirmation. This includes any changes necessitated by a change in applicable law.

A Purchase Order or written authorization to accept the contract of work as described, along with a signed copy of the attached Customer authorization for service is required in advance of PASS providing the service defined in this proposal.

Please direct your purchase order to:

Pall Water
Pall System Services P.O. Box 5630
839 State Route 13
Cortland, New York 13045-5630
Tel: 866-475-0115 / Fax: 607.758.4526
Email: Pall_Technology_csc@pall.com
Attn: Customer Service

Pall Systems Support

To obtain support for your Pall systems installation, our Customers can contact Pall via our toll free number at 866-475-0115 or by email to pall_technology_csc@pall.com. Through this channel, you gain access to warranty assistance, technical support as well as our service and spares team.

Pall Customers have access to this 24/7 Service Hotline. Pall System Engineers are on full-time rotation to provide around-the-clock availability of live technical support. This service is charged at $250 for support time for the first 30 minutes, during normal workday hours between 9:00-AM and 4:00-PM EST, excluding weekends and holidays.

If your system is out of warranty or does not have a 24/7 service support contract, there will be a charge when technical support is to be provided for intervals longer than 30 minutes, or after-hours technical support to resolve the issue. Extensive off-site support will require a purchase order or credit card. Billing is based on a minimum 1-hour charge at Pall's off-site hourly service rate. You will be asked to provide your credit card number or service contract purchase order number that will be billed at Pall's Off-Site Service Rates, with a minimum 1-hour charge. If the problem cannot be resolved over the telephone, the Customer can request a Pall System Service Representative to visit the site location. You will be quoted an Emergency Service Rate and billed for last-minute travel expenses.

Please feel free to call me at your convenience with any questions or comments. We look forward to providing you with field services to assist you with system operation, and await your purchase order.

Sincerely,

Jay Garcia
Key Account Manager
Phone: 516.301.6332

Pall Corporation

Pall Water
Pall Technology Services
Pall Proposal No.: OPP1512064
Date: September 17, 2020

Customer Authorization for Service

I am an authorized representative of the customer, and I accept the Terms and Conditions of this Service Agreement on behalf of the customer. I authorize Pall Corporation to perform the work defined in this agreement, and accept the costs and charges defined in this agreement.

Company: _____

_____ Print Name

_____ Title/Position

_____ Signature

_____ Date

Purchase Order No. or Reference for Billing: _____

Circle Service Visit Frequency: Annual Semi-Annual Quarterly Single Emergency

Requested Date(s) to Schedule Service Visit(s): _____
(unless deemed emergency service, please allow a 4-week window to accommodate scheduling by Pall.)

Pall Proposal No.: _____

Effective Date and Duration: This Agreement will be effective as of the date signed below, and will remain in effect:

- until on site service work has been completed by Pall,
- or until 30 days after receipt of notice of termination by either party.

Customer Billing Address: _____

_____

_____

Customer Comments: _____

_____

_____

Standard Terms and Conditions of Sale
Non-Systems – The Americas

1. **Applicability: Entire Agreement:**

   1.1. These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods identified on Buyer's purchase order (the "**Goods**") by Seller to Buyer. By placing a purchase order, Buyer makes an offer to purchase the Goods pursuant to these Terms, including (a) a list of the Goods to be purchased; (b) the quantity of each of the Goods ordered; (c) the requested delivery date; (d) the unit Price for each of the Goods to be purchased; (e) the billing address; and (f) the delivery location (the "**Basic Purchase Order Terms**"), and on no other terms.

   1.2. The accompanying quotation, proposal, confirmation of sale, invoice, order acknowledgment or similar document delivered by Seller to Buyer (the "**Sales Confirmation**"), the Basic Purchase Order Terms and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

   1.3. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

2. **Non-delivery:**

   2.1 The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's Shipment Point (as defined in **Section 4**) is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

   2.2 Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within 10 days of the date when the Goods would in the ordinary course of events have been received.

   2.3 Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

3. **Delivery:**

   3.1 The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. The delivery and/or shipping schedule is the best estimate possible based on conditions existing at the time of Seller's Sales Confirmation or Seller's quotation and receipt of all specifications, as applicable, and in the case of non-standard items, any such date is subject to Seller's receipt of complete information necessary for design and manufacture. Seller shall not be liable for any delays, loss or damage in transit or for any other direct, indirect, or consequential damages due to delays, including without limitation, loss of use.

   3.2 Seller may, in its sole discretion, without liability or penalty, deliver partial shipments of Goods to Buyer and ship the Goods as they become available, in advance of the quoted delivery date. If the Goods are delivered in installments, then insofar as each shipment is subject to the same Agreement, the Agreement will be treated as a single contract and not severable.

   3.3 Seller shall make the Goods available to Buyer at Seller's factory or designated shipment point (each, "**Seller's Shipment Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within 5 days of Seller's written notice that the Goods have been delivered to the Seller's Shipment Point.

   3.4 If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Seller's Shipment Point, or if Seller is unable to deliver the Goods at the Seller's Shipment Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) title and risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4. **Shipping Terms:** Unless otherwise mutually agreed to in writing by the parties, delivery shall be FCA (Seller's Shipment Point) INCOTERMS 2010. At Buyer's request, Seller will, at Buyer's risk and expense, arrange for the delivery of the Goods to Buyer's site/facility and Buyer will pay, or reimburse Seller, for all freight charges, taxes, duties, entry fees, brokers' fees, special, miscellaneous and all other ancillary charges and special packaging charges incurred.

5. **Title and Risk of Loss:** Title and risk of loss passes to Buyer upon the earlier of (i) delivery of the Goods at the Seller's Shipment Point or (ii) deemed delivery pursuant to clause 3.4 above. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and

replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the New York Uniform Commercial Code.

6. **Inspection and Rejection of Nonconforming Goods:**

6.1 Buyer shall inspect the Goods within 10 days of receipt (the "**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. Such notification shall identify each and every alleged nonconformity of the Goods and describe that portion of the shipment being rejected. Seller shall then respond with instructions as to the disposition of the Goods.

6.2 If Buyer timely notifies Seller of any nonconforming Goods, Seller shall, in its sole discretion, (i) replace such nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the nonconforming Goods to Seller's Shipment Point. If Seller exercises its option to replace nonconforming Goods, Seller shall, after receiving Buyer's shipment of nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Seller's Shipment Point.

6.3 Buyer acknowledges and agrees that the remedies set forth in **Section 6.2** are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under **Section 6.2**, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

6.4 If Seller delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

7. **Services:** Seller will provide such services as are expressly described in the Sales Confirmation (collectively, the "**Services**"), during normal business hours, unless otherwise specified in the Sales Confirmation. Services requested or required by Buyer outside of these hours or in addition to the quoted or agreed upon services will be charged at Seller's then current schedule of rates, including overtime charges, if applicable, and will be in addition to the charges outlined in the Sales Confirmation.

8. **Purchase Price:** The price for the Goods and/or Services thereof shall be Seller's quoted price. Seller may also at any time assess a fuel or energy surcharge (in addition to the price of the Goods) (the "**Purchase Price**"). The Purchase Price is based on the project schedule defined in this Agreement, Sales Confirmation or applicable contract documents. Notwithstanding anything to the contrary set out herein, in the event of any delay to Seller's delivery schedule caused by Buyer or its representatives (other than for Force Majeure or delays caused by Seller), including without limitation, a suspension of work or the project, a postponement of the delivery date or failure to timely issue of a notice of commencement or similar document, then the Purchase Price shall increase by 1% for every month or partial month of such delay and this Agreement shall be construed as if the increased Purchase Price were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased Purchase Price.

9. **Taxes:** The Purchase Price is exclusive of any applicable federal, state or local sales, use, excise or other similar taxes, including, without limitation, value added tax, goods and services tax or other similar tax imposed by any governmental authority on any amounts payable by Buyer. All such taxes will be for Buyer's account and will be paid by Buyer to Seller upon submission of Seller's invoices. Buyer agrees to make tax accruals and payments to the tax authorities as appropriate. If Buyer is exempt from any applicable sales tax or equivalent, but fails to notify Seller of such exemption or fails to furnish its Sales Tax Exemption Number to Seller in a timely manner and Seller is required to pay such tax, the amount of any such payment made by Seller will be reimbursed by Buyer to Seller upon submission of Seller's invoices.

10. **Payment:**

10.1 Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder by EFT, wire transfer, or check and in US dollars. Payment for foreign billing shall be in accordance with Seller's written instructions.

10.2 Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend performance of any Purchase Order, or suspend the delivery of any Goods, if Buyer fails to pay any amounts when due hereunder and such failure continues for 5 days following written notice thereof. Additionally Seller my require payment in cash, security or other adequate assurance satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action.

10.3 All sales are subject to the approval of Seller's credit department.

10.4 Buyer may not withhold or setoff any amounts that may be claimed by Buyer against any amounts that are due and payable to Seller by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

11. Limited Warranty:

11.1 Limited Warranty for Goods. Seller warrants to Buyer that for a period of twelve months from the date of delivery of the Goods, including deemed delivery pursuant to clause 3.4 above (the "**Warranty Period**"), that the Goods manufactured by Seller, when properly installed and maintained, and operated at ratings, specifications and design conditions specified by Seller, will materially conform to Seller's specifications for such Goods set forth in Seller's proposal, or, in the absence of such a proposal, such specifications for such Goods appearing in Seller's product catalogues and literature or in the Sales Confirmation, at the time of the order and will be free from material defects in material and workmanship (this "**Limited Warranty**"). Buyer shall notify Seller promptly in writing of any claims within the Warranty Period and provide Seller with an opportunity to inspect and test the Goods or service claimed to fail to meet this Limited Warranty. Buyer shall provide Seller with a copy of the original invoice for the product or service, and prepay all freight charges to return any Goods to Seller's factory, or other facility designated by Seller. All claims must be accompanied by full particulars, including system operating conditions, if applicable. If the defects are of such type and nature as to be covered by this Limited Warranty, Seller shall, at its option and in its sole discretion, either: (a) accept return of the defective Goods and furnish replacement Goods; (b) furnish replacement parts for the defective Goods; (c) repair the defective Goods; or (d) accept return of the defective Goods and return payments made, or issue credits for, such defective Goods. If Seller determines that any warranty claim is not, in fact, covered by this Limited Warranty, Buyer shall pay Seller its then customary charges for any additionally required service or products.

11.2 Limited Warranty for Services. Seller further warrants that all Services performed hereunder, if any, will be performed in a workmanlike manner in accordance with applicable law and industry standards by qualified personnel (this "**Limited Warranty for Services**"); this Limited Warranty for Services shall survive for 30 days following Seller's completion of the Services (the "**Service Warranty Period**"). In the event of a warranty claim under this Limited Warranty for Services, Buyer shall inform Seller promptly in writing of the details of the claim within the Service Warranty Period. Seller's liability under any service warranty is limited (in Seller's sole discretion) to repeating the service that during the Service Warranty Period does not meet this Limited Warranty for Services or issuing credit for the nonconforming portions of the service. If Seller determines that any warranty claim is not, in fact, covered by the foregoing Limited Warranty for Services, Buyer shall pay Seller its then customary charges for all services performed by Seller.

11.3 No Warranty as to Third Party Products. Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in **Section 11.1**. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** With respect to any Third Party Product, the warranty, if any, is provided solely through the manufacturer of such Third Party Product, the terms of which vary from manufacturer to manufacturer and Seller assumes no responsibility on their behalf. For Third Party Products, specific warranty terms may be obtained from the manufacturer's warranty statement.

11.4 Other Limits. **EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 11.1 and 11.2, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING WITHOUT LIMITATION ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** Seller does not warrant against, and in no event shall Seller be liable for, damages or defects arising out of improper or abnormal use, misuse, abuse, improper installation (other than by Seller), application, operation, maintenance or repair, alteration, accident, or for negligence in use, storage, transportation or handling or other negligence of Buyer. In no event shall Seller be liable for any Goods repaired or altered by someone other than Seller other than pursuant to written authorization by Seller.

11.5 Exclusive Obligation. **THIS WARRANTY IS EXCLUSIVE. THE LIMITED WARRANTY AND THE LIMITED WARRANTY FOR SERVICES ARE THE SOLE AND EXCLUSIVE OBLIGATIONS OF SELLER WITH RESPECT TO THE DEFECTIVE GOODS AND SERVICES. SELLER SHALL NOT HAVE ANY OTHER OBLIGATION WITH RESPECT TO THE GOODS, SERVICES, OR ANY PART THEREOF, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE. THE REMEDIES SET FORTH IN SECTIONS 11.1 AND 11.2 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11.1 AND 11.2.**

11.6 Buyer Breach. In no event shall Buyer be entitled to claim under the above Limited Warranties if Buyer is in breach of its obligations, including but not limited to payment, hereunder.

12. Limitation of Liability:

12.1 IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, INCLUDING WITHOUT LIMITATION, REMANUFACTURING COSTS AND REWORK COSTS, DE-INSTALLATION OR RE-INSTALLATION COST, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (TORT, CONTRACT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND WHATEVER THE FORUM, WHETHER ARISING OUT OF OR IN CONNECTION WITH THE MANUFACTURE, PACKAGING, DELIVERY, STORAGE, USE, MISUSE OR NON-USE OF ANY OF ITS GOODS OR SERVICES OR ANY OTHER CAUSE WHATSOEVER.

12.2 IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER

12.3 The limitation of liability set forth in **Section 12.2** above shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

13. **Cancellation:** Buyer may not cancel this Agreement after Sales Confirmation unless all the details are approved in writing by the parties, including Buyer's agreement to pay a stated amount of termination charges.

14. **Termination:** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for 10 days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15. **Changes:** Seller shall not be obligated to implement any changes or variations in the scope of work described in Seller's Documentation unless Buyer and Seller agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. This includes any changes or variations necessitated by a change in applicable law occurring after the effective date of this Agreement including these Terms.

16. **Intellectual Property Infringement:** Buyer has no authorization to make any representation, statement or warranty on behalf of Seller relating to any Goods sold hereunder. Buyer shall indemnify and defend, at its own expense, Seller against claims or liability for U.S. or applicable foreign patent, copyright, trademark or other intellectual property infringement and for product liability arising from the preparation or manufacture of the Goods according to Buyer's specifications or instructions, or from Buyer's unauthorized or improper use of the Goods or part thereof, or from any changes or alterations to the Goods or part thereof made by persons other than Seller, or from the use of the Goods in combination with products not furnished by Seller or from the manufacture or sale or use of Buyer products which incorporate or integrate the Goods.

17. **Ownership of Materials:** All ideas, concepts, whether patentable or not, devices, inventions, copyrights, improvements or discoveries, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information that are: a) created, prepared, reduced to practice or disclosed by Seller; and/or b) based upon, derived from, or utilize the Confidential Information of Seller, and all related intellectual property rights, shall at all times remain Seller's property. No right, title or interest in any patents, trademarks, trade names or trade secrets, or in any pattern, drawing or design for any of the Goods or in any other Seller intellectual property right, shall pass or transfer to the Buyer and Seller shall at all times retain ownership rights therein. Notwithstanding the foregoing, Seller grants Buyer a non-exclusive, non-transferable license to use any such material to the extent necessary and solely for Buyer's use of the Goods purchased by Buyer from Seller hereunder. Buyer shall not disclose any such material to third parties without Seller's prior written consent. As a condition to Seller's delivery to Buyer of the Goods, Buyer shall not, directly or indirectly, and shall cause its employees, agents and representatives not to: (i) alter or modify the Goods, (ii) disassemble, decompile or otherwise reverse engineer or analyze the Goods, (iii) remove any product identification or proprietary rights notices, (iv) modify or create derivative works, (v) otherwise take any action contrary to Seller's rights in the technology and intellectual property relating to the Goods, (vi) assist or ask others to do any of the foregoing.

18. **Export:** As a condition to Seller's delivery to Buyer of the Goods, Buyer agrees, with respect to the exportation or resale of the Goods by Buyer, to comply with all requirements of the International Traffic in Arms Regulations ("**ITAR**") and the Export Administration Regulations ("**EAR**"), regulations issued thereunder and any subsequent amendments thereto, and all other national, including, but not limited to, European, government laws and regulations on export controls, including laws and regulations pertaining to export licenses, restrictions on export to embargoed countries and restrictions on sales to certain persons and/or entities. Buyer further agrees that the shipment and/or delivery of the Goods by Seller is contingent upon Seller obtaining all required export authorizations, licenses, and permits (collectively, "**Authorizations**") and Buyer agrees that Seller shall not be liable to Buyer for any failure or delay in the shipment or delivery of the Goods if such Authorizations are delayed, conditioned, denied or not issued by the regulatory or governmental agencies having jurisdiction over such Authorizations.

19. **Confidentiality:** If Seller discloses or grants Buyer access to any research, development, technical, economic, or other business information or "know-how" of a confidential nature, whether reduced to writing or not, Buyer will not use or disclose any such information to any other person or company at any time, without Seller's prior written consent. In the event that Buyer and Seller have entered into a separate confidentiality agreement (the "**Confidentiality Agreement**"), the terms and conditions of the Confidentiality Agreement shall take precedence over the terms of this paragraph.

20. **No Waiver:** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. Seller's failure to exercise, or to delay in exercising, any right, remedy, power or privilege arising from this Agreement, or to insist on Buyer's strict performance of these Terms shall not operate as or be construed as a waiver by Seller.

21. **Force Majeure:** Whenever performance by Seller of any of its obligations hereunder, is substantially prevented by reason of any act of God, strike, lock out, or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war conditions, or by reason of any other matter beyond its reasonable control, then such performance shall be excused, and deemed suspended during the continuation of such event and for a reasonable time thereafter, delayed, or adjusted accordingly.

22. **No Third-Party Beneficiaries:** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

23. **Relationship of the Parties:** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

24. **Validity:** If any provision of this Agreement, the Sales Confirmation or these Terms is held by any competent authority to be invalid or unenforceable in whole or in any part, such provision shall be ineffective, but only to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision nor the other provisions, which shall not be affected.

25. **Governing Law:** This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by the laws of the State of New York, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.

    The parties expressly exclude the application of the United Nations Conventions on Contracts for the International Sale of Goods, and further exclude the applications of the International Sale of Goods Contracts Convention Act, S.C. 1990-1991, C.13, and the International Sale of Goods Act, R.S.O. 1990, C.I. 10, as amended.

26. **Submission to Jurisdiction:** Buyer and Seller hereby unconditionally and irrevocably submit to (and waive any objection on the grounds of inconvenient forum or otherwise) the jurisdiction of the Supreme Court of the State of New York, County of Nassau or the United States District Court for the Southern District of New York, which courts shall have exclusive jurisdiction to adjudicate and determine any suit, action or proceeding regarding or relating to this Agreement and the purchase and supply of the Goods. A judgment, order or decision of those courts in respect of any such claim or dispute shall be conclusive and may be recognized and enforced by any courts of any state, country or other jurisdiction.

27. **No Jury Trial: BUYER AND SELLER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

28. **Survival:** All payment, confidentiality and indemnity obligations, warranties, limitations of liability, product return, and ownership of materials provisions together with those sections the survival of which is necessary for the interpretation or enforcement of these Terms, shall continue in full force and effect for the duration stated in such provisions or the applicable statute of limitations.

29. **Amendment and Modification:** This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.

PALL Water

Pall Advanced Separation Systems
839 NYS Route 13
PO Box 5630
Cortland, N.Y. 13045-5630
607.753.6041 phone / 607.758.4526 fax

PROPOSAL SUMMARY

Date:September 17, 2020
Contact: Chen, Depin
Email: theping.chen@veolia.com
Company: Gardner WTP
Quote No.: OPP1512038

Inquiry Date	Shipping Terms	EX WORKS	Quote Valid for
9/17/2020	Prepaid and Add	ORIGIN	30 days

PASS MM# or Item #	*Part Number / Description*	*Qty*	Unit Price USD$	Total Value USD$
WH012452	FUSE,LITTELFUSE,2AMP,TYPE T,5x20mm	1	$2.36	$2.36
WH012503	FUSE,LITTELFUSE,5AMP,TYPE T,5x20mm	1	$0.99	$0.99
WH012477	FUSE,LITTELFUSE,1AMP,TYPE T,0.25"x1.25"	1	$2.25	$2.25
WH012370	FUSE,LITTELFUSE,2AMP,TYPE T,0.25"x1.25"	1	$2.25	$2.25
WH012568	FUSE,LITTELFUSE,1AMP,TYPE T,5x20mm	1	$0.92	$0.92
WH012557	FUSE,LITTELFUSE,3.15AMP,TYPE T,5x20mm	1	$0.99	$0.99
WH012400	FUSE,LITTELFUSE,0.1AMP,TYPE T,5x20mm	1	$1.35	$1.35
WH012510	FUSE,LITTELFUSE,10AMP,TYPE T,5x20mm	1	$0.92	$0.92
WH037534	PUMP,DIAPH,0-15 GPM,WILDEN,P1,PP	1	$997.36	$997.36
WH171203	PUMP,DIAPH,0-15GPM,WILDEN,P1,KY/VT	1	$1,317.82	$1,317.82
WH020948	PUMP,DIAPH,0-15 GPM,WILDEN,P1,KYNAR	1	$1,840.05	$1,840.05
WH012988	PUMP,DIAPH,0-5 GPM,WILDEN,P.025,PP	1	$454.98	$454.98
WH171214	KIT,REPAIR,WILDEN,P1/PPPPP/WFS/TF/KWF	1	$715.74	$715.74
WH171215	KIT,REPAIR,WILDEN,P025/PPPPP/WFS/TF/PWF	1	$467.57	$467.57
WH171216	KIT,REPAIR,WILDEN,P1/PPPPP/VTS/VT/VT	1	$1,159.58	$1,159.58
WH171217	KIT,REPAIR,WILDEN,P1/KKPPP/WFS/TF/KWF	1	$715.74	$715.74

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839 NYS Route 13
PO Box 5630
Cortland, N.Y. 13045-5630
607.753 6041 phone / 607.758.4526 fax

WH171218	MECH SEAL,PUMP,GOULDS,3196MTX,3x4-10H	1	$1,981.76	$1,981.76
WH010930	PLC COMP,AB,CONTROLOGIX POWER SUPPLY	1	$1,521.25	$1,521.25
WH042754	PLC COMP,AB,CONTROLOGIX,ETHERNET MD,EN2T	1	$4,115.59	$4,115.59
WH010925	PLC COMP,AB,CONTROLOGIX,INPUT MOD,32 PT.	1	$721.89	$721.89
WH045565	PLC COMP,AB,ISO. DIG. OUT,16CH,CLGX,DC	1	$1,107.14	$1,107.14
WH079878	PLC COMP,AB,ANALOG INPUT,8CH,CONTROLOGIX REPLACES WH016389	1	$3,328.91	$3,328.91
WH079879	PLC COMP,AB,ANALOG OUT, 8CH,CONTROLOGIXREPLACES WH025593	1	$3,964.77	$3,964.77
WH177680	PLC COMP,AB,CONTROLOGIX CPU,1756-L72	1	$9,809.64	$9,809.64
WH180571	HACH, KTO: TU5400sc W/SC200 2 CH	1	$13,449.74	$13,449.74
WH180802	VALVE, NUMATICS,2005, 1/8 FLASH LKG	1	$140.25	$140.25
WH180803	VALVE, NUMATICS, 2005, ¼ PSHN	1	$229.72	$229.72
WH180804	VALVE, NUMATICS, 2005, REGULATOR W/ SC	1	$236.07	$236.07

Terms of Sale: Net 30 Days. Shipment is made via 3rd party billing (please provide an account number), or origin collect. Please include Palls' shipping terms on your purchase order.

Shipment Lead Time: TBD Weeks ARO, subject to prior sale

Comments: PARTIAL LIST

Pall's minimum order value is $500.00. Exception to this will be taken only on a case by case basis. An order processing fee may apply to orders that are accepted, but do not meet the minimum order value. If the ordered quantity is different than the quoted quantity, the unit price is subject to change and will require confirmation from Pall Advanced Separations Systems prior to order acceptance.

Spare Parts Order acceptance and payment terms: Pall Advanced Separations Systems requires all Accounts outstanding beyond 30 days to be paid in full prior to order acceptance. Your account status will be verified at the time of order placement, and you will be notified if you have a balance due. To avoid order processing and good shipment delays, please insure your account is up to date in advance of placing your order.

Please Address Your Order to: PALL ADVANCED SEPARATIONS SYSTEMS, Attn: Customer Service, E-mail to Pall_Technology_CSC@pall.com

Respectfully Submitted,
PALL ADVANCED SEPARATIONS SYSTEMS
Pall Technology Services
By: Paul Reidy

PALL Water

Pall Advanced Separation Systems
839 NYS Route 13
PO Box 5630
Cortland, N.Y. 13045-5630
607.753.6041 phone / 607.758.4526 fax
www.pallwater.com

Title: Technical Sales Assistant

All sales made by Pall are subject to general conditions of sales set forth on the attached page.

PALL Water

Pall Advanced Separation Systems
839 NYS Route 13
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Standard Terms and Conditions of Sale
Non-Systems – The Americas

1. **Applicability: Entire Agreement:**

   1.1. These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods identified on Buyer's purchase order (the "**Goods**") by Seller to Buyer. By placing a purchase order, Buyer makes an offer to purchase the Goods pursuant to these Terms, including (a) a list of the Goods to be purchased; (b) the quantity of each of the Goods ordered; (c) the requested delivery date; (d) the unit Price for each of the Goods to be purchased; (e) the billing address; and (f) the delivery location (the "**Basic Purchase Order Terms**"), and on no other terms.

   1.2. The accompanying quotation, proposal, confirmation of sale, invoice, order acknowledgment or similar document delivered by Seller to Buyer (the "**Sales Confirmation**"), the Basic Purchase Order Terms and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

   1.3. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

2. **Non-delivery:**

   2.1 The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's Shipment Point (as defined in **Section 4**) is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

   2.2 Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within 10 days of the date when the Goods would in the ordinary course of events have been received.

   2.3 Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

3. **Delivery:**

   3.1 The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. The delivery and/or shipping schedule is the best estimate possible based on conditions existing at the time of Seller's Sales Confirmation or Seller's quotation and receipt of all specifications, as applicable, and in the case of non-standard items, any such date is subject to Seller's receipt of complete information necessary for design and manufacture. Seller shall not be liable for any delays, loss or damage in transit or for any other direct, indirect, or consequential damages due to delays, including without limitation, loss of use.

   3.2 Seller may, in its sole discretion, without liability or penalty, deliver partial shipments of Goods to Buyer and ship the Goods as they become available, in advance of the quoted delivery date. If the Goods are delivered in installments, then insofar as each shipment is subject to the same Agreement, the Agreement will be treated as a single contract and not severable.

   3.3 Seller shall make the Goods available to Buyer at Seller's factory or designated shipment point (each, "**Seller's Shipment Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within 5 days of Seller's written notice that the Goods have been delivered to the Seller's Shipment Point.

   3.4 If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Seller's Shipment Point, or if Seller is unable to deliver the Goods at the Seller's Shipment Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) title and risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

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4. **Shipping Terms:** Unless otherwise mutually agreed to in writing by the parties, delivery shall be FCA (Seller's Shipment Point) INCOTERMS 2010. At Buyer's request, Seller will, at Buyer's risk and expense, arrange for the delivery of the Goods to Buyer's site/facility and Buyer will pay, or reimburse Seller, for all freight charges, taxes, duties, entry fees, brokers' fees, special, miscellaneous and all other ancillary charges and special packaging charges incurred.

5. **Title and Risk of Loss:** Title and risk of loss passes to Buyer upon the earlier of (i) delivery of the Goods at the Seller's Shipment Point or (ii) deemed delivery pursuant to clause 3.4 above. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the New York Uniform Commercial Code.

6. **Inspection and Rejection of Nonconforming Goods:**

   6.1 Buyer shall inspect the Goods within 10 days of receipt (the "**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. Such notification shall identify each and every alleged nonconformity of the Goods and describe that portion of the shipment being rejected. Seller shall then respond with instructions as to the disposition of the Goods.

   6.2 If Buyer timely notifies Seller of any nonconforming Goods, Seller shall, in its sole discretion, (i) replace such nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the nonconforming Goods to Seller's Shipment Point. If Seller exercises its option to replace nonconforming Goods, Seller shall, after receiving Buyer's shipment of nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Seller's Shipment Point.

   6.3 Buyer acknowledges and agrees that the remedies set forth in **Section 6.2** are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under **Section 6.2**, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

   6.4 If Seller delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

7. **Services:** Seller will provide such services as are expressly described in the Sales Confirmation (collectively, the "**Services**"), during normal business hours, unless otherwise specified in the Sales Confirmation. Services requested or required by Buyer outside of these hours or in addition to the quoted or agreed upon services will be charged at Seller's then current schedule of rates, including overtime charges, if applicable, and will be in addition to the charges outlined in the Sales Confirmation.

8. **Purchase Price:** The price for the Goods and/or Services thereof shall be Seller's quoted price. Seller may also at any time assess a fuel or energy surcharge (in addition to the price of the Goods) (the "**Purchase Price**"). The Purchase Price is based on the project schedule defined in this Agreement, Sales Confirmation or applicable contract documents. Notwithstanding anything to the contrary set out herein, in the event of any delay to Seller's delivery schedule caused by Buyer or its representatives (other than for Force Majeure or delays caused by Seller), including without limitation, a suspension of work or the project, a postponement of the delivery date or failure to timely issue of a notice of commencement or similar document, then the Purchase Price shall increase by 1% for every month or partial month of such delay and this Agreement shall be construed as if the increased Purchase Price were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased Purchase Price.

9. **Taxes:** The Purchase Price is exclusive of any applicable federal, state or local sales, use, excise or other similar taxes, including, without limitation, value added tax, goods and services tax or other similar tax imposed by any governmental authority on any amounts payable by Buyer. All such taxes will be for Buyer's account and will be paid by Buyer to Seller upon submission of Seller's invoices. Buyer agrees to make tax accruals and payments to the tax authorities as appropriate. If Buyer is exempt from any applicable sales tax or equivalent, but fails to notify Seller of such exemption or fails to furnish its Sales Tax Exemption Number to Seller in a timely manner and Seller is required to pay such tax, the amount of any such payment made by Seller will be reimbursed by Buyer to Seller upon submission of Seller's invoices.

10. **Payment:**

   10.1 Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder by EFT, wire transfer, or check and in US dollars. Payment for foreign billing shall be in accordance with Seller's written instructions.

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10.2 Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend performance of any Purchase Order, or suspend the delivery of any Goods, if Buyer fails to pay any amounts when due hereunder and such failure continues for 5 days following written notice thereof. Additionally Seller my require payment in cash, security or other adequate assurance satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action.

10.3 All sales are subject to the approval of Seller's credit department.

10.4 Buyer may not withhold or setoff any amounts that may be claimed by Buyer against any amounts that are due and payable to Seller by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

11. Limited Warranty:

11.1 Limited Warranty for Goods. Seller warrants to Buyer that for a period of twelve months from the date of delivery of the Goods, including deemed delivery pursuant to clause 3.4 above (the "**Warranty Period**"), that the Goods manufactured by Seller, when properly installed and maintained, and operated at ratings, specifications and design conditions specified by Seller, will materially conform to Seller's specifications for such Goods set forth in Seller's proposal, or, in the absence of such a proposal, such specifications for such Goods appearing in Seller's product catalogues and literature or in the Sales Confirmation, at the time of the order and will be free from material defects in material and workmanship (this "**Limited Warranty**"). Buyer shall notify Seller promptly in writing of any claims within the Warranty Period and provide Seller with an opportunity to inspect and test the Goods or service claimed to fail to meet this Limited Warranty. Buyer shall provide Seller with a copy of the original invoice for the product or service, and prepay all freight charges to return any Goods to Seller's factory, or other facility designated by Seller. All claims must be accompanied by full particulars, including system operating conditions, if applicable. If the defects are of such type and nature as to be covered by this Limited Warranty, Seller shall, at its option and in its sole discretion, either: (a) accept return of the defective Goods and furnish replacement Goods; (b) furnish replacement parts for the defective Goods; (c) repair the defective Goods; or (d) accept return of the defective Goods and return payments made, or issue credits for, such defective Goods. If Seller determines that any warranty claim is not, in fact, covered by this Limited Warranty, Buyer shall pay Seller its then customary charges for any additionally required service or products.

11.2 Limited Warranty for Services. Seller further warrants that all Services performed hereunder, if any, will be performed in a workmanlike manner in accordance with applicable law and industry standards by qualified personnel (this "**Limited Warranty for Services**"); this Limited Warranty for Services shall survive for 30 days following Seller's completion of the Services (the "**Service Warranty Period**"). In the event of a warranty claim under this Limited Warranty for Services, Buyer shall inform Seller promptly in writing of the details of the claim within the Service Warranty Period. Seller's liability under any service warranty is limited (in Seller's sole discretion) to repeating the service that during the Service Warranty Period does not meet this Limited Warranty for Services or issuing credit for the nonconforming portions of the service. If Seller determines that any warranty claim is not, in fact, covered by the foregoing Limited Warranty for Services, Buyer shall pay Seller its then customary charges for all services performed by Seller.

11.3 No Warranty as to Third Party Products. Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in **Section 11.1**. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** With respect to any Third Party Product, the warranty, if any, is provided solely through the manufacturer of such Third Party Product, the terms of which vary from manufacturer to manufacturer and Seller assumes no responsibility on their behalf. For Third Party Products, specific warranty terms may be obtained from the manufacturer's warranty statement.

11.4 Other Limits. **EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 11.1 and 11.2, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING WITHOUT LIMITATION ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** Seller does not warrant against, and in no event shall Seller be liable for, damages or defects arising out of improper or abnormal use, misuse, abuse, improper installation (other than by Seller), application, operation, maintenance or repair, alteration, accident, or for negligence in use, storage, transportation or handling or other negligence of Buyer. In no event shall Seller be liable for any Goods repaired or altered by someone other than Seller other than pursuant to written authorization by Seller.

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11.5 Exclusive Obligation. **THIS WARRANTY IS EXCLUSIVE. THE LIMITED WARRANTY AND THE LIMITED WARRANTY FOR SERVICES ARE THE SOLE AND EXCLUSIVE OBLIGATIONS OF SELLER WITH RESPECT TO THE DEFECTIVE GOODS AND SERVICES. SELLER SHALL NOT HAVE ANY OTHER OBLIGATION WITH RESPECT TO THE GOODS, SERVICES, OR ANY PART THEREOF, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE. THE REMEDIES SET FORTH IN SECTIONS 11.1 AND 11.2 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11.1 AND 11.2.**

11.6 Buyer Breach. In no event shall Buyer be entitled to claim under the above Limited Warranties if Buyer is in breach of its obligations, including but not limited to payment, hereunder.

12. **Limitation of Liability:**

12.1 **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, INCLUDING WITHOUT LIMITATION, REMANUFACTURING COSTS AND REWORK COSTS, DE-INSTALLATION OR RE-INSTALLATION COST, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (TORT, CONTRACT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND WHATEVER THE FORUM, WHETHER ARISING OUT OF OR IN CONNECTION WITH THE MANUFACTURE, PACKAGING, DELIVERY, STORAGE, USE, MISUSE OR NON-USE OF ANY OF ITS GOODS OR SERVICES OR ANY OTHER CAUSE WHATSOEVER.**

12.2 **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER**

12.3 The limitation of liability set forth in **Section 12.2** above shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

13. **Cancellation:** Buyer may not cancel this Agreement after Sales Confirmation unless all the details are approved in writing by the parties, including Buyer's agreement to pay a stated amount of termination charges.

14. **Termination:** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for 10 days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15. **Changes:** Seller shall not be obligated to implement any changes or variations in the scope of work described in Seller's Documentation unless Buyer and Seller agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. This includes any changes or variations necessitated by a change in applicable law occurring after the effective date of this Agreement including these Terms.

16. **Intellectual Property Infringement:** Buyer has no authorization to make any representation, statement or warranty on behalf of Seller relating to any Goods sold hereunder. Buyer shall indemnify and defend, at its own expense, Seller against claims or liability for U.S. or applicable foreign patent, copyright, trademark or other intellectual property infringement and for product liability arising from the preparation or manufacture of the Goods according to Buyer's specifications or instructions, or from Buyer's unauthorized or improper use of the Goods or part thereof, or from any changes or alterations to the Goods or part thereof made by persons other than Seller, or from the use of the Goods in combination with products not furnished by Seller or from the manufacture or sale or use of Buyer products which incorporate or integrate the Goods.

17. **Ownership of Materials:** All ideas, concepts, whether patentable or not, devices, inventions, copyrights, improvements or discoveries, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information that are: a) created, prepared, reduced to practice or disclosed by Seller; and/or b) based upon, derived from, or utilize the Confidential Information of Seller, and all related intellectual property rights, shall at all times remain Seller's property. No right, title or interest in any patents, trademarks, trade names or trade secrets, or in any pattern, drawing or design for any of the Goods or in any other Seller intellectual property right, shall pass or transfer to the Buyer and Seller shall at all times retain ownership rights therein. Notwithstanding the foregoing, Seller grants Buyer a non-exclusive, non-transferable license to use any such material to the extent necessary and solely for Buyer's use of the Goods purchased by Buyer from Seller hereunder. Buyer shall not disclose any such material to third parties without Seller's prior written consent. As a condition to Seller's delivery to Buyer of the Goods, Buyer shall not, directly or indirectly, and shall cause its employees, agents and representatives not to: (i) alter or modify the Goods, (ii) disassemble, decompile or otherwise reverse engineer or analyze the Goods, (iii) remove any product identification or proprietary rights notices, (iv) modify or create derivative works, (v) otherwise take any action contrary to Seller's rights in the technology and intellectual property relating to the Goods, (vi) assist or ask others to do any of the foregoing.

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18. **Export:** As a condition to Seller's delivery to Buyer of the Goods, Buyer agrees, with respect to the exportation or resale of the Goods by Buyer, to comply with all requirements of the International Traffic in Arms Regulations ("**ITAR**") and the Export Administration Regulations ("**EAR**"), regulations issued thereunder and any subsequent amendments thereto, and all other national, including, but not limited to, European, government laws and regulations on export controls, including laws and regulations pertaining to export licenses, restrictions on export to embargoed countries and restrictions on sales to certain persons and/or entities. Buyer further agrees that the shipment and/or delivery of the Goods by Seller is contingent upon Seller obtaining all required export authorizations, licenses, and permits (collectively, "**Authorizations**") and Buyer agrees that Seller shall not be liable to Buyer for any failure or delay in the shipment or delivery of the Goods if such Authorizations are delayed, conditioned, denied or not issued by the regulatory or governmental agencies having jurisdiction over such Authorizations.

19. **Confidentiality:** If Seller discloses or grants Buyer access to any research, development, technical, economic, or other business information or "know-how" of a confidential nature, whether reduced to writing or not, Buyer will not use or disclose any such information to any other person or company at any time, without Seller's prior written consent. In the event that Buyer and Seller have entered into a separate confidentiality agreement (the "**Confidentiality Agreement**"), the terms and conditions of the Confidentiality Agreement shall take precedence over the terms of this paragraph.

20. **No Waiver:** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. Seller's failure to exercise, or to delay in exercising, any right, remedy, power or privilege arising from this Agreement, or to insist on Buyer's strict performance of these Terms shall not operate as or be construed as a waiver by Seller.

21. **Force Majeure:** Whenever performance by Seller of any of its obligations hereunder, is substantially prevented by reason of any act of God, strike, lock out, or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war conditions, or by reason of any other matter beyond its reasonable control, then such performance shall be excused, and deemed suspended during the continuation of such event and for a reasonable time thereafter, delayed, or adjusted accordingly.

22. **No Third-Party Beneficiaries:** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

23. **Relationship of the Parties:** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

24. **Validity:** If any provision of this Agreement, the Sales Confirmation or these Terms is held by any competent authority to be invalid or unenforceable in whole or in any part, such provision shall be ineffective, but only to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision nor the other provisions, which shall not be affected.

25. **Governing Law:** This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by the laws of the State of New York, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.

    The parties expressly exclude the application of the United Nations Conventions on Contracts for the International Sale of Goods, and further exclude the applications of the International Sale of Goods Contracts Convention Act, S.C. 1990-1991, C.13, and the International Sale of Goods Act, R.S.O. 1990, C.I. 10, as amended.

26. **Submission to Jurisdiction:** Buyer and Seller hereby unconditionally and irrevocably submit to (and waive any objection on the grounds of inconvenient forum or otherwise) the jurisdiction of the Supreme Court of the State of New York, County of Nassau or the United States District Court for the Southern District of New York, which courts shall have exclusive jurisdiction to adjudicate and determine any suit, action or proceeding regarding or relating to this Agreement and the purchase and supply of the Goods. A judgment, order or decision of those courts in respect of any such claim or dispute shall be conclusive and may be recognized and enforced by any courts of any state, country or other jurisdiction.

27. **No Jury Trial: BUYER AND SELLER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

28. **Survival:** All payment, confidentiality and indemnity obligations, warranties, limitations of liability, product return, and ownership of materials provisions together with those sections the survival of which is necessary for the interpretation or enforcement of these Terms, shall continue in full force and effect for the duration stated in such provisions or the applicable statute of limitations.

29. **Amendment and Modification:** This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.

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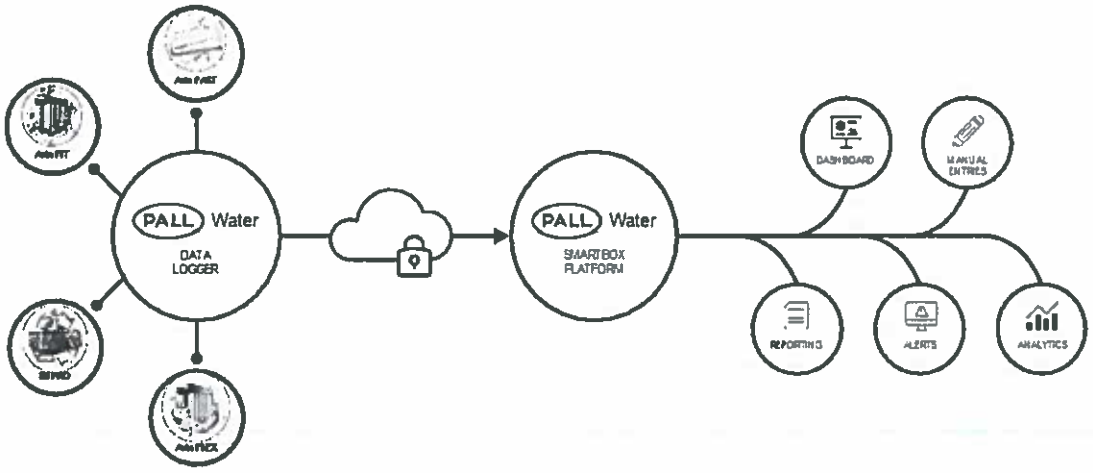
Aria SMARTBOX: System Introduction

To get the most out of your water treatment system, it is important to understand how your system is operating today and how it will perform in the future. Pall Water's Aria™ SMARTBOX solution is an easy-to-use tool that offers quick and reliable access to all of your water treatment system data.

Monitor Your System in Real-Time

The Aria SMARTBOX delivers a powerful set of tools to help manage your Aria systems effectively. Real-time dashboards, customizable auto-generated reports, and automatic alerts are all provided in the Aria SMARTBOX solution.

Aria SMARTBOX technology is secure, user-friendly, and fully customizable – allowing you to tailor the information you see and how you see it.



For More Information: Please contact your Pall Water Representative and ask for the "Pall Water Aria SMARTBOX Architecture" document to view all system details. For additional security information, please ask for the "Pall Water Aria SMARTBOX Security" document.

Selecting the Right Tier of Service

To meet any number of service requirements, the Aria SMARTBOX technology is available in two service packages. Our basic package (Service Level 1) includes a Browser Tool for fast and simple access to your critical Pall system data and trend graphs. Our most advanced package (Service Level 2), for those interested in more complex reporting, optimization and troubleshooting, includes full SMARTBOX functionality combined with expert monitoring and optimizations from Pall Water's process and technical engineers. The full range of service

packages that include SMARTBOX functionality are described below. Additional maintenance features can also be added to any Aria SMARTBOX package.

SUMMARY OF SERVICES INCLUDED IN ARIA SMARTBOX PACKAGES

	Level 1	Level 2
What's Included?	**Real-Time Data Visualization**	**Proactive Monitoring & Optimization**
Plant Documentation	X	X
BOM		
Critical Spares		
Operating Protocol		
Data Visualization	X	X
Dashboard		
Trend Lines		
Helpful Meters		
Alerts List		
Process Engineering		X
Monthly Reports		
Optimization Recommendations		
Proactive Troubleshooting		
Automated Alerts (email or texts)		

Cloud-Based Software Access | **Real-Time Data Visualization** | **Expert Process Monitoring** | **24/7 Remote Emmergency Support**

For Additional Services: Additional on-demand services (such as emergency support and maintenance plans) can be added to your service contract at any time.

Please Note: Pall Water's Customer Service Team can personalize service offerings to meet the needs of your plant. Please contact us to learn more.

PALL Water

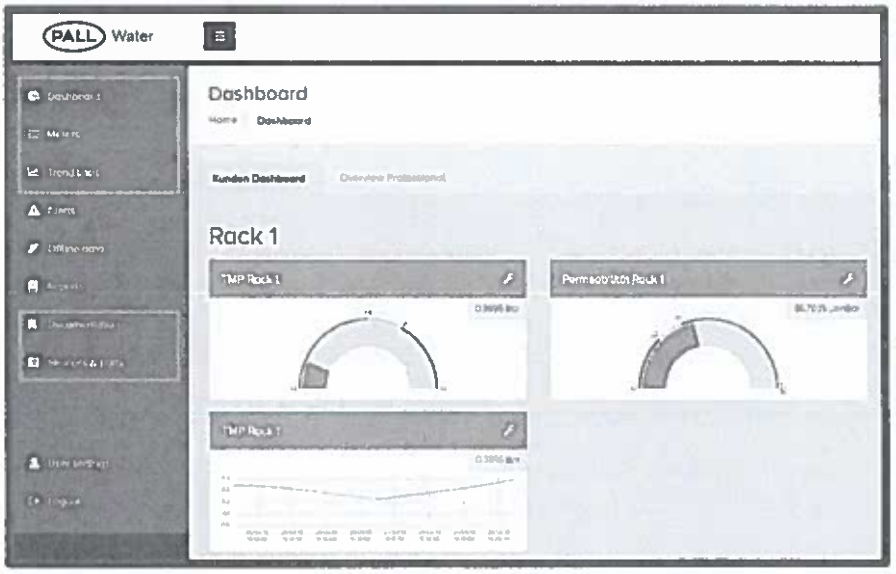
Aria SMARTBOX: Real-Time Data Visualization

Installing the Aria SMARTBOX in your membrane system enables advanced monitoring features that put you in control. Aria SMARTBOX hardware allows you to visualize and manage your water treatment system in real-time, with enhanced troubleshooting capability.

Enable Intelligent Monitoring Capabilities

Unlock the benefits of Pall Water's Aria CARE Service Program and the Browser Tool by having Pall install Aria SMARTBOX hardware in your membrane filtration system.

Once installed and activated, the Aria SMARTBOX's intelligent functionality will become available. This includes live data viewing and trend lines. For your convenience, a basic dashboard is included upon set-up. Through a secure login, information can be viewed from any internet connected device.

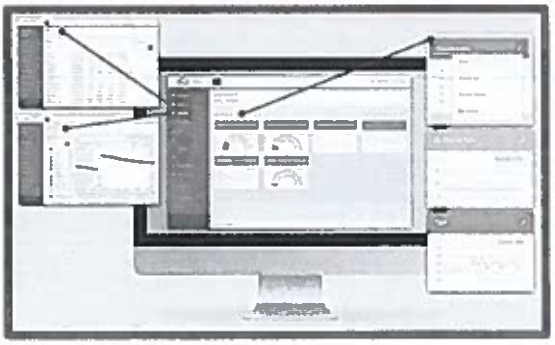


Please Note: In Service Level 1, monitoring from a Pall Water Engineer can be requested on an as-needed basis. These requests can be placed via the Browser Tool and will incur an additional hourly cost. For regular, year-long monitoring from a Pall Water Engineer, we recommend upgrading to Service Level 2. Please speak to your Pall Water Representative to find the best solution for you.

PALL Water

Pall's Aria SMARTBOX Enables the Following Features:

- **Dashboard**
  - The Dashboard acts as your go-to source for an overview of your system operations. This display includes all relevant system data, with information that can be displayed as graphs, meters, or values.
- **Meters**
  - The Meters section displays the Life, Average, Minimum, and Maximum values of your system.
- **Trend Lines**
  - View all of your recorded data as graph with our Trend Lines feature. Enjoy full visibility into your water treatment system and enhanced troubleshooting capability.
- **Alerts**
  - The Alerts tab chronicles all alarms relevant to your system's performance.
- **Reports**
  - View an archive of any Reports that have been generated for your system.
- **Documentation**
  - The Documentation section provides a list of all system-related PIDs, drawings, spare parts, the Maintenance Manual, and more.
- **Services & Parts**
  - Inquire about services or critical spare parts for your specific system.
- **User Settings**
  - Quickly access your User Settings and other preferences via this tab.



PALL Water

Quickly Source Important Information

Our Browser Tool was designed to provide quick links to critical information that will assist in the use and operation of your membrane system. Whether you are looking for a User Manual, or need to order critical spare parts*, our Browser Tool provides the answer.

*Critical Spares are crucial to the proper functioning of your system. In the event of failure or malfunction, these components could lead to a loss of production. Critical Spares and significant components with long lead times are highlighted in red for fast and easy referencing.

PALL Water

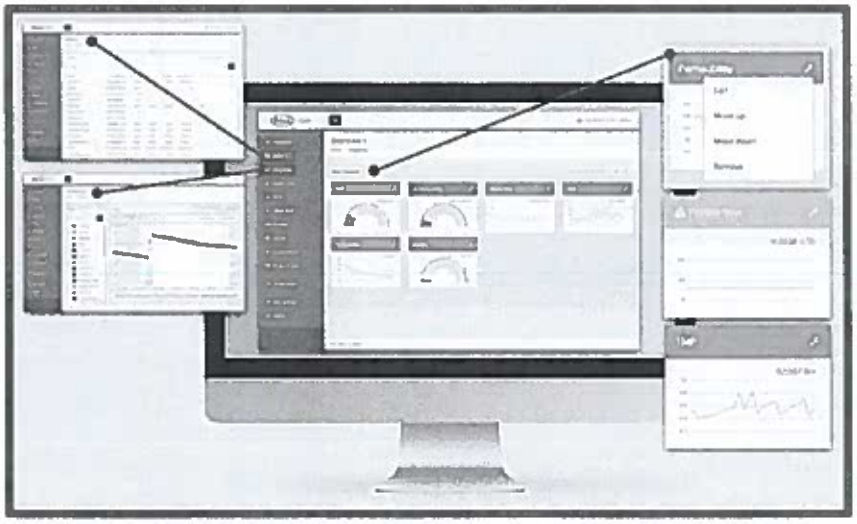
Aria SMARTBOX: Pall Water Proactive Support

The addition of Monitoring Services – which includes automatic reports, alert tools, and regular assessments from Pall Water staff – can be added to your Aria SMARTBOX for enhanced insight into the operations of your water treatment facility.

Custom Monitoring & Reporting for Unparalleled Insight

You can determine the frequency of reporting to meet your monitoring needs. On a weekly or monthly basis, the Aria SMARTBOX will generate real-time reports and communicate them directly to any email addresses provided. These custom reports detail key performance indicators (KPIs) and relevant historical trends at your plant.

In addition to automated reports, a Pall Water Engineer will assess the current operation of your plant and keep you up-to-date with operational status and optimization information. Monthly reports issued by the Pall Water Engineer address any potential production challenges and include suggested remedies. Potential system improvement recommendations are also included with information tailored to your specific site. The frequency of your reports can be modified to meet your needs.



Please Note: Service Level 3 provides a Pall Water expert to monitor your data and provide insight and input on your reports. There is an annual cost associated with this level of system monitoring, which is described at the end of this document. For more details about our monitoring services, please contact your Pall Water Representative.

PALL Water

Additional Services: 24/7 Emergency Support

Emergencies can occur at any time, and Pall Water is here to help. We offer around-the-clock support to ensure that you have productive days and worry-free nights.

With Level 4, we will be continuously monitoring your system data and can proactively assist you with troubleshooting to avoid downtime. If you have any questions or concerns, your contract also includes 24/7 Pall Water technician support and guidance. Trained experts are available via phone to help answer your questions and provide quick assistance.

Reliable Phone Support

Pall Water offers telephone support to provide technical advice and quick assistance for different problem scenarios you may encounter. Technicians can assist in a range of situations by providing operating instructions or helping remotely to get your equipment back into operation.

Emergency Support Whenever You Need It

Pall Water technicians are available 24 hours a day, 7 days a week, 365 days a year to provide emergency support when needed. Contact us via a special phone number for remote support or on-site visits, in the instance of a water treatment emergency or system malfunction.

Customer Telephone Support (Americas Region) Normal Service Hours: 8:30 AM – 5:00 PM, Monday – Friday Eastern Time Emergency Hotline Service is available 24/7, 365 days a year	
Telephone:	(866) 475-0115
Email:	pall_technology_csc@pall.com

Please Note: 24/7 Emergency Support can be added to any level of service for an additional yearly cost. In addition to phone support, emergency on-site visits are also available (when feasible) and will incur extra charges. Contact your Pall Water Representative for a comprehensive price list.

PALL Water

Additional Services: Remote Control Assistance

Additional Support with Remote Control

Available as an additional service, our Remote Control system enables Pall Water Engineers to access your plant when requested. When needed, you can activate this feature to allow a Pall Water Engineer to remotely access your system via software to assist with changes and optimization. A Pall Water Representative will work with you to choose the best support options based on your plant's requirements.

Securing Your Remote Connection

A secure connection to your system is important, therefore Pall Water partners with trusted platforms to ensure security when connecting to your plant.

> *"While ease of use is important, the security, integrity, and reliability of eWON's Talk2M cloud infrastructure and its customers' networks is eWON's first priority. Using a defense-in-depth approach based on guidelines set forth by ISO27002, IEC 62443-2-4 and NIST Cyber Security Framework 1.0 and other publications, guidelines and industry best practices, eWON developed a managed, hybrid, layered cyber security approach to protect its devices, network and most importantly, its customer's industrial systems.*
>
> *From the Devices to the Policies & Procedures, discover how security is a core competency fully integrated at every level within the framework of our solution. HMS is ISO27001:2013 certified for its Cloud Connectivity platform Talk2M. ISO27001 is a well-known and internationally recognized security standard that ensures the security management and continuous improvement on the long-term. This certification validates a highly demanding Information Security Management System (ISMS) for Talk2M."*

For More Information: Please contact your Pall Water Representative to learn more about our hardware offerings, software options, and security features. The "Pall Water Aria SMARTBOX Architecture" document will provide more details.

Please Note: Additional hourly charges may apply for additional Pall Water remote control services that are ordered via the Browser Tool.

PALL Water

Security & Privacy

Your Security Is Our Priority

The Pall Water SMARTBOX platform is hosted and managed within Amazon's secure data centers and utilizes Amazon Web Service (AWS) technology. Amazon continually manages risk and undergoes recurring assessments to ensure compliance with industry standards.

To ensure data security when using the Aria SMARTBOX, your information is securely stored in the Cloud. The Aria SMARTBOX hardware sends information to the Cloud in a singular direction but does not receive information from the Cloud, thus protecting your plant from outside control or cloud-based security breaches. Therefore, your data cannot be used from the Cloud to access or remotely operate your plant.

To protect your information, the Aria SMARTBOX platform is built with high security standards in place. For authentication, this platform uses the OAuth 2.0 standard. This open protocol allows secure authorization in a simple, standard method and can be accessed from the web, your mobile, or desktop applications. Operating system access is limited to Pall Water's Aria SMARTBOX staff, and requires a username, password, and multi-factor authentication.

The security of your data is our top priority. Therefore, security measures for the Aria SMARTBOX include: TLS/SSL encryption, authentication, and authorization via SCRAM-SHA1; network isolation; IP whitelists; and encrypted storage volumes.

Protecting Your Privacy

Pall Water is committed to transparency and customer privacy. Your data from the Aria SMARTBOX will never be shared with third parties without explicit permission.
We take great steps to protect the privacy of our partners, and protect data stored within the Aria SMARTBOX platform. Some of the protections inherent to our platform include: authentication, access controls, and data transport encryption (HTTPS).

For More Information: Please contact your Pall Water Representative or reference the "Pall Water Aria SMARTBOX Security" document for more details about security and privacy.

PALL Water

Pall Corporation

Pall Water
Pall Technology Services
839 State Route 13
Cortland New York 13045-5630
Tel: 866.475.0115 ▲ FAX: 607.758..4526
Email: pall_technology_csc@pall.com

Pall Proposal No.: OPP1429977rev2
Date: May 29, 2020

Dane E. Arnold, Director
Department of Public Works
50 Manca Drive
Gardner, MA 01440

Re: UNA-620A Microfiltration Replacement Project

As a follow up to your discussion with Pall, we are pleased to offer a proposal for technical parts and services. We will arrange onsite support pending receipt of your purchase order, at which time site visit details will be confirmed.

Scope of Services

Pall Water is pleased to propose installation supervision and materials described below for replacing 59 modules on each of your three module skids. Pall will provide 177 new modules and all associated materials needed for this replacement and expansion, detailed below.

Item 1 - Modules and associated items:

1) 177 Pall UNA-620A Microfiltration modules
2) 3 Gal. lubricant for module nuts
3) 354 each module nuts
4) 354 each module O-rings
5) 4 each XR gaskets
6) 177 each clear couplings
7) 177 each upper end caps
8) 177 each lower end caps
9) 87 Inner XR hoses
10) 90 Outer XR hoses

Item 2 - Installation Supervision:
Pall will provide a qualified Field Service Engineer (FSE) to supervise and assist with removing the old modules and installing the new ones. Tools for module nut removal/tightening and clear coupling installation will be brought to site by Field Service engineer and loaned for the duration of the installation process.

Overall, Pall expects this work to take up to 5.5 days to complete, including set up and first rack CIP at the beginning and clean up at the end. As part of this work, Pall will also provide a new Operating Protocol. The Operating Protocol is a document created by Pall's Process Engineers based on a review of your MF system together with incoming water quality*, and includes recommended settings and protocols for Flux Maintenance (FM), Enhanced Flux Maintenance (EFM) and Clean-in-place (CIP) operations. The OP is designed to give operators the information and guidance to achieve optimal system performance results. Potential benefits from following Pall's Operating Protocol include improved cleanings, increased up time and extended service life.

Copies of the Operating Protocol will be provided shortly after completion of the installation work.

* Incoming water quality data is provided by the customer. Pall can provide the comprehensive water quality analysis needed for the Operating Protocol an additional cost.

Plan and Schedule

The Pall Field Service Engineer will arrive at the site a half day before the start of the module installation process to meet with site personnel, review the site where the work will be performed, initiate and complete a CIP on the first rack to be changed and make preparations for the module installation. For safety and to preserve the integrity of the new modules, a clean-in-place (CIP) procedure will be performed on each rack prior to module expansion.

Once the full set of modules is installed on each rack, the rack will then be filled and rinsed in place to ensure all preservative has been removed from the new modules. The FSE will then verify the operating set points, oversee the start-up of the rack and verify proper procedure.

Disclaimer: This proposal is based on information and conditions known at the time of quotation. Pall Water reserves the right to revise this proposal through change order(s) should conditions vary significantly from those known at the time of quotation and require additional work or materials.

Item 3 – Level II SMARTBOX

Pall Water will supply and install Aria SMARTBOX while on-site for installation supervision. The hardware and installation will be at no cost to the customer. For the annual fee noted below, the Aria SMARTBOX will deliver a powerful set of tools to help manage your Aria systems effectively. Real-time dashboards, customizable auto-generated reports, and automatic alerts are all provided in the Aria SMARTBOX solution.

On a monthly basis, a Pall Water Process Engineer will assess the current operation of your plant against past trends. A quarterly report will keep you up-to-date on operational status and will provide optimization information to meet your treatment and/or efficiency goals. These reports address any potential production challenges and include suggested remedies. Potential system improvement recommendations are also included with information tailored to your specific site.

If customer opts for this level of SMARTBOX and "Installation Supervision", Pall Water will provide a 5-year absolute + 5-year prorated warranty (10-years total).

Warranty

Pall Water will provide a 10-year module warranty (1-year absolute/9-years prorated) if the customer opts for "Installation supervision" as described and quoted herein.

Pall Water also makes available an enhanced 5-year absolute/5-year prorated warranty (10-years total) if the customer chooses to install a SmartBox with Level II Process support and quarterly reports. The service has many unique features that will help your plant operate more efficiently and guarantees long-life of the installed modules because of the dedicated support included.

PROPOSAL SUMMARY

Item 1: Modules and Associated Items	**$ 296,797.97**
Item 2: Installation Supervision, Operating Protocol	**$ 23,800.00**
Item 3: Smartbox Level II (Optional, not included in total price below)	**$ 17,495.00**
Item 4: Estimated Freight	**$ 1,475.00**

Total amount for purchase order: $ 322,072.97

Delivery: Modules must be delivered by December 31, 2020. Modules can be delivered in multiple shipments.

Service Reports: If service reports are required by your site to comply with your company or state regulations, please indicate on your order that service report documents are required. Service reports detailing the visit and recommendations will then be provided.

Materials: This proposal covers parts and services.

Validity: This proposal is valid for 60 days.

Terms of Sale: Standard Terms and Conditions of Sale Non-Systems - The Americas

Terms of Service:

- Regular minimum service charge is for a 10-hour day. Maximum workday is 12 hours including travel time.

Service Order acceptance and payment terms: Pall Advanced Separations Systems requires all accounts outstanding beyond 30 days to be paid in full prior to order acceptance. Your account status will be verified at the time of order placement, and you will be notified if you have a balance due. To avoid order processing, goods shipment or service scheduling delays, please insure your account is up to date in advance of placing your order.

Charges per the proposal will be billed automatically upon completion of the service, and sign-off of the service report, and become payable within 30 business days of receipt of the invoice.

Changes: Pall shall not implement any changes in the scope of services described in Pall's proposal unless the Customer and Pall agree to the details of the change. Any resulting price, schedule or other contractual modifications, will require a verbal change called into Pall's Customer Service Department, with a follow up written confirmation. This includes any changes necessitated by a change in applicable law.

A Purchase Order or written authorization to accept the contract of work as described, along with a signed copy of the attached Customer authorization for service is required in advance of PASS providing the service defined in this proposal.

Please direct your purchase order to:

Pall Water
Pall System Services P.O. Box 5630
839 State Route 13
Cortland, New York 13045-5630
Tel: 866-475-0115 / Fax: 607.758.4526
Email: Pall_Technology_csc@pall.com
Attn: Customer Service

Pall Systems Support

To obtain support for your Pall systems installation, our Customers can contact Pall via our toll free number at 866-475-0115 or by email to pall_technology_csc@pall.com. Through this channel, you gain access to warranty assistance, technical support as well as our service and spares team.

Pall Customers have access to this 24/7 Service Hotline. Pall System Engineers are on full-time rotation to provide around-the-clock availability of live technical support. This service is charged at $250 for support time for the first 30 minutes, during normal workday hours between 9:00-AM and 4:00-PM EST, excluding weekends and holidays.

If your system is out of warranty or does not have a 24/7 service support contract, there will be a charge when technical support is to be provided for intervals longer than 30 minutes, or after-hours technical support to resolve the issue. Extensive off-site support will require a purchase order or credit card. Billing is based on a minimum 1-hour charge at Pall's off-site hourly service rate. You will be asked to provide your credit card number or service contract purchase order number that will be billed at Pall's Off-Site Service Rates, with a minimum 1-hour charge. If the problem cannot be resolved over the telephone, the Customer can request a Pall System Service Representative to visit the site location. You will be quoted an Emergency Service Rate and billed for last-minute travel expenses.

Please feel free to call me at your convenience with any questions or comments. We look forward to providing you with field services to assist you with system operation, and await your purchase order.

Sincerely,

Jay Garcia
Key Account Manager
Phone: 516.301.6332

Pall Corporation

Pall Water
Pall Technology Services
Pall Proposal No.: OPP1429977rev2
Date: May 29, 2020

Customer Authorization for Service

I am an authorized representative of the customer, and I accept the Terms and Conditions of this Service Agreement on behalf of the customer. I authorize Pall Corporation to perform the work defined in this agreement, and accept the costs and charges defined in this agreement.

Company: _____

_____ Print Name

_____ Title/Position

_____ Signature

_____ Date

Purchase Order No. or Reference for Billing: _____

Circle Service Visit Frequency: Annual Semi-Annual Quarterly Single Emergency

Requested Date(s) to Schedule Service Visit(s): _____
(unless deemed emergency service, please allow a 4-week window to accommodate scheduling by Pall.)

Pall Proposal No.: _____

Effective Date and Duration: This Agreement will be effective as of the date signed below, and will remain in effect:

- until on site service work has been completed by Pall,
- or until 30 days after receipt of notice of termination by either party.

Customer Billing Address: _____

_____

_____

Customer Comments: _____

_____

_____

Standard Terms and Conditions of Sale
Non-Systems – The Americas

1. **Applicability: Entire Agreement:**

   1.1. These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods identified on Buyer's purchase order (the "**Goods**") by Seller to Buyer. By placing a purchase order, Buyer makes an offer to purchase the Goods pursuant to these Terms, including (a) a list of the Goods to be purchased; (b) the quantity of each of the Goods ordered; (c) the requested delivery date; (d) the unit Price for each of the Goods to be purchased; (e) the billing address; and (f) the delivery location (the "**Basic Purchase Order Terms**"), and on no other terms.

   1.2. The accompanying quotation, proposal, confirmation of sale, invoice, order acknowledgment or similar document delivered by Seller to Buyer (the "**Sales Confirmation**"), the Basic Purchase Order Terms and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

   1.3. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

2. **Non-delivery:**

   2.1 The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's Shipment Point (as defined in **Section 4**) is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

   2.2 Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within 10 days of the date when the Goods would in the ordinary course of events have been received.

   2.3 Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

3. **Delivery:**

   3.1 The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. The delivery and/or shipping schedule is the best estimate possible based on conditions existing at the time of Seller's Sales Confirmation or Seller's quotation and receipt of all specifications, as applicable, and in the case of non-standard items, any such date is subject to Seller's receipt of complete information necessary for design and manufacture. Seller shall not be liable for any delays, loss or damage in transit or for any other direct, indirect, or consequential damages due to delays, including without limitation, loss of use.

   3.2 Seller may, in its sole discretion, without liability or penalty, deliver partial shipments of Goods to Buyer and ship the Goods as they become available, in advance of the quoted delivery date. If the Goods are delivered in installments, then insofar as each shipment is subject to the same Agreement, the Agreement will be treated as a single contract and not severable.

   3.3 Seller shall make the Goods available to Buyer at Seller's factory or designated shipment point (each, "**Seller's Shipment Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within 5 days of Seller's written notice that the Goods have been delivered to the Seller's Shipment Point.

   3.4 If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Seller's Shipment Point, or if Seller is unable to deliver the Goods at the Seller's Shipment Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) title and risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4. **Shipping Terms:** Unless otherwise mutually agreed to in writing by the parties, delivery shall be FCA (Seller's Shipment Point) INCOTERMS 2010. At Buyer's request, Seller will, at Buyer's risk and expense, arrange for the delivery of the Goods to Buyer's site/facility and Buyer will pay, or reimburse Seller, for all freight charges, taxes, duties, entry fees, brokers' fees, special, miscellaneous and all other ancillary charges and special packaging charges incurred.

5. **Title and Risk of Loss:** Title and risk of loss passes to Buyer upon the earlier of (i) delivery of the Goods at the Seller's Shipment Point or (ii) deemed delivery pursuant to clause 3.4 above. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and

replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the New York Uniform Commercial Code.

6. **Inspection and Rejection of Nonconforming Goods:**

6.1 Buyer shall inspect the Goods within 10 days of receipt (the "**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. Such notification shall identify each and every alleged nonconformity of the Goods and describe that portion of the shipment being rejected. Seller shall then respond with instructions as to the disposition of the Goods.

6.2 If Buyer timely notifies Seller of any nonconforming Goods, Seller shall, in its sole discretion, (i) replace such nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the nonconforming Goods to Seller's Shipment Point. If Seller exercises its option to replace nonconforming Goods, Seller shall, after receiving Buyer's shipment of nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Seller's Shipment Point.

6.3 Buyer acknowledges and agrees that the remedies set forth in **Section 6.2** are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under **Section 6.2**, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

6.4 If Seller delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

7. **Services:** Seller will provide such services as are expressly described in the Sales Confirmation (collectively, the "**Services**"), during normal business hours, unless otherwise specified in the Sales Confirmation. Services requested or required by Buyer outside of these hours or in addition to the quoted or agreed upon services will be charged at Seller's then current schedule of rates, including overtime charges, if applicable, and will be in addition to the charges outlined in the Sales Confirmation.

8. **Purchase Price:** The price for the Goods and/or Services thereof shall be Seller's quoted price. Seller may also at any time assess a fuel or energy surcharge (in addition to the price of the Goods) (the "**Purchase Price**"). The Purchase Price is based on the project schedule defined in this Agreement, Sales Confirmation or applicable contract documents. Notwithstanding anything to the contrary set out herein, in the event of any delay to Seller's delivery schedule caused by Buyer or its representatives (other than for Force Majeure or delays caused by Seller), including without limitation, a suspension of work or the project, a postponement of the delivery date or failure to timely issue of a notice of commencement or similar document, then the Purchase Price shall increase by 1% for every month or partial month of such delay and this Agreement shall be construed as if the increased Purchase Price were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased Purchase Price.

9. **Taxes:** The Purchase Price is exclusive of any applicable federal, state or local sales, use, excise or other similar taxes, including, without limitation, value added tax, goods and services tax or other similar tax imposed by any governmental authority on any amounts payable by Buyer. All such taxes will be for Buyer's account and will be paid by Buyer to Seller upon submission of Seller's invoices. Buyer agrees to make tax accruals and payments to the tax authorities as appropriate. If Buyer is exempt from any applicable sales tax or equivalent, but fails to notify Seller of such exemption or fails to furnish its Sales Tax Exemption Number to Seller in a timely manner and Seller is required to pay such tax, the amount of any such payment made by Seller will be reimbursed by Buyer to Seller upon submission of Seller's invoices.

10. **Payment:**

10.1 Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder by EFT, wire transfer, or check and in US dollars. Payment for foreign billing shall be in accordance with Seller's written instructions.

10.2 Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend performance of any Purchase Order, or suspend the delivery of any Goods, if Buyer fails to pay any amounts when due hereunder and such failure continues for 5 days following written notice thereof. Additionally Seller my require payment in cash, security or other adequate assurance satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action.

10.3 All sales are subject to the approval of Seller's credit department.

10.4 Buyer may not withhold or setoff any amounts that may be claimed by Buyer against any amounts that are due and payable to Seller by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

11. Limited Warranty:

11.1 Limited Warranty for Goods. Seller warrants to Buyer that for a period of twelve months from the date of delivery of the Goods, including deemed delivery pursuant to clause 3.4 above (the "**Warranty Period**"), that the Goods manufactured by Seller, when properly installed and maintained, and operated at ratings, specifications and design conditions specified by Seller, will materially conform to Seller's specifications for such Goods set forth in Seller's proposal, or, in the absence of such a proposal, such specifications for such Goods appearing in Seller's product catalogues and literature or in the Sales Confirmation, at the time of the order and will be free from material defects in material and workmanship (this "**Limited Warranty**"). Buyer shall notify Seller promptly in writing of any claims within the Warranty Period and provide Seller with an opportunity to inspect and test the Goods or service claimed to fail to meet this Limited Warranty. Buyer shall provide Seller with a copy of the original invoice for the product or service, and prepay all freight charges to return any Goods to Seller's factory, or other facility designated by Seller. All claims must be accompanied by full particulars, including system operating conditions, if applicable. If the defects are of such type and nature as to be covered by this Limited Warranty, Seller shall, at its option and in its sole discretion, either: (a) accept return of the defective Goods and furnish replacement Goods; (b) furnish replacement parts for the defective Goods; (c) repair the defective Goods; or (d) accept return of the defective Goods and return payments made, or issue credits for, such defective Goods. If Seller determines that any warranty claim is not, in fact, covered by this Limited Warranty, Buyer shall pay Seller its then customary charges for any additionally required service or products.

11.2 Limited Warranty for Services. Seller further warrants that all Services performed hereunder, if any, will be performed in a workmanlike manner in accordance with applicable law and industry standards by qualified personnel (this "**Limited Warranty for Services**"); this Limited Warranty for Services shall survive for 30 days following Seller's completion of the Services (the "**Service Warranty Period**"). In the event of a warranty claim under this Limited Warranty for Services, Buyer shall inform Seller promptly in writing of the details of the claim within the Service Warranty Period. Seller's liability under any service warranty is limited (in Seller's sole discretion) to repeating the service that during the Service Warranty Period does not meet this Limited Warranty for Services or issuing credit for the nonconforming portions of the service. If Seller determines that any warranty claim is not, in fact, covered by the foregoing Limited Warranty for Services, Buyer shall pay Seller its then customary charges for all services performed by Seller.

11.3 No Warranty as to Third Party Products. Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in **Section 11.1**. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** With respect to any Third Party Product, the warranty, if any, is provided solely through the manufacturer of such Third Party Product, the terms of which vary from manufacturer to manufacturer and Seller assumes no responsibility on their behalf. For Third Party Products, specific warranty terms may be obtained from the manufacturer's warranty statement.

11.4 Other Limits. **EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 11.1 and 11.2, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING WITHOUT LIMITATION ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** Seller does not warrant against, and in no event shall Seller be liable for, damages or defects arising out of improper or abnormal use, misuse, abuse, improper installation (other than by Seller), application, operation, maintenance or repair, alteration, accident, or for negligence in use, storage, transportation or handling or other negligence of Buyer. In no event shall Seller be liable for any Goods repaired or altered by someone other than Seller other than pursuant to written authorization by Seller.

11.5 Exclusive Obligation. **THIS WARRANTY IS EXCLUSIVE. THE LIMITED WARRANTY AND THE LIMITED WARRANTY FOR SERVICES ARE THE SOLE AND EXCLUSIVE OBLIGATIONS OF SELLER WITH RESPECT TO THE DEFECTIVE GOODS AND SERVICES. SELLER SHALL NOT HAVE ANY OTHER OBLIGATION WITH RESPECT TO THE GOODS, SERVICES, OR ANY PART THEREOF, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE. THE REMEDIES SET FORTH IN SECTIONS 11.1 AND 11.2 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11.1 AND 11.2.**

11.6 Buyer Breach. In no event shall Buyer be entitled to claim under the above Limited Warranties if Buyer is in breach of its obligations, including but not limited to payment, hereunder.

12. Limitation of Liability:

12.1 IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, INCLUDING WITHOUT LIMITATION, REMANUFACTURING COSTS AND REWORK COSTS, DE-INSTALLATION OR RE-INSTALLATION COST, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (TORT, CONTRACT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND WHATEVER THE FORUM, WHETHER ARISING OUT OF OR IN CONNECTION WITH THE MANUFACTURE, PACKAGING, DELIVERY, STORAGE, USE, MISUSE OR NON-USE OF ANY OF ITS GOODS OR SERVICES OR ANY OTHER CAUSE WHATSOEVER.

12.2 **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER**

12.3 The limitation of liability set forth in **Section 12.2** above shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

13. **Cancellation:** Buyer may not cancel this Agreement after Sales Confirmation unless all the details are approved in writing by the parties, including Buyer's agreement to pay a stated amount of termination charges.

14. **Termination:** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for 10 days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15. **Changes:** Seller shall not be obligated to implement any changes or variations in the scope of work described in Seller's Documentation unless Buyer and Seller agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. This includes any changes or variations necessitated by a change in applicable law occurring after the effective date of this Agreement including these Terms.

16. **Intellectual Property Infringement:** Buyer has no authorization to make any representation, statement or warranty on behalf of Seller relating to any Goods sold hereunder. Buyer shall indemnify and defend, at its own expense, Seller against claims or liability for U.S. or applicable foreign patent, copyright, trademark or other intellectual property infringement and for product liability arising from the preparation or manufacture of the Goods according to Buyer's specifications or instructions, or from Buyer's unauthorized or improper use of the Goods or part thereof, or from any changes or alterations to the Goods or part thereof made by persons other than Seller, or from the use of the Goods in combination with products not furnished by Seller or from the manufacture or sale or use of Buyer products which incorporate or integrate the Goods.

17. **Ownership of Materials:** All ideas, concepts, whether patentable or not, devices, inventions, copyrights, improvements or discoveries, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information that are: a) created, prepared, reduced to practice or disclosed by Seller; and/or b) based upon, derived from, or utilize the Confidential Information of Seller, and all related intellectual property rights, shall at all times remain Seller's property. No right, title or interest in any patents, trademarks, trade names or trade secrets, or in any pattern, drawing or design for any of the Goods or in any other Seller intellectual property right, shall pass or transfer to the Buyer and Seller shall at all times retain ownership rights therein. Notwithstanding the foregoing, Seller grants Buyer a non-exclusive, non-transferable license to use any such material to the extent necessary and solely for Buyer's use of the Goods purchased by Buyer from Seller hereunder. Buyer shall not disclose any such material to third parties without Seller's prior written consent. As a condition to Seller's delivery to Buyer of the Goods, Buyer shall not, directly or indirectly, and shall cause its employees, agents and representatives not to: (i) alter or modify the Goods, (ii) disassemble, decompile or otherwise reverse engineer or analyze the Goods, (iii) remove any product identification or proprietary rights notices, (iv) modify or create derivative works, (v) otherwise take any action contrary to Seller's rights in the technology and intellectual property relating to the Goods, (vi) assist or ask others to do any of the foregoing.

18. **Export:** As a condition to Seller's delivery to Buyer of the Goods, Buyer agrees, with respect to the exportation or resale of the Goods by Buyer, to comply with all requirements of the International Traffic in Arms Regulations ("**ITAR**") and the Export Administration Regulations ("**EAR**"), regulations issued thereunder and any subsequent amendments thereto, and all other national, including, but not limited to, European, government laws and regulations on export controls, including laws and regulations pertaining to export licenses, restrictions on export to embargoed countries and restrictions on sales to certain persons and/or entities. Buyer further agrees that the shipment and/or delivery of the Goods by Seller is contingent upon Seller obtaining all required export authorizations, licenses, and permits (collectively, "**Authorizations**") and Buyer agrees that Seller shall not be liable to Buyer for any failure or delay in the shipment or delivery of the Goods if such Authorizations are delayed, conditioned, denied or not issued by the regulatory or governmental agencies having jurisdiction over such Authorizations.

19. **Confidentiality:** If Seller discloses or grants Buyer access to any research, development, technical, economic, or other business information or "know-how" of a confidential nature, whether reduced to writing or not, Buyer will not use or disclose any such information to any other person or company at any time, without Seller's prior written consent. In the event that Buyer and Seller have entered into a separate confidentiality agreement (the "**Confidentiality Agreement**"), the terms and conditions of the Confidentiality Agreement shall take precedence over the terms of this paragraph.

20. **No Waiver:** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. Seller's failure to exercise, or to delay in exercising, any right, remedy, power or privilege arising from this Agreement, or to insist on Buyer's strict performance of these Terms shall not operate as or be construed as a waiver by Seller.

21. **Force Majeure:** Whenever performance by Seller of any of its obligations hereunder, is substantially prevented by reason of any act of God, strike, lock out, or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war conditions, or by reason of any other matter beyond its reasonable control, then such performance shall be excused, and deemed suspended during the continuation of such event and for a reasonable time thereafter, delayed, or adjusted accordingly.

22. **No Third-Party Beneficiaries:** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

23. **Relationship of the Parties:** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

24. **Validity:** If any provision of this Agreement, the Sales Confirmation or these Terms is held by any competent authority to be invalid or unenforceable in whole or in any part, such provision shall be ineffective, but only to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision nor the other provisions, which shall not be affected.

25. **Governing Law:** This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by the laws of the State of New York, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.

    The parties expressly exclude the application of the United Nations Conventions on Contracts for the International Sale of Goods, and further exclude the applications of the International Sale of Goods Contracts Convention Act, S.C. 1990-1991, C.13, and the International Sale of Goods Act, R.S.O. 1990, C.I. 10, as amended.

26. **Submission to Jurisdiction:** Buyer and Seller hereby unconditionally and irrevocably submit to (and waive any objection on the grounds of inconvenient forum or otherwise) the jurisdiction of the Supreme Court of the State of New York, County of Nassau or the United States District Court for the Southern District of New York, which courts shall have exclusive jurisdiction to adjudicate and determine any suit, action or proceeding regarding or relating to this Agreement and the purchase and supply of the Goods. A judgment, order or decision of those courts in respect of any such claim or dispute shall be conclusive and may be recognized and enforced by any courts of any state, country or other jurisdiction.

27. **No Jury Trial: BUYER AND SELLER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

28. **Survival:** All payment, confidentiality and indemnity obligations, warranties, limitations of liability, product return, and ownership of materials provisions together with those sections the survival of which is necessary for the interpretation or enforcement of these Terms, shall continue in full force and effect for the duration stated in such provisions or the applicable statute of limitations.

29. **Amendment and Modification:** This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.

10335

Alan Agnelli

From: Alan Agnelli
Sent: Tuesday, September 1, 2020 4:44 PM
To: Councillor Elizabeth Kazinskas ; Councillor James M. Walsh; Councillor Ronald F. Cormier; Ronald F Cormier
Subject: FW: EXT || FW: FW: 200 Catherine Street, Gardner Easement & Sketch WR# 28733033
Attachments: 28733033 200 Catherine Street Gardner Ma.pdf; 200 Catherine Street Sketch.pdf

Tracking:

Recipient	Delivery
Councillor Elizabeth Kazinskas	Delivered: 9/1/2020 4:44 PM
Councillor James M. Walsh	Delivered: 9/1/2020 4:44 PM
Councillor Ronald F. Cormier	
Ronald F Cormier	Delivered: 9/1/2020 4:44 PM

From: Elizabeth Kazinskas <ekazinskas@gardner-ma.gov>
Sent: Tuesday, September 1, 2020 4:42 PM
To: Alan Agnelli <aagnelli@gardner-ma.gov>
Cc: John Flick <jflick@flicklawgroup.com>
Subject: Fw: EXT || FW: FW: 200 Catherine Street, Gardner Easement & Sketch WR# 28733033

Dear Clerk Agnelli,
Please forward these informational emails to the Finance Committee and include them in the record for the September 2nd, 2020 Finance Committee Meeting. This is information is in relation to agenda item 6-3.

Thank you

Best,
Lizzy

Elizabeth Kazinskas
Council President
Ward 2 City Councillor
City of Gardner
Cell: (978) 337-1533
ekazinskas@gardner-ma.gov

From: John Flick <jflick@flicklawgroup.com>
Sent: Tuesday, September 1, 2020 3:21 PM
To: Elizabeth Kazinskas
Cc: Alana Eagley; Mayor; Anderson, Wayne
Subject: FW: EXT || FW: FW: 200 Catherine Street, Gardner Easement & Sketch WR# 28733033

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The revised NG docs are attached. I am still waiting on the School Department's final approval.

John

****
John M. Flick, Esq.
Flick Law Group, P.C.
144 Central Street
Gardner, MA 01440
Main No: 978-632-7948, Ext. 101
Direct Dial: 978-483-0847
Fax: 978-630-3703
www.flicklawgroup.com
****

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From: John Flick
Sent: Thursday, July 30, 2020 9:55 AM
To: Anderson, Wayne <andersonw@gardnerk12.org>
Cc: Mayor (mayor@gardner-ma.gov) <mayor@gardner-ma.gov>
Subject: FW: EXT || FW: FW: 200 Catherine Street, Gardner Easement & Sketch WR# 28733033

Wayne,

Here is the response I received from NG. If this is satisfactory to the School Department, I will provide this communication with the corrected easement to the City Clerk for the Council's consideration.

John

****
John M. Flick, Esq.
Flick Law Group, P.C.
144 Central Street, Suite 201
Gardner, MA 01440
978-632-7948, Ext. 301 Voice
978-630-3703 Fax
www.flicklawgroup.com
****

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From: Morancy, Nadine <Nadine.Morancy@nationalgrid.com>
Sent: Thursday, July 30, 2020 8:35 AM
To: John Flick <jflick@flicklawgroup.com>
Subject: RE: EXT || FW: FW: 200 Catherine Street, Gardner Easement & Sketch WR# 28733033

<="" span="">
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Good Morning Mr. Flick,

I hope this email finds you well.

Thank you for calling my attention to the typo within the easement. This matter has been rectified and the revised easement is attached hereto.

The sketch attached to our easement clearly shows the former line being removed and relocated to a new location. Once this easement is signed and recorded it will supersede the former easement of record that used old Pole 9-4, and establish this new location. Our easements are written according to placement as you will see on page two of the easement, with the wording "...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." In the future should we wish to use the old location of Pole 9-4, we would have to come to the City and request an easement to do so.

As you are well aware, the reason the line is being moved is to provide ease of access. This ease of access is extremely important in the event of an outage for it allows us to rectify any issues in a fast and efficient manner. This becomes most important when the line is serving an area such as 200 Catherine Street.

I thank you in advance for your time and attention. If I may be of further assistance, please do not hesitate to contact me.

Best Regards,
Nadine J. Morancy

Nadine J. Morancy
Real Estate Representative
Right-of-Way & Survey Engineering
Phone: 508-860-6455

Nadine.Morancy@nationalgrid.com

From: John Flick <jflick@flicklawgroup.com>
Sent: Wednesday, July 29, 2020 12:38 PM
To: Morancy, Nadine <Nadine.Morancy@nationalgrid.com>
Subject: EXT || FW: FW: 200 Catherine Street, Gardner Easement & Sketch WR# 28733033

Ms. Morancy,

I am the City Solicitor for the City of Gardner. I have been working to obtain approval for the relocation of the pole and easement on Catherine Street, Gardner. Please see the issues discussed below regarding the proposed easement relocation. One significant concern is the abandonment of the existing ROW. Can you confirm that the existing ROW will be released once the new easement is granted.

Regards,
John Flick

****

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

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From: Anderson, Wayne <andersonw@gardnerk12.org>
Sent: Monday, July 27, 2020 9:20 AM
To: John Flick <jflick@flicklawgroup.com>; John Flick <jflick@gardner-ma.gov>
Subject: Fwd: FW: 200 Catherine Street, Gardner Easement & Sketch WR# 28733033

<="" span="">
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Hi John,

Has National Grid corrected the error in the easement yet?

National Grid says the poles are co-owned with Verizon. And, Verizon will be responsible for removing the old poles.

Regards,

Wayne Anderson
Director of Facilities

Gardner Public Schools
70 Waterford Street
Gardner, MA 01440-2525

Work: 978-632-1603;2045
Fax: 978-632-4234
Mobile: 978-360-2242

---------- Forwarded message ---------
From: **Anderson, Wayne** <andersonw@gardnerk12.org>
Date: Thu, Jun 11, 2020, 8:37 AM
Subject: Re: FW: 200 Catherine Street, Gardner Easement & Sketch WR# 28733033
To: Pellegrino, Mark <pellegm@gardnerk12.org>
Cc: John Flick <jflick@gardner-ma.gov>

Hello all,

Please see notes on attached easement and sketch.

1) There is a typo in the easement. They listed the address as 300 Catherine Street. It should be 200 Catherine Street.

2) Should they remove the easement for the existing overhead utility pole and cabling?

3) Should we note removal of existing utility pole P9-4?

I have contacted National Grid for clarification on the project need.

Also, I need to contact Verizon regarding their portion of the project.

Regards,

Wayne Anderson
Director of Facilities

Gardner Public Schools
70 Waterford Street
Gardner, MA 01440-2525

Work: +1-978-632-4626
Fax: +1-978-632-1164
Mobile: +1-978-360-2242

On Tue, Jun 9, 2020 at 11:29 AM Pellegrino, Mark <pellegm@gardnerk12.org> wrote:

Hi Wayne,
Attached you will find the easement information. I am just reading now that the attachments were removed. Please look them over and respond by tomorrow. Thanks, Mark

Dr. Mark J. Pellegrino
Superintendent, Gardner Public Schools

Positive Relationships and Rigor for Every Child, in Every Classroom, Every Day...

Click here to like GPS on Facebook

On Mon, Jun 1, 2020 at 5:38 PM Anderson, Wayne <andersonw@gardnerk12.org> wrote:

Hi Mark,

The easement attachment was removed.

Please send it to me for review.

Wayne Anderson
Director of Facilities

Gardner Public Schools
70 Waterford Street
Gardner, MA 01440-2525

Work: 978-632-1603;2045
Fax: 978-632-4234
Mobile: 978-360-2242

On Mon, Jun 1, 2020, 4:34 PM Pellegrino, Mark <pellegm@gardnerk12.org> wrote:

Hi Wayne,
Can you check this out and ensure there are no issues that you see? I want to get this signed and back to John asap.
Thanks,
Mark

Dr. Mark J. Pellegrino
Superintendent, Gardner Public Schools

Positive Relationships and Rigor for Every Child, in Every Classroom, Every Day...

Click here to like GPS on Facebook

On Mon, Jun 1, 2020 at 2:07 PM John Flick <jflick@flicklawgroup.com> wrote:

Mark,

I received the following easement request from National Grid. Can you please have your facility personnel review this. Please let me know if there are any concerns. If none, please provide me with a written statement to that effect so that it may be presented to the council for consideration.

Thank you,
John Flick
City Solicitor

****

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

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From: Alan Agnelli <aagnelli@gardner-ma.gov>
Sent: Friday, May 29, 2020 1:42 PM
To: John Flick <jflick@flicklawgroup.com>
Subject: FW: 200 Catherine Street, Gardner Easement & Sketch WR# 28733033
Importance: High

<="" span="">
CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello John:

On behalf of the Acting Mayor and City Council, please review the attached Easement and advise and comment.

Thank you.

Alan

Alan L. Agnelli
City Clerk
95 Pleasant Street, Room 121
Gardner, MA 01440
Tel 978-630-4058
Fax 978-630-2589

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From: Morancy, Nadine <Nadine.Morancy@nationalgrid.com>
Sent: Friday, May 29, 2020 11:26 AM
To: Alan Agnelli <aagnelli@gardner-ma.gov>
Cc: Mayor <Mayor@gardner-ma.gov>
Subject: 200 Catherine Street, Gardner Easement & Sketch WR# 28733033
Importance: High

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

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Advance notice of vacation: No vacation days booked

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The Gardner Public Schools does not discriminate due to race, color, sex, gender identity, religion, national origin, sexual orientation, disability, age, homelessness or limited English proficiency.

10335

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 certain parcels 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

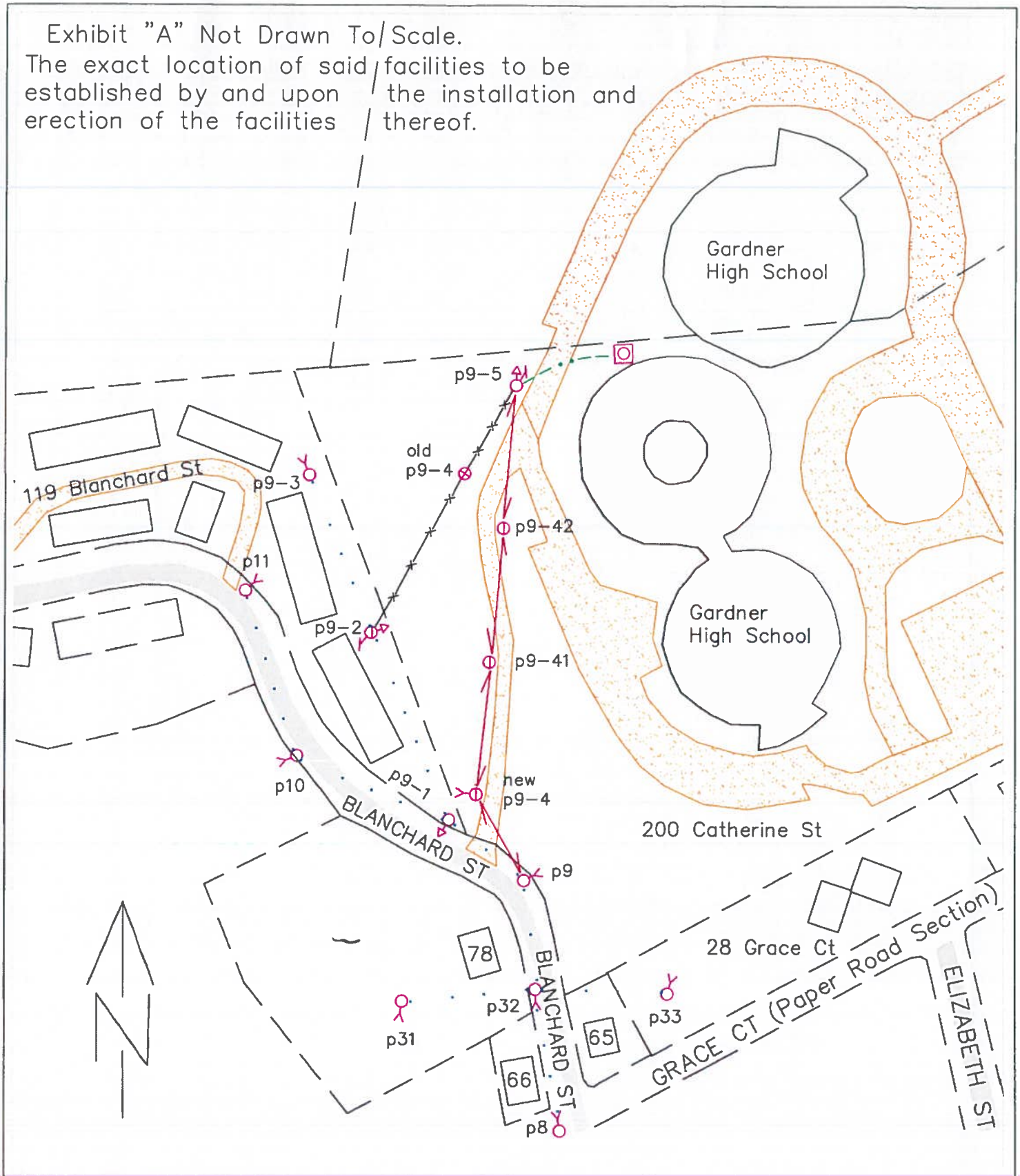
RETURN TO:

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

Approved By: _____

10335

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

10327-10328

City of Gardner, *Executive Department*

Michael J. Nicholson, Mayor

RECEIVED
2020 AUG 20 PM 2:28
CITY CLERK'S OFFICE
GARDNER, MA

August 20, 2020

The Honorable Elizabeth Kazinskas, President
And Gardner City Councilors
95 Pleasant St., Rm 121
Gardner, MA 01440

RE: Proposed Stormwater Ordinances

Dear President Kazinskas and Councilors,

In 2017, the Federal Environmental Protection Agency ("EPA") issued new mandates for cities and towns across the United States to implement new regulations regarding Stormwater discharge as part of their respective ordinances. The initial mandate that was given for these ordinances was to have these items passed and codified into cities' ordinances by the end of the 2019 calendar year or the EPA would issue significant fines and penalties to those that did not comply.

Following the EPA issuing a compliance order to the City in December of 2019, the City received two (2) extensions from this deadline – once to be able to complete the review of the requirements in time, and the second as a result of the absence of having an elected mayor for six months in 2020. Our current extension expires on October 15, 2020. The City has also been informed that we will likely not be issued an additional extension. Failure to adopt ordinances by the October 15th deadline will likely result in the Federal Government issuing significant fines and penalties against the City.

The two (2) attached ordinance proposals have been worked on and reviewed by the City Engineer's Office, the City's Law Department, and officials from the EPA in order to ensure all of the mandated requirements are met.

Thank you for your attention to these matters.

Respectfully,

Michael J. Nicholson
Mayor, City of Gardner

Enclosures:

- Stormwater and Erosion Control Proposed Ordinance
- Illicit Connections and Discharges to Storm Drain System Proposed Ordinance

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

10327

XXXXXX. - STORMWATER AND EROSION CONTROL

Sec. XXXX. - Purpose and Intent.

(a) The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare of the city by establishing minimum requirements and procedures to control the adverse effects of soil erosion and sedimentation, construction site runoff, increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment. It has been determined that proper management of stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, protect water and aquatic resources, protect and enhance wildlife habitat, and promote groundwater recharge to protect surface and groundwater drinking supplies. This ordinance seeks to meet that purpose through the following objectives:

(1) Establish a mechanism by which the municipality can monitor and ensure compliance with requirements of Phase II of the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and other applicable State and Federal mandates. Under the Phase II stormwater permit, the U.S. Environmental Protection Agency (EPA) required regulated municipalities to reduce the discharge of pollutants in stormwater to the maximum extent practicable and to adopt ordinances to address the control of sources of pollutants entering the municipal storm drain system.

(2) Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources.

(3) Require that new development, redevelopment and other land alteration activities maintain the after-development runoff characteristics as equal to or better than the pre-development runoff characteristics where appropriate in order to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats.

(4) Establish minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality; establish minimum design criteria for the protection of properties and aquatic resources downstream from land development and land conversion activities from damages due to alterations in volume, velocity, frequency, duration, and peak flow rate of storm water runoff; establish minimum design criteria for measures to eliminate or minimize to the extent feasible nonpoint source pollution from stormwater runoff which would otherwise degrade water quality.

(5) Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet or exceed the minimum post-development stormwater management standards.

(6) Encourage the use of nonstructural stormwater management, environmentally sensitive site design practices, and low-impact development practices, such as reducing impervious cover, increasing site-wide infiltration, and preserving open space and other natural areas, to the maximum extent practicable.

(7) Establish provisions that require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities.

(8) Establish provisions to ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained.

(9) Establish provisions for the long-term operation and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety or the environment.

(10) Establish certain administrative procedures for the submission, review, approval or disapproval of stormwater management plans, erosion and sediment controls, the inspection of construction sites and approved active projects, and long-term monitoring.

(11) Ensure that construction and waste materials, toxic materials, hazardous materials, and other pollutants are prevented from mixing with stormwater runoff, which would degrade water quality.

(12) Establish the City of Gardner's legal authority and capacity to ensure compliance with the provisions of this ordinance through permitting, inspection, monitoring, and enforcement.

(b) Nothing in this ordinance is intended to replace the requirements of the City of Gardner Zoning Ordinance, the Massachusetts Wetlands Protection Act, the City of Gardner General Ordinance, any other ordinance that may be adopted by the City of Gardner, or any rules and regulations adopted there under.

Sec. XXXX. - Authority.

This ordinance is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34., and as authorized by the residents of the City of Gardner at City Council Meeting dated XXXXXXXXXX.

Sec. XXXXX. - Definitions.

The following definitions shall apply in the interpretation, implementation, and enforcement of this ordinance:

Alter: Any activity that will measurably change the ability of a ground surface area to absorb water, will change existing surface drainage patterns, or will increase or decrease the rate or volume of flow from a site. Alter may be similarly represented as "alteration of drainage characteristics," and "conducting land-disturbing activities".

Applicant: Any person, individual, partnership, association, organization, firm, company, trust, corporation, agency, authority, department, or political subdivision of the commonwealth or the federal government, to the extent permitted by law, any officer, employee, or agent of such person who has filed an application for a stormwater permit.

Development: The modification of land to accommodate a new use, revised use, or expansion of use, usually involving construction.

Discharge of pollutants: The addition of any pollutant or combination of pollutants into the MS4 or into the waters of the United States or the waters of the commonwealth, from any source.

Environmentally sensitive site design: Design that incorporates low impact development techniques to prevent the generation of stormwater and nonpoint source pollution by reducing impervious surfaces, disconnecting stormwater sheet flow paths and treating stormwater at its source, maximizing open space, minimizing disturbance, protecting natural features and processes, and/or enhancing wildlife habitat, as defined in 310 CMR 10.

Impervious cover (IC) or impervious area (IA): Any material or structure on, above or below the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include, without limitation: roads, paved surfaces (parking lots, sidewalks, and driveways), concrete, brick, stone, and roof tops.

Infiltration: The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a site.

Land disturbance: Any action that causes removal of vegetation (including tree cutting) or that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material. See also "alter."

Land-disturbing activity: Any action that causes a change in the existing soil cover which includes the position or location of soil, sand, rock, gravel, or similar earth material. Land-disturbing activities include, but are not limited to, clearing, clearing of trees, grubbing, filling and excavation.

Low impact development (LID) techniques: Innovative stormwater management systems that are modeled after natural hydrologic features. See 310 CMR 10 for further clarification.

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Massachusetts Stormwater Management Standards: The latest version as may be amended from time to time of the stormwater management standards and accompanying Stormwater Handbook issued by the Massachusetts Department of Environmental Protection Agency pursuant to authority under the Wetlands Protection Act, M.G.L.A. c. 131, § 40, and the Massachusetts Clean Waters Act, M.G.L.A. c. 21, § 26-53. The Stormwater Management Standards are incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k) and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

Municipal separate storm sewer system (MS4) or Municipal storm drain system: The conveyance or system of conveyances designed or used for collecting or conveying stormwater, which is not a combined sewer, including any road with a drainage system, municipal street, catch basins, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, ditch, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of Gardner.

Nonpoint source: Any source from which pollution is discharged which is not identified as a point source, including, but not limited to urban, agricultural, or silvicultural runoff. Nonpoint source pollution emanates from many diffuse sources caused by rainfall, snowmelt, or other methods of pollutant transport moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

Point source: The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

Pollutant: Any element or property of sewage, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any storm drain system treatment works, ground water or surface water.

Pollutants shall include, without limitation:

(1) Paints, varnishes, and solvents;

(2) Oil and other automotive fluids;

(3) Non-hazardous liquid and solid wastes and yard wastes;

(4) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, accumulations and floatables;

(5) Pesticides, herbicides, and fertilizers;

(6) Hazardous materials and wastes; sewage, fecal coliform, and pathogens;

(7) Dissolved and particulate metals;

(8) Animal wastes;

(9) Rock, sand, salt, soils, with the exception of winter salting and sanding in quantities that will not clog or otherwise impair the performance of the MS4 and stormwater management systems;

(10) Construction wastes and residues; and

(11) Noxious or offensive matter of any kind.

Post-development: The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity in accordance with approved plans on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

Pre-development: The conditions that exist prior to the proposed disturbance activity. Where phased development or plan approval occurs (preliminary grading, roads, utilities, etc.) the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

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Recharge: The replenishment of underground water reserves.

Reconstruction: Any action causing complete removal and replacement of paved surfaces, such as driveways, parking areas and roads.

Redevelopment: Any construction, alteration, improvement, repaving, or resurfacing on a previously-developed site.

Runoff: Rainfall or snowmelt water flowing over the ground surface or other source that may result in transport of pollutants.

Site: Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

Stockpiling: The storage of unsecured material for future use, excluding the storage of materials ten cubic yards or less when secured utilizing erosion controls to prevent erosion of material.

Stormwater: Stormwater runoff, snow melt runoff, and surface water runoff or drainage.

Stormwater best management practice (BMP): A structural or non-structural technique for managing stormwater to prevent or reduce nonpoint source pollutants from entering surface waters or ground waters, as defined in 310 CMR 10. A structural stormwater best management practice includes a basin, discharge outlet, swale, rain garden, filter, or other stormwater treatment practice or measure either alone or in combination including, without limitation, any overflow pipe, conduit, weir control structure that:

(1) Is not naturally occurring;

(2) Is not designed as a wetland replication area; and

(3) Has been designated, constructed, and installed for the purpose of conveying, collecting, storing, discharging, recharging or treating stormwater.

Nonstructural stormwater best management practices include source control and pollution prevention measures.

Stormwater management permit (SMP): A permit issued by the stormwater authority, after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the city from the deleterious effects of uncontrolled and untreated stormwater runoff.

Surface waters: All water other than groundwater within the jurisdiction of the commonwealth including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, and coastal waters, as defined in 310 CMR 10.00.

Toxic material or hazardous material or waste: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious, or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous material include any synthetic organic chemical, petroleum, product, heavy metal, radioactive or infectious waste, acid, and alkali, and any substance defined as toxic or hazardous under M.G.L.A. c. 21C and c. 21E, and the regulations at 310 CMR 30.300 and 310 CMR 40.0000.

Sec. XXXXX- Applicability.

(a) This ordinance shall be applicable to the following activities. Compliance with all provisions of this ordinance, to the maximum extent practicable as determined by the stormwater authority, shall be a requirement for issuance of a stormwater management permit.

(1) All subdivisions as defined in the Massachusetts Subdivision Control Law (M.G.L.A. c. 41 §§ 81K—81GG) requiring approval of a definitive subdivision plan;

(2) Any activity that will result in a land disturbance of ten thousand square feet or greater within the City of Gardner.

(b) This ordinance shall apply to land or parcels of land that are held in common ownership (including ownership by related or jointly-controlled persons or entities) as of the effective date of this ordinance, if the total land-disturbing activities on said land or parcels, considered as a whole, would presently or ultimately exceed the minimum thresholds in this ordinance. A development shall not be segmented or phased in a manner to avoid compliance with this ordinance. The building department shall review all building permits to determine if a storm water management permit will be required, and, if required, will direct the applicant or potential applicant to the designated contact person at the department of public works.

(c) Coordination with other city permits.

(1) No building permit, subdivision approval, special permit, variance, or finding shall constitute compliance with this ordinance. For a project or activity that meets the scope and applicability of this section of this ordinance, no work may commence until the site owner or his agent submits the required documentation, the stormwater authority issues a stormwater permit, and the site owner and responsible parties sign and certify that all land clearing, construction and development will be done pursuant to the approved plans and permit.

(2) The ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence.

(3) In case of conflicting requirements, applicable state and or federal statutes and regulations shall be considered the more restrictive or more protective of human health and the environment, and shall take precedence over the City of Gardner's Stormwater and Erosion Control Ordinance and the rules and regulations promulgated thereunder. These state statutes and regulations include, but are not limited to the Massachusetts Wetlands Protection Act, the Massachusetts Rivers Act, the Massachusetts Watershed Protection Act, and the Massachusetts Stormwater Management Standards, as amended.

(4) In no instances shall a stormwater management permit constitute authorization for alteration of wetland resources subject to the jurisdiction of the Wetlands Protection Act.

Sec. XXXXX. - Exemptions.

Exemptions from this ordinance apply to the following activities, provided that a project is solely comprised of any one of these activities:

(a) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.04 ("Agricultural"), M.G.L.A. c. 40A, § 3 and the conversion of additional land to agricultural use, when undertaken in such a manner as to prevent erosion and siltation through the use of best management practices recommended by the U.S. Department of Agriculture Natural Resources Conservation Service or the Massachusetts Department of Agricultural Resources.

(b) Any work or projects for which all necessary approvals and permits were issued before the effective date of this ordinance. All applicable and relevant regulations must be met; city, state and federal. (This exemption does not apply to amendments or extensions of approved projects that have not started construction. In these cases, the applicant may need to re-design the project to comply with these requirements.)

(c) Routine maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling. Routine maintenance includes activities that are regularly scheduled to maintain the health and condition of a landscaped area. Examples include removal of weeds or invasive species, pruning, mowing, raking, and other activities that are done at regular intervals within the course of a year.

(d) Construction of any fence that will not alter existing terrain or drainage patterns.

(e) Construction, reconstruction, operation and maintenance of utilities (including but not limited to gas, city stormwater, water, sanitary sewer, road maintenance, electric, telephone, or cable television) excluding the construction of new MS4, where the surface vegetation and contours of the area shall be substantially restored.

(f) Emergency repairs to any existing utilities (gas, water, sanitary sewer, septic, electric, telephone, cable television, etc.) and emergency repairs to any stormwater management facility that poses a threat to public health or safety, as deemed necessary by the department of public works. All reasonable efforts must be made to use proper stormwater erosion controls in all emergency repairs.

(g) Repair, replacement or expansion of septic systems. Note—Proper erosion controls must be used.

Sec. XXXX - Administration and permitting process.

(a) Stormwater Authority. The Department of Public Works is hereby designated as the stormwater authority. The stormwater authority, or his/her agent, shall administer, implement, and enforce this ordinance. The Department of Public Works may delegate in writing another city department, commission or board to act as his/her agent to review application submittals and for site inspections and enforcement of this ordinance.

(b) Stormwater and Erosion Control Regulations ("Regulations"). The stormwater authority may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, delegation of authority, procedures and administration of this ordinance. Failure of the stormwater authority to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this ordinance.

(c) Stormwater Management Handbook. The stormwater authority will utilize the Massachusetts Stormwater Management Policy and the Massachusetts Stormwater Handbooks Volumes 1, 2 and 3, as amended from time to time, for criteria and information including specifications and standards of the latest edition of the Massachusetts Stormwater Management Handbook for the execution of the provisions of this ordinance. These include a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. Unless specifically made more stringent in this ordinance and the rules and regulations promulgated hereunder, stormwater management practices that are designed, constructed, and maintained in accordance with the Massachusetts Stormwater Handbooks' design and sizing criteria shall be presumed by the stormwater authority to be protective of the Massachusetts Water Quality Standards.

(d) Stormwater Management Permit. The Stormwater Authority shall have the authority to issue a Stormwater Management Permit (SMP) for projects exceeding the thresholds defined in this Ordinance. Requirements of the SMP may be defined and included within the regulations promulgated pursuant to this Ordinance.

(e) Appeals of Actions by the Stormwater Authority. A decision by the stormwater authority made under this ordinance shall be final. Further relief shall be to the Superior Court in accordance with the provisions of M.G.L.A c. 249, § 4.

Sec. XXXXX. - Enforcement.

(a) The stormwater authority, or an authorized agent of the stormwater authority, shall enforce this ordinance, and any regulations, permit orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for violations.

(b) If a person violates the provisions of this ordinance or its regulations, or a permit, notice or order issued there under, the stormwater authority may seek injunctive relief in a court of competent

jurisdiction to restrain the person from activities which would create further violations or to compel the person to perform abatement or remediation of the violation.

(c) The stormwater authority, or an authorized agent of the stormwater authority, may issue a written order to enforce the provisions or this ordinance or the regulations, which may include requirements to:

(1) Cease and desist from land-disturbing activity until there is compliance with the ordinance or provisions of an approved SMP;

(2) Maintain, install or perform additional erosion and sediment control measures;

(3) Perform monitoring, analyses, and reporting;

(4) Remediate erosion and sedimentation resulting directly or indirectly from land-disturbing activity;

(5) Comply with requirements in the SMP for operation and maintenance of stormwater management systems; and

(6) Remediate adverse impacts resulting directly or indirectly from malfunction of the stormwater management systems.

If the stormwater authority or its authorized agent determines that abatement or remediation is required, the order shall set forth a deadline by which such abatement or remediation must be completed.

(d) Criminal Penalties. Any person who violates any provisions of this ordinance, regulation, order or permit issued hereunder, shall be punished by a fine of not more than three hundred dollars. Each day a violation exists shall constitute a new and separate violation.

(e) Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the stormwater authority may elect to utilize the non-criminal disposition procedure set forth in M.G.L.A c. 40, § 21D, in which case any police officer of the City of Gardner, the city engineer, and such other persons as are authorized by the stormwater authority shall be the enforcing person. If non-criminal disposition is used, any person who violates any provision of this ordinance, regulation, order or permit issued thereunder, shall be punished as follows:

(1) First violation: Warning

(2) Second violation: one hundred dollars

(3) Third violation: two hundred dollars

(4) Fourth and subsequent violations: three hundred dollars.

(5) Each day a violation exists shall constitute a separate violation. Each day of noncompliance shall constitute a new and separate violation.

The conservation agent, DPW personnel and any other city employee designated in writing by the Stormwater Authority, may as an alternative to initiating criminal proceedings, seek the noncriminal disposition of violations of the Storm Water Ordinance, by following the procedure set forth in M.G.L.A. c. 40, § 21D. Any person, corporation, company, or partnership that violates any provision of this ordinance shall be subject to a penalty of one hundred dollars for the second offense, two hundred dollars for the third offense, and three hundred dollars for the fourth and each additional offense.

(f) Remedies Not Exclusive. The remedies listed in this ordinance are not exclusive of any other remedies available to the stormwater authority or the city under any applicable federal, state or local law.

Sec. XXXXX. - Severability.

The invalidity of any section, provision, paragraph, sentence, or clause of this ordinance shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

Sec. XXXXXX - Effective date.

This ordinance shall take effect on XXXXXXXXXX

DRAFT

10327-10328

City of Gardner, *Executive Department*

Michael J. Nicholson, Mayor

RECEIVED
2020 AUG 20 PM 2:28
CITY CLERK'S OFFICE
GARDNER, MA

August 20, 2020

The Honorable Elizabeth Kazinskas, President
And Gardner City Councilors
95 Pleasant St., Rm 121
Gardner, MA 01440

RE: Proposed Stormwater Ordinances

Dear President Kazinskas and Councilors,

In 2017, the Federal Environmental Protection Agency ("EPA") issued new mandates for cities and towns across the United States to implement new regulations regarding Stormwater discharge as part of their respective ordinances. The initial mandate that was given for these ordinances was to have these items passed and codified into cities' ordinances by the end of the 2019 calendar year or the EPA would issue significant fines and penalties to those that did not comply.

Following the EPA issuing a compliance order to the City in December of 2019, the City received two (2) extensions from this deadline – once to be able to complete the review of the requirements in time, and the second as a result of the absence of having an elected mayor for six months in 2020. Our current extension expires on October 15, 2020. The City has also been informed that we will likely not be issued an additional extension. Failure to adopt ordinances by the October 15th deadline will likely result in the Federal Government issuing significant fines and penalties against the City.

The two (2) attached ordinance proposals have been worked on and reviewed by the City Engineer's Office, the City's Law Department, and officials from the EPA in order to ensure all of the mandated requirements are met.

Thank you for your attention to these matters.

Respectfully,

Michael J. Nicholson
Mayor, City of Gardner

Enclosures:

- Stormwater and Erosion Control Proposed Ordinance
- Illicit Connections and Discharges to Storm Drain System Proposed Ordinance

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

XXXXX - ILLICIT CONNECTIONS AND DISCHARGES TO THE STORM DRAIN SYSTEM.

XXXXX - Purpose and authority.

(a) The purpose of this article is to regulate illicit connections and discharges to the storm drain system, which is necessary for the protection of Gardner's water bodies, groundwater, and to safeguard the public health, safety, welfare and the environment.

The objectives of this article are:

(1) To prevent pollutants from entering Gardner's municipal separate storm sewer system (MS4).

(2) To prohibit illicit connections and unauthorized discharges to the MS4.

(3) To require the removal of all such illicit connections.

(4) To comply with state and federal statutes and regulations relating to stormwater discharges.

(5) To establish the legal authority to ensure compliance with the provisions of this article through inspection, monitoring and enforcement.

(6) To prevent contamination of drinking water supplies.

(b) Authority. The Department of Public Works shall administer, implement and enforce this article.

XXXXXX - Definitions.

For the purposes of this article, the following shall mean:

"Authorized enforcement agency" means the Department of Public Works, its employees or agents designated to enforce this article.

"Best management practice (BMP)" means an activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improved the quality of stormwater runoff.

"Clean Water Act" means the Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.) as hereafter amended.

"Discharge of pollutants" means the addition from any source of any pollutant or combination of pollutants into the storm drain system or into the waters of the United States or Commonwealth from any source.

"Groundwater" means all water beneath the surface of the ground.

"Illegal discharge" means any direct or indirect nonstormwater discharge to the storm drain system, except as specifically exempted in sections 5(4) and 5(5). The term does not include a discharge in compliance with an NPDES stormwater discharge permit.

"Illicit connection" means any surface or subsurface drain or conveyance, which allows an illegal discharge into the storm drain system. Illicit connections include conveyances which allow a nonstormwater discharge to the storm drain system, including sewage, process wastewater or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether such connection was previously allowed, permitted, or approved before the effective date of this article.

"Impervious surface" means any material or structure on or above the ground that prevents water from infiltrating the underlying soil.

"Municipal separate storm sewer system (MS4) or municipal storm drain system" means the system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system; street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of Gardner.

DRAFT

"National pollutant discharge elimination system (NPDES) storm water discharge permit" means a permit issued by United States Environmental Protection Agency or jointly with the state that authorized the discharge of pollutants to waters of the United States.

"Nonstormwater discharge" means any discharge to the storm drain system, not composed entirely of stormwater.

"Person" means any individual, partnership, association, firm, company, trust, corporation, and, any agency, authority, department or political subdivision of the commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

"Pollutant" means any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the commonwealth. Pollutants shall include:

(1) Paints, varnishes and solvents.

(2) Oil and other automotive fluids.

(3) Nonhazardous liquid and solid wastes and yard wastes.

(4) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, accumulations and floatables.

(5) Pesticides, herbicides and fertilizers.

(6) Hazardous materials and wastes; sewage, fecal coliform and pathogens.

(7) Dissolved and particulate metals.

(8) Animal wastes.

(9) Rock, sand, salt, soils, with the exception of winter salting and sanding in quantities that will not clog or otherwise impair the performance of the MS4 and stormwater management systems;

(10) Construction wastes and residues.

(11) Noxious or offensive matter of any kind.

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

"Recharge" means the process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

"Storm drain system" means the system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system on public or private ways within the City of Gardner.

"Stormwater" means runoff from precipitation or snow melt.

"Toxic or hazardous material or waste" means any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as toxic or hazardous under G.L. chapters 21C and 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000.

"Uncontaminated" means water containing no pollutants.

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"Wastewater" means any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

"Waters of the commonwealth" mean all waters within the jurisdiction of the commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters and groundwater.

XXXXX. - Applicability.

This article shall apply to flows entering the storm drain system on public or private ways with the City of Gardner.

XXXXXX. - Regulations.

The Department of Public Works may promulgate rules, regulations and a permitting process to effectuate the purposes of this article. Failure by the Department of Public Works to promulgate such rules and regulations shall not have the effect of suspending or invalidating this article.

XXXXXX. - Prohibited activities.

(a) Illegal Discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or nonstormwater discharge into the storm drain system, watercourse, or into the waters of the commonwealth.

(b) Illicit Connections. No person shall construct, use, allow, maintain or continue any illicit connection to the storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

(c) Obstruction of Storm Drain System. No person shall obstruct or interfere with the normal flow of stormwater in or out of the storm drain system without prior approval from the Department of Public Works or its designated agent.

(d) Exemptions. This section shall not apply to any of the following nonstormwater discharges or flows provided that the source is not a significant contributor of a pollutant to the storm drain system:

(1) Municipal waterline flushing.

(2) Discharges from landscape irrigation or lawn watering.

(3) Water from individual residential car washing and temporary fund-raising car wash events.

(4) Discharges from dechlorinated swimming pool water, provided it is allowed to stand for one week prior to draining, or tested for chlorine levels with a pool test kit prior to draining (less than one part per million chlorine), and the pool is drained in such a way as not to cause a nuisance.

(5) Discharges from street sweepers of minor amounts of water during operations.

(6) Discharges or flows resulting from fire fighting activities.

(7) Nonstormwater discharges permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations.

DRAFT

(e) Exemptions with Permit from Department of Public Works. This section shall not apply to any of the following nonstormwater discharges or flows, provided that the source is not a significant contributor of a pollutant to the storm drain system, and provided that a permit is approved by the Department of Public Works:

(1) Flows from potable water sources.

(2) Springs.

(3) Natural flows from riparian habitats and wetlands.

(4) Diverted stream flows.

(5) Rising groundwater.

(6) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater.

(7) Uncontaminated groundwater discharge from a sump pump, with a permit from the Department of Public Works.

(8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems, such as dewatering excavations for foundation or pipelines), crawl space pumps, or air conditioning condensation.

(9) Dye testing, provided verbal notification is given to the Department of Public Works prior to the time of the test.

(10) Unforeseen sources, on a case by case basis

The Department of Public Works may develop criteria for issuing permits under this section, based on the need to maintain capacity of the storm drain system and to protect public health, safety, welfare of the environment.

XXXXX. - Suspension of storm drain system access.

(a) The Department of Public Works may suspend storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened illegal discharge that presents or may present imminent risk of harm to the public health, safety, welfare or the environment. In the event, any person fails to comply with an emergency suspension order, the authorized enforcement agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

(b) Any person in violation of this section may have their storm drain system access terminated, if such termination would abate or reduce an illicit discharge. The Department of Public Works will notify a violator of the proposed termination of storm drain system access. The violator may petition the Department of Public Works for reconsideration and hearing. Any person who reinstates storm drain system access to premises terminated pursuant to this section, without prior approval from the Department of Public Works, shall be deemed to have violated this article.

XXXXXX. - Notification of spills.

Notwithstanding any other requirements of local, state, or federal law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials at that facility operation which is resulting or may result in illegal discharge of pollutants that person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the

person shall immediately notify the Gardner Fire and Police departments. In the event of a release of nonhazardous material, such person shall notify the authorized enforcement agency not later than the next business day. Written confirmation of all telephone, facsimile or in person notifications shall be provided to the authorized enforcement agency within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

XXXXXX. - Enforcement.

(a) Enforcement. The Department of Public Works or its authorized agent shall enforce this article, and the regulations promulgated thereunder, as well as the terms and conditions of all permits, notices, and orders, and may pursue all civil and criminal remedies for such violations.

(b) Civil Relief. If anyone violates the provisions of this article, regulations, permit, notice, or order issued thereunder, the Department of Public Works may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or compel the person to abate or remediate the violation.

(c) Orders. The Department of Public Works may issue a written order to enforce the provisions of this article or the regulations thereunder, which may include: (1) elimination of illicit connections or discharges to the storm drain system; (2) termination of access to the storm drainage system; (3) performance of monitoring, analyses, and reporting; (4) cessation of unlawful discharges, practices, or operations; and (5) remediation of contamination in connection therewith. If the Department of Public Works determines that abatement or remediation of contamination is required, the order shall set forth a deadline for completion of the abatement or remediation. Such order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the city may, at its option, undertake such work, and expenses thereof shall be charged to the violator or property owner.

Within thirty days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the city, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Department of Public Works within thirty days following a decision of the receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty days following a decision of the Department of Public Works affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of such costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. chapter 59, section 57 after the thirty-first day at which the costs first become due.

(d) Criminal and Civil Penalties. Any person who violates any provision of this article, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine not to exceed three hundred dollars for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the city in any court of competent jurisdiction.

(e) Noncriminal Disposition. As an alternative to criminal prosecution or civil action, the City of Gardner may elect to utilize the noncriminal disposition procedure set forth in G.L. chapter 40, section 21D. The Department of Public Works shall be the enforcing entity. The penalty for the 1st violation shall be one hundred dollars. The penalty for the 2nd violation shall be two hundred dollars. The penalty for the 3rd and subsequent violations shall be three hundred dollars. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

(f) Entry to Perform Duties under this Article. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Department of Public Works, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their

duties under this article and regulations and may make or cause to be made such examinations, surveys or sampling as the Department of Public Works deems reasonably necessary.

(g) Appeals. The decisions or orders of the Department of Public Works shall be final. Further relief shall be to a court of competent jurisdiction.

(h) Remedies Not Exclusive. The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law.

XXXXX. - Severability.

If any provision, paragraph, sentence, or clause, of this article shall be held invalid for any reason, all provisions shall continue in full force and effect.

DRAFT

10331

CITY OF GARDNER POLICE DEPARTMENT
200 Main Street, Suite 214
Gardner, Massachusetts 01440
Phone: (978) 632-5600
Fax: (978) 630-4027

RECEIVED
2020 AUG -5 PM 2:46
CLERK'S OFFICE
GARDNER, MA

James F. Trifiro Jr.
Deputy Chief of Police
Email: JTrifiro@gardner-ma.gov

August 5th, 2020

Gardner City Council Members,

On March 10th, 2020 on behalf of the members of the Traffic Commission I submitted a letter to the council recommending the following ordinance amendment in Gardner City Code:

600-24/Parking prohibited on certain streets – Nutting Street/Both Sides/Entire Length

This recommendation was based on the facts that according to Gardner City Code(s) 567-8/Specifications, in combination with 600-21/General Prohibitions, roadways shall have a width of not less than 28 feet and parking of a motor vehicle should leave a clear and unobstructed lane at least 10 feet wide for passing traffic. Given that the configuration of Nutting Street has a two way traffic pattern, and designated parking spots are required to be 8 feet wide it would be most relevant to have 28 feet in roadway width to meet the Gardner City Code(s) specifications and sanction roadway (one side) parking. A survey of Nutting Street had been conducted and it was discovered that the width of the roadway ranged from approximately 21 feet in width near the vicinity of the Prospect Street intersection, funneling to a span of approximately 29 feet in width near the vicinity of the Union Street intersection. In addition, the span identified as being approximately 29 feet in width only extended for approximately 50 feet from the intersection and this dimension combined with the fact that motor vehicles are not permitted to park within 20 feet of an intersection (Gardner City Code 600-21) significantly restricted the availability of sanctioned roadside parking down to approximately 30 feet. In summary, our analysis showed that the bulk of Nutting Street predominantly did not appear to have the approved conditions permissible for roadside parking and was considered under width according to Gardner City Code.

On May 4th, 2020 I met via a Zoom Meeting with the members of the Public Safety Committee and presented the Traffic Commissions recommendation to prohibit parking on Nutting Street which was supported by tangible facts, validated measurements and opinions for potential safety concerns within the area. In response of the communication within this meeting the members of the Public Safety Committee voted to return the recommended ordinance amendment in Gardner City Code back to Traffic Commission for further public comment.

On July 17th, 2020 at the quarterly Traffic Commission Meeting this topic along with direction from the Public Safety Committee was brought forward to the commission members for discussion. During our conversation the responsibilities of the Traffic Commission were deliberated and after examining the duties as defined in Gardner City Code 275-3, all members of the commission agreed that a survey for further public comment regarding recommendations on City Code amendments were not a function within the Traffic Commissions scope of assignments. As a result of the dialogue, with no disrespect intended to the Public Safety Committee the members of the Traffic Commission unanimous decided to stand affirmative on their recommendation relying within the facts as originally presented. As a result of this conference we would like to recommend (re-submit) the following ordinance amendment in Gardner City Code:

600-24/Parking prohibited on certain streets – Nutting Street/Both Sides/Entire Length

In summary and on behalf of the Traffic Commission, we believe that this change meets the guidelines as documented in roadway guidance by Gardner City Code, acts in the best interest of public safety and would formally address any parking concerns generated from citizens in the area.

Your favorable consideration in our recommendation would be greatly appreciated.

James F. Trifiro Jr.

James F. Trifiro Jr.
Deputy Chief of Police
City of Gardner Police Department

1033

ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 600 THEREOF, ENTITLED "VEHICLES AND TRAFFIC."

Be it ordained by the City Council of the City of Gardner as follows:

Section 1. Section 600-24 of Chapter 600, Vehicles and Traffic, Parking Prohibited on certain streets, is amended by adding the following:

Name of Street	Side	Location
Nutting Street	Both	Entire length

Section 2. This Ordinance shall take effect upon passage and publication as required by law.

10305

CITY OF GARDNER
MASSACHUSETTS 01440-2630

OFFICE OF THE
CITY CLERK

RECEIVED
2020 SEP 15 PM 12:00
CITY CLERK'S OFFICE
GARDNER, MA

CITY OF GARDNER
NOTICE OF JOINT PUBLIC HEARING
DEVELOPMENT OVERLAY DISTRICT DESIGNATION

Pursuant to G.L. c. 40A, § 5, notice is hereby given that the City Council and Planning Board will conduct a **Joint Public Hearing** on **Monday, October 5, 2020 at 6:00 P.M.** to consider designating 2 parcels of land at 525 Parker Street as a Development Overlay District 1. The Hearing will he held via Zoom and broadcast on the City of Gardner YouTube Channel. Interested parties desiring to offer testimony are encouraged to submit their comments in writing and e-mailed to the City Clerk at aagnelli@gardner-ma.gov or mailed to **City Clerk, 95 Pleasant Street, Room 121, Gardner, MA 01440**. Parties desiring to address their comments via Zoom are required to pre-register in advance of the hearing by contacting the City Clerk by e-mail. The proposed Amendment is available for viewing on the City Council's webpage – www.gardner-ma.gov/324/City-Council under ***Informational Documents***.

ALAN L. AGNELLI
CITY CLERK

10305

McCarty Engineering, Inc.
Civil Engineers

RECEIVED
2020 JUL 14 PM 1:22
CITY CLERK'S OFFICE
GARDNER, MA

July 13, 2020

Elizabeth J. Kazinskas, Council President
City Council
95 Pleasant Street
Room 121
Gardner, MA 01440

Via: Hand Delivery

Ref.: Parker Place
525 Parker Place
Development Overlay District 1
Gardner, Massachusetts

Dear Council President and Members:

On behalf of Traven Development LLC., McCarty Engineering, Inc. (MEI) is hereby requesting that under section 675-530 of the City of Gardner Zoning Ordinance that the designation of the Development Overlay District 1, that was voted into action on April 18, 2006 and approved by Mayor Gerald E. St. Hilaire on April 19, 2006 continue to apply to the property situated at 525 Parker Street. Associated with this designation we are also hereby requesting that the approved use be amended from three- and four-unit condominiums to multi-unit residential buildings.

525 Parker Street consists of two parcels totaling approximately 16.2 acres±. The properties are depicted on the City of Gardner Assessors Maps as parcels M22-1-6 and M22-6-27 both of which are zoned Industrial 1 and are configured such that they have frontage along Parker Street, Water Street and Parker Pond.

This parcel is the former location of one of Gardner's premier furniture manufactures Gem Industries who specialized in the creation of dormitory furniture. The factory and parking areas were situated to the interior portions of the site while the perimeter was marked with undulating topography and wetland systems. In the early 2000s the factory was demolished and the site has remained vacant.

In harmony with the previously approved project and the City-wide growth and development policies, the applicant proposes to redevelop this parcel and construct three multi-family residential buildings, totaling 123 units.

42 Jungle Road Leominster, MA Ph: 978-534-1318 Fax: 978-840-6907 www.mccartydb.com

The site has been configured such that the main access into the site will be off of Parker Street with an emergency access provided off of Water Street. The parking lots have been located within the interior of the site with the buildings positioned alongside the edge of the parking. This configuration allows for the buildings to buffer the parking areas to the abutting residences. Linked to this properties' revitalization, an extensive landscape plan is proposed which will aid in accenting the building architecture, complimenting the natural elements while also providing buffering and screening. A traffic-assessment memorandum has been submitted with this cover letter detailing the potential impact this project would have on the surrounding area.

This request to amend the Overlay district is the first step in the permitting process. This project will require the filing for a Special Permit and Site Plan Review from the Planning Board and a Notice of Intent with the local Conservation Commission and DEP.

We feel this proposed development is consistent with the intent of the Development Overlay District 1 and we look forward to working with City Council on this matter. If you have any questions of comments, please feel free to contact our office.

Sincerely,

Lar Greene, RLA
P:\MEI\223-Olson\City Council\Docs\Revised Development 1 Overlay Requestletter.docx

10305

TEPP LLC TRANSPORTATION ENGINEERING, PLANNING AND POLICY

MEMORANDUM

93 Stiles Road, Suite 201, Salem, New Hampshire 03079 USA
800 Turnpike Street, Suite 300, North Andover, Massachusetts 01845 USA
Phone (603) 212-9133 and Fax (603) 226-4108
Email tepp@teppllc.com and Web www.teppllc.com

Ref: 1505

Subject: Traffic Assessment
Parker Estates Apartment Development
Gardner, Massachusetts

From: Kim Eric Hazarvartian, Ph.D., P.E., PTOE
Principal

Date: July 7, 2020

COMMONWEALTH OF MASSACHUSETTS
KIM ERIC HAZARVARTIAN
CIVIL
No. 32570
REGISTERED PROFESSIONAL ENGINEER

INTRODUCTION

TEPP LLC to prepare this traffic-assessment memorandum (TAM) regarding the proposed Parker Estates apartment development in the City of Gardner, Massachusetts.

This TAM concludes that:

- relevant sight distances for the Parker Street/proposed driveway intersection provide for greater than the Parker Street speed limit
- the project is anticipated to have no significant impact on area traffic operations
- further traffic-impact analysis is not warranted

PROJECT DESCRIPTION

The existing site:

- has an area of about 706,849 square feet
- was previously developed as an industrial use
- fronts on the north side of Parker Street
- has residential development to the north and east
- has Parker Pond and a railroad to the west

The project:

- provides a total of 123 dwelling units in three three-story buildings
- includes a proposed driveway intersecting the north side of Parker Street about 700 feet (ft) west of Rock Street

- includes a proposed emergency-access driveway intersecting the west side of Water Street about 180 ft south of the end of the street

PARKER STREET

Parker Street:

- functions as arterial street
- connects the City central business district, to the east, and the Town of Templeton, to the west
- is under the jurisdiction of the City and is signed as Massachusetts Route 101

Parker Street near the site:

- is oriented about east-west
- has a tangent horizontal alignment
- includes a minor westbound downgrade
- has a marked travelway with one lane per direction
- has curb and sidewalk on the south side
- has asphaltic-cement-concrete pavement in poor-to-fair condition
- includes utility poles on the west side, some with luminaires
- provides access for residential development
- underpasses a railroad about 300 ft west of the proposed driveway location

WATER STREET

Water Street:

- functions as local street
- is oriented roughly north-south
- extends from Branch Street, to the south, to the end of the street, to the south, a length of about 650 ft
- is under the jurisdiction of the City

Water Street near the site:

- has tangent alignment that includes a turn about 140 ft south of the proposed driveway location
- included minor grades
- has an unmarked travelway providing one lane per direction
- has curb and sidewalk on the east side
- has asphaltic-cement-concrete pavement in fair-to-good condition
- includes utility poles on the north side, some with luminaires
- provides access for residential development

SIGHT DISTANCES

The American Association of State Highway and Transportation Officials (AASHTO) has established authoritative policy for sight distances at unsignalized intersections in terms of:

- stopping sight distance (SSD)
- optional intersection sight distance (ISD)

SSD:

- provides for safety
- enables a driver, on the major road, to perceive and react accordingly to a vehicle entering the major road from a minor road
- is conservative because it encompasses a wide range of brake-reaction times and deceleration rates[1]

Optional ISD:

- is ordinarily greater than SSD and may enhance traffic operations
- is not required for safety[2]

Table 1 shows relevant available sight distances for the Parker Street/proposed driveway intersection. Stopping sight distances are available for greater than the Parker Street speed limit.

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[1] AASHTO, *A Policy on Geometric Design of Highways and Streets*, 6th Edition (Washington, DC, 2011), pages 3-2 to 3-6.

[2] AASHTO, pages 9-28 to 9-29.

Table 1. Sight distances for Parker Street/proposed driveway intersection.

Movement and View	Available Sight Distance (ft)[a]	Speeds (mph)		
		Limit	SSD	ISD
Movement—Left Turns from Proposed Driveway				
View—To and from Parker Street East Leg	700	30	50+	50+
View—To and from Parker Street West Leg	700	30	50+	50+
Movement—Right Turns from Proposed Driveway				
View—To and from Parkier Street East Leg	700	30	50+	50+
Movement—Left Turns from Parker Street				
View—To and from Parker Street East Leg	700	30	50+	50+

[a] From field assessment on June 30, 2020.

For the Water Street/proposed emergency-access driveway intersection, sight distances extend from the horizontal turn, to the south, and the end of street, to the north.

TRIP GENERATION

The Institute of Transportation Engineers (ITE) publishes trip-generation information in the authoritative *Trip Generation Manual*.[3] This information is based on empirical data for a variety of land uses including multifamily housing (mid-rise), land use 221, based on dwelling units[4]

Table 2 shows calculated weekday vehicle-trips for the proposed 123-dwelling-unit development as:

Table 2. Calculated weekday vehicle-trip generation.

Time Period and Direction	Vehicle-Trips[a]		
	Total	In	Out
Daily	669	334	335
AM-Street-Peak Hour	42	11	31
PM-Street-Peak Hour	54	33	21

[a] Based on ITE, multifamily housing (mid-rise), land use 221, 123 dwelling units.

[3] ITE, *Trip Generation Manual*, 10th Edition (Washington DC, September 2017).

[4] ITE, *Trip Generation Manual*, Volume 2, Data, Residential (Land Uses 200-299), pages 71 to 149.

- daily, 669 (total of in and out)
- AM-street-peak hour, 42 (11 in and 31 out)
- PM-street-peak hour, 54 (33 in and 21 out)

POTENTIAL TRAFFIC IMPACTS

ITE suggests that land developments generating at least 100 peak-hour vehicle trips, in the busier direction, are candidates for consideration of traffic impact analysis.[5] Tabulated peak-hour trip generation due to the proposed redevelopment is well below this national ITE threshold.

The proposed redevelopment is calculated to generate 42 to 54 vehicle-trips during tabulated peak hours, split:

- in versus out of the site
- along Parker Street to and from the east
- along Parker Street to and from the west

This represents averages of about:

- 10 to 14 vehicles per hour per direction on Parker Street east or west of the site
- 1 vehicle per 4 to 6 minutes per direction on Parker Street east or west of the site

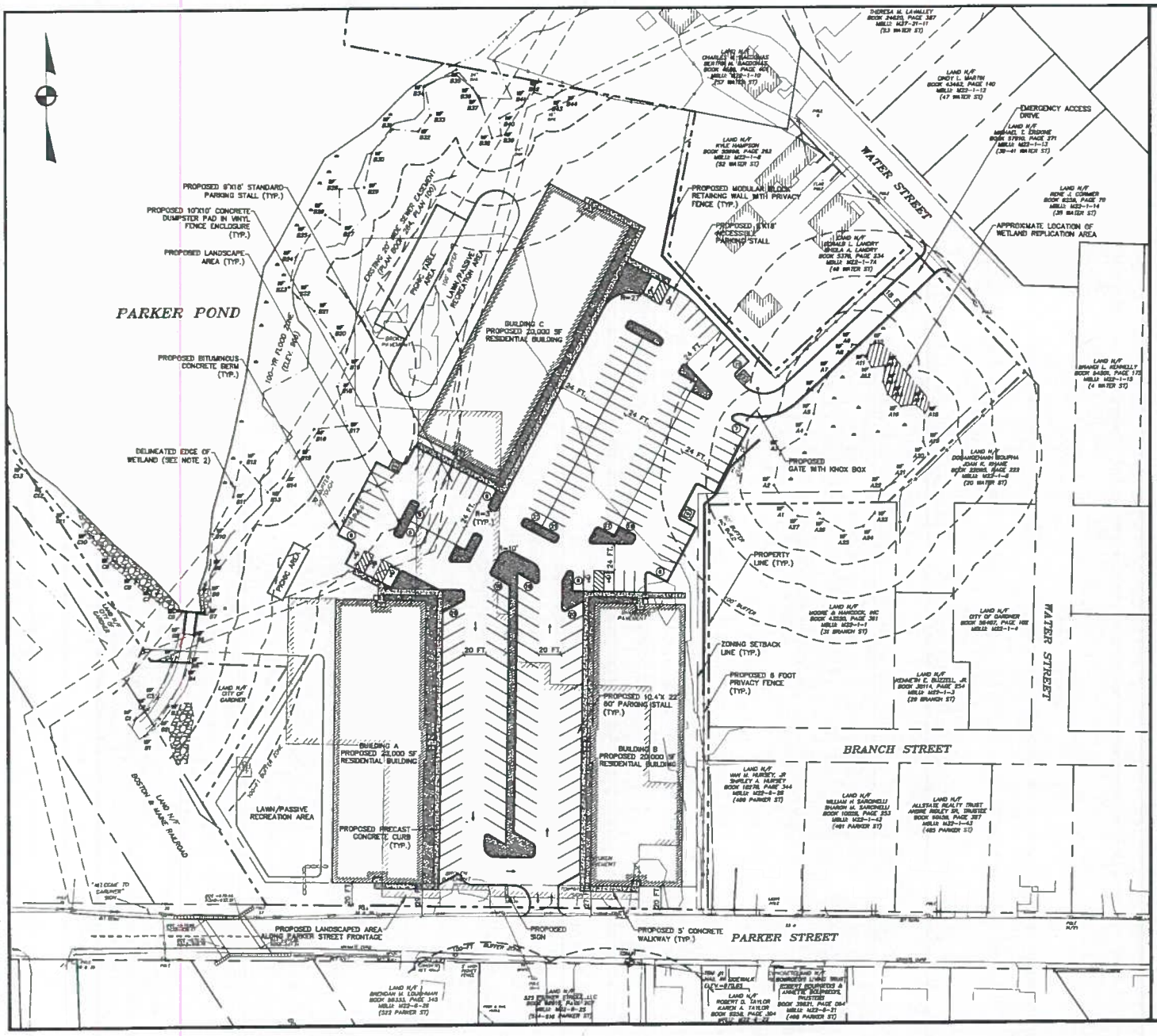
On this basis, the proposed development is anticipated to have no significant impact on area traffic operations.

CONCLUSION

This TAM concludes that:

- relevant sight distances for the Parker Street/proposed driveway intersection provide for greater than the Parker Street speed limit
- the project is anticipated to have no significant impact on area traffic operations
- further traffic-impact analysis is not warranted

[5] ITE, *Manual of Transportation Engineering Studies* (Prentice Hall: Englewood Cliffs, New Jersey, 2000), page 144.



LOCUS PLAN

1"=1,000 FT.±

NOTES:

1. EXISTING CONDITIONS INFORMATION SHOWN WAS RECEIVED ELECTRONICALLY FROM HANNIGAN ENGINEERING, INC. DATED NOVEMBER 14, 2019.
2. THE WETLANDS WERE DELINEATED BY ECOTEC, INC. ON OCTOBER 30, 2019. FLAGS WERE FIELD LOCATED BY HANNIGAN ENGINEERING, INC. IN NOVEMBER 2019.
3. A PORTION OF THIS PARCEL IS LOCATED WITHIN THE LIMITS OF THE 100-YEAR FLOODPLAIN BASED ON A REVIEW OF THE MASS GIS ONLINE DATA VIEWER. NO WORK IS PROPOSED WITHIN THE FLOODPLAIN.

ZONING SUMMARY: EAST PARCEL

DISTRICT: INDUSTRIAL 1/DEVELOPMENT OVERLAY DISTRICT 1*

DIMENSIONAL REQUIREMENTS:

	REQUIRED:	PROVIDED:	CONFORMANCE:
MIN. LOT AREA:	5,000 S.F.	708,848 S.F.	Y
MAX. LOT COVERAGE:	85%	21.6%	Y**
FRONTAGE:	NONE	380.5 FT.	Y
MIN. SIDE YARD:	10 FT.	21 FT.	Y
MIN. FRONT YARD:	10 FT.	20 FT	Y
MIN. REAR YARD:	20 FT.	581 FT.	Y
MAX. HEIGHT:	60 FT.	52 FT.	Y
MAX. STORIES:	5	3	Y
OPEN SPACE:	15%	21.1%	Y***

*PER SECTION 5300(2) OF THE ZONING BYLAW THIS PROJECT WILL REQUIRE A SPECIAL PERMIT BY THE CITY OF GARDNER PLANNING BOARD.

**MAX LOT COVERAGE WITHIN THE USABLE AREA IS 51.7%.

***OPEN SPACE WITHIN THE USABLE AREA IS 50.4%. NOTE, SURFACE AREA OF PARKER POND IS NOT INCLUDED IN THIS CALCULATION.

PARKING SUMMARY:

REQUIREMENTS:

RESIDENTIAL 2 BEDROOM: 2 SPACE/UNIT

RESIDENTIAL 1 BEDROOM: 1 SPACE/UNIT

PROPOSED:

RESIDENTIAL: 90 2 BEDROOM UNITS

RESIDENTIAL: 33 1 BEDROOM UNITS

PARKING REQUIRED:

RESIDENTIAL: 90 UNITS X 2 SP/UNIT= 180 SPACES

RESIDENTIAL: 33 UNITS X 1 SP/UNIT= 33 SPACES

TOTAL SPACES REQUIRED: 213 SPACES

PARKING PROVIDED: 213 SPACES

TOTAL ACCESSIBLE REQUIRED: 7 SPACES

ACCESSIBLE PARKING REQUIRED: 7 SPACES

NOT FOR CONSTRUCTION

THESE PLANS WERE PREPARED FOR THE PURPOSE OF OBTAINING STATE AND LOCAL PERMITS AND ARE NOT INTENDED TO BE USED AS CONSTRUCTION DOCUMENTS.

No.	Date	Revision

7/13/20

Drawn By: JJ | Designed By: PJM | Checked By:

McCarty Engineering, Inc.
Civil Engineers
42 Jungle Road, Leominster, MA 01453
phone:(978) 534-1318 fax: (978) 840-0907
www.mccartyeng.com

Project Name

Parker Estates
Parker Street
Gardner, MA

Sheet Title

Proposed Development Plan

Job No: 223

File Name: 223P-CPB02

Date: July 13, 2020

Scale: 1"=40'

Sheet No. 1

10365

10383

CITY OF GARDNER

DEPARTMENT OF COMMUNITY DEVELOPMENT AND PLANNING
Manca Annex, 115 Pleasant Street, Room 201 Gardner, Massachusetts 01440
Phone: (978) 630-4014 ◊ Fax: (978) 632-1905 ◊ CDBG (978) 632-3800

RECEIVED
2020 AUG 25 AM 11:08
CITY CLERK'S OFFICE
GARDNER, MA

August 24, 2020

President Elizabeth J. Kazinskas
C/o Alan Agnelli, City Clerk
City Hall
95 Pleasant Street
Gardner, MA 01440

Subject: Amendment to Development Overlay District 1 ~ 525 Parker Street

Dear President Kazinskas:

At the Planning Board meeting held on Monday, August 17, 2020, the Planning Board voted 4-1 to recommend approval of the amendment to Development Overlay District 1 referenced above. The parcel is zoned industrial, has long been vacant, and is surrounded by residential uses, therefore, the amendment will prove beneficial for future development of area by encouraging the change in use.

The Planning Board looks forward to joining the City Council at a joint public hearing scheduled at its earliest convenience. Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

Trevor M. Beauregard
Director, Community Development and Planning

10305

CITY OF GARDNER
MASSACHUSETTS
CITY CLERK

95 PLEASANT STREET, ROOM 121
GARDNER, MA 01440-2630
TEL 978-630-4058

ALAN L. AGNELLI
City Clerk
Registrar of Voters

JOHN A. OLIVARI
Assistant City Clerk
FAITH A. GLOVER
Assistant City Clerk

August 10, 2020

Mark M. Schafron, Chairman
Gardner Planning Board
City Hall Annex, Room 201
115 Pleasant Street
Gardner, MA 01440

Re: Renewed Petition by Traven Development LLC to renew the designation of two (2) parcels at 525 Parker Street as a Development Overlay District 1

Dear Mr. Schafron:

Pursuant to G.L. Chapter 40A, § 5, the City Council voted to transmit to the Planning Board for review and report the enclosed renewed Petition by Traven Development LLC to renew the designation of two (2) parcels at 525 Parker Street as a Development Overlay District 1.

Should you have any questions, please feel free to contact me.

Very truly yours,

Alan L. Agnelli

ALAN L. AGNELLI
City Clerk

Enclosures (2)

10326

AN ORDER APPROPRIATING A SUM OF MONEY FROM FREE CASH TO POOL FILTRATION SYSTEM ACCOUNT.

ORDERED:

That there be and is hereby appropriated the sum of Seventy-Five Thousand Dollars and No Cents ($75,000.00) from Free Cash to the Pool Filtration System Account:

10326

City of Gardner, *Executive Department*

Michael J. Nicholson, Mayor

RECEIVED

2020 AUG 27 PM 4:26

CITY CLERK'S OFFICE
GARDNER, MA

August 27, 2020

The Hon. Elizabeth Kazinskas, President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant St
Gardner, MA 01440

RE: Free Cash to Pool Filtration System Account

Dear President Kazinskas and Councilors,

Attached, please find a request for appropriation from Free Cash for $75,000.00.

This appropriation is being requested in order to replace the current filtration system at the Greenwood outdoor pool. The current filter is over 30 years old and is in rough condition.

The objective is to have it repaired before the cold weather sets in, with the hopes of having it ready for next year's seasonal operation.

Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner

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

10326

City of Gardner
Human Resources Department
95 Pleasant Street Rm. 14
Gardner, MA 01440
(978) 630-4001 • (978) 630-4025

Debra A. Pond, Director of Human Resources

August 27, 2020

Michael Nicholson, Mayor
City of Gardner
95 Pleasant Street
Gardner, MA 01440

SUBJECT: Greenwood Pool Filtration System

Dear Mayor Nicholson:

I am respectfully requesting an appropriation in the amount of $75,000.00 for a new filtration system for the Greenwood outdoor pool facility. The current filtration system is over thirty (30) years old and springing leaks. We will make it through this season, but it will not survive another season. The proposal is to install the new system after the pool closes for the season and before the snow falls so that we will have a turnkey operation in the early summer.

We have a proposal for a Whitten 1U-2C-90 Two-Cell Pressure Sand Filter in the amount of $42,500.00. This is the cost of the filtration system delivered to the site. It does not include:

- Offloading or placement in the filter building;
- Installation by a mechanical contractor/commercial pool contractor; or
- Engineering consultation for preparation of system changes for presentation to the Board of Health.

The estimated cost for these items are included in the appropriation request. Thank you for your consideration. If you have any questions, please contact me.

Sincerely,

Debra A. Pond
Director of Human Resources

Enclosure

The City of Gardner provides equal opportunity in employment to all persons. No person shall be denied equal access because of race, creed, color, religion, national origin, sex, sexual orientation, gender identity, age, or physical/mental disability.

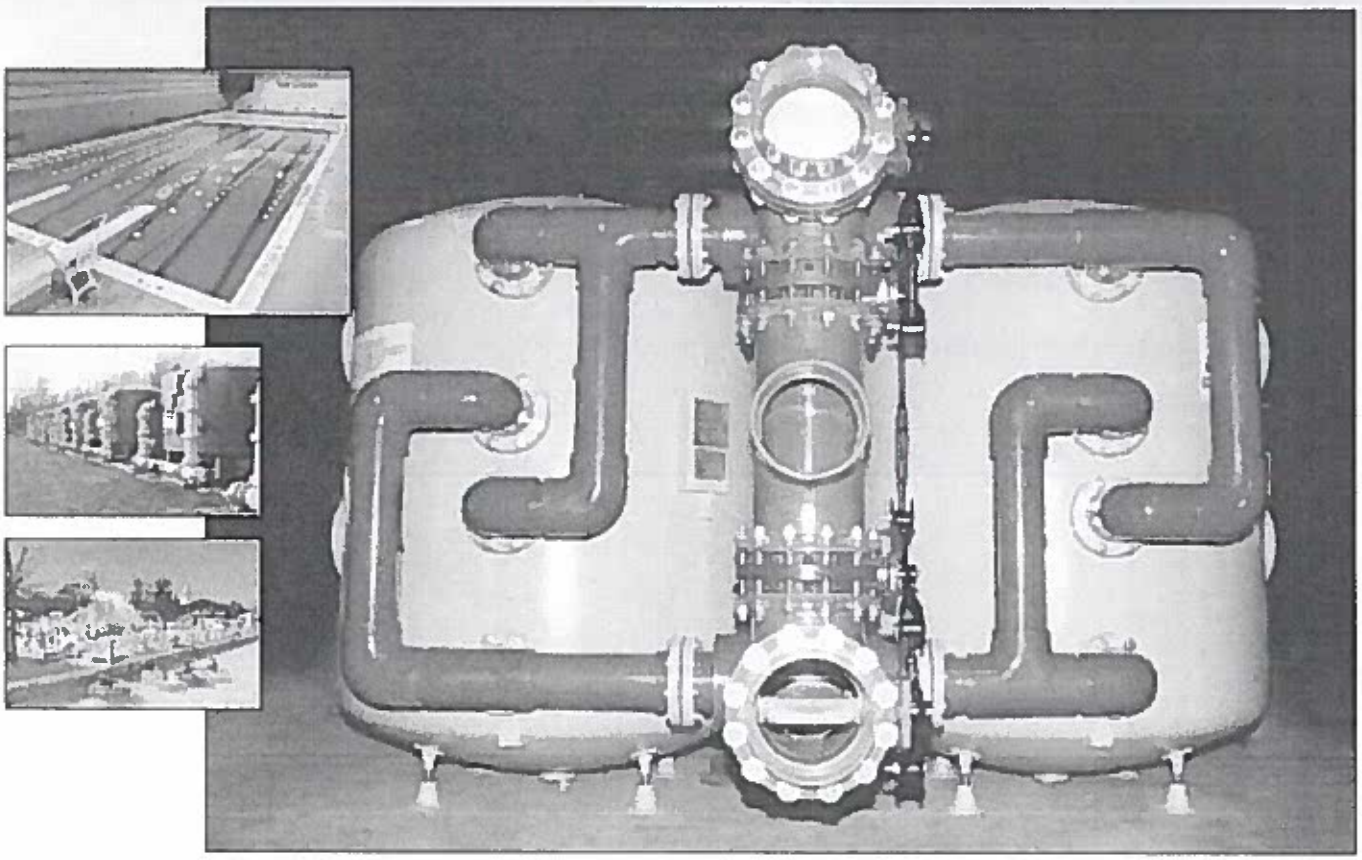
10326

WHITTEN

ADG EQUIPMENT SYSTEMS

An Aquatic Development Group Company
Quality Pool Products for Over 30 Years

NSF International



Pressure Multi-Cell Filtration System

Whitten pressure sand filters are NSF listed for flows up to 20 GPM per sq.ft. of filter area. Whitten Multi-Cells offer unique space savings which is achieved by stacking multiple filter cells within a single tank.

- Proven
- Reliable
- Simple
- Affordable

High quality tank materials for all models are selected based on specific application. Typically, A-36 or SA-516 carbon steel comes in thicknesses of 3/16" through 1/2" or T-304L and T-316L stainless steel also in thicknesses up to 1/2". Standard tanks are sized in six-inch increments from 36" through 120" diameter. Multiple tanks can be arranged in series to accommodate high volume systems.

Whitten filter tanks are lined with Unisol 2000 PVC baked coatings to provide a 15 year warranty. Optional linings include epoxy rubber membrane Unisol 2000 R or Hypalon for ozone applications. All linings are NSF approved for installation in Whitten Multi-Cell filters.

10326

Over 1500 Installations World-Wide

(notable installations)

Bates College	**Lewistown, Maine**
Dorney Park & Wild Water Kingdom	**Allentown, Pennsylvania**
Fairland Aquatic Center	**Laural, Maryland**
Georgetown University	**Washington, DC**
Hewlett High School	**Hewlett, New York**
Ithaca High School	**Ithaca, New York**
Lexington YMCA	**Manhattan, New York**
Six Flags Great Adventure	**Jackson, New Jersey**
Southern Illinois University	**Carbondale, Illinois**
University of Massachusetts	**Boston, Massachusetts**
Williams College	**Williamstown, Massachusetts**

AQUATIC DEVELOPMENT GROUP, INC.

One Aquatic Center
Cohoes, NY 12047
Phone 518.783.0038
Fax 518.783.0474
www.aquaticgroup.com

For a complete catalog of ADG Equipment Systems call 800-458-9283.

10326

Pressure Filtra

Why Whitten Pressure Filters?

- NSF International listed
- Multi-Cell filters reduce floor space requirements
- Filters can be back washed one cell at a time or one tank at a time to avoid overflowing sewer capacity (Rate=15gmp/sf)
- Filtration controls are available in manual, semi-automatic and fully automatic
- High quality tank materials for all models are selected based on specific application
- Affordable upfront investment with low operating costs
- Standard interior tank coating (unisol 2000) baked PVC has over 20 years of proven reliability
- 15-Year limited warranty
- Over 30 years of proven service

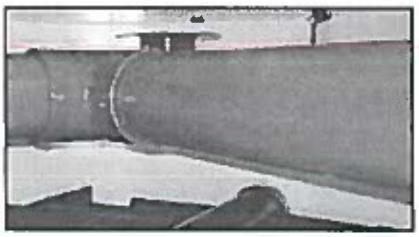
SINGLE TANK								
MODEL NUMBER	FILTER AREA	FLOW RATE G.P.M./SQ. FT					PIPE CONNECTION (FOR 3 TO 15 GPM)	
	SQ. FT	3 G.P.M. FILTER RATE	5 G.P.M. FILTER RATE	7.5 G.P.M. FILTER RATE	15 G.P.M. FILTER RATE	20 G.P.M. FILTER RATE	INFLUENT/ EFFLUENT	BACK WASH
1U-1C-36	7.07	21.21	35.35	53.03	106.05	141.40	3"	3"
1U-1C-42	9.62	28.86	48.10	72.15	144.30	192.40	3"	3"
1U-1C-48	12.57	37.71	62.85	94.28	188.55	251.40	3"	3"
1U-1C-54	15.90	47.70	79.50	119.25	238.50	318.00	4"	4"
1U-1C-60	19.63	58.89	98.15	147.23	294.45	392.60	4"	4"
1U-1C-66	23.76	71.28	118.80	178.20	356.40	475.20	4"	4"
1U-1C-72	28.27	84.81	141.35	212.03	424.05	565.40	4"	4"
1U-1C-78	33.18	99.54	165.90	248.85	497.70	663.60	6"	6"
1U-1C-84	38.48	115.44	192.40	288.60	577.20	769.60	6"	6"
1U-1C-90	44.18	132.54	220.90	331.35	662.70	883.60	6"	6"
1U-1C-96	50.27	150.81	251.35	377.03	754.04	1005.38	6"	6"
1U-1C-102	56.75	170.25	283.75	425.63	851.25	1135.00	8"	8"
1U-1C-108	63.62	190.86	318.10	477.15	954.30	1272.40	8"	8"
1U-1C-114	70.88	212.64	354.40	531.60	1063.20	1417.60	8"	8"
1U-1C-120	78.54	235.62	392.70	589.05	1178.10	1570.80	8"	8"
1U-2C-36	14.04	42.12	70.20	105.30	210.60	280.00	3"	3"
1U-2C-42	19.24	57.72	96.20	144.30	288.60	384.80	3"	4"
1U-2C-48	25.14	75.42	125.70	188.55	377.10	502.80	3"	4"
1U-2C-54	31.80	95.40	159.00	238.50	477.00	636.00	4"	6"
1U-2C-60	39.28	117.75	196.40	294.60	589.20	785.60	4"	6"
1U-2C-66	47.52	142.56	237.60	356.40	712.80	950.40	4"	6"
1U-2C-72	56.54	169.62	282.70	424.05	848.10	1130.80	6"	6"
1U-2C-78	66.36	199.08	331.80	497.70	995.40	1327.20	6"	8"
1U-2C-84	76.96	230.88	384.80	577.20	1154.40	1539.20	6"	8"
1U-2C-90	88.36	265.08	441.80	662.70	1325.40	1767.20	6"	8"
1U-2C-96	100.54	301.62	502.70	754.05	1508.10	2010.80	6"	8"
1U-2C-102	113.50	340.50	567.50	851.25	1702.50	2270.00	6"	10"
1U-2C-108	127.24	381.72	636.20	954.30	1908.60	2544.80	8"	10"
1U-2C-114	144.76	434.28	708.80	1063.20	2126.40	2835.20	8"	10"
1U-2C-120	157.08	471.24	785.40	1178.10	2356.20	3141.60	8"	10"
1U-3C-36	21.21	63.90	106.05	159.08	318.15	424.20	3"	4"
1U-3C-42	28.88	86.58	144.30	216.45	432.90	577.20	3"	6"
1U-3C-48	37.71	113.13	188.55	282.83	565.65	754.20	3"	6"
1U-3C-54	47.70	143.10	238.50	357.75	715.50	954.00	4"	6"
1U-3C-60	58.92	176.76	294.60	441.90	883.80	1178.40	4"	6"
1U-3C-66	71.28	213.84	356.40	534.60	1069.20	1425.60	4"	8"
1U-3C-72	84.81	263.52	424.05	636.08	1272.15	1696.20	6"	8"
1U-3C-78	99.54	298.92	497.70	746.55	1493.10	1990.80	6"	8"
1U-3C-84	115.44	346.32	577.20	865.80	1731.60	2308.80	6"	10"
1U-3C-90	132.54	397.62	662.70	994.05	1988.10	2650.80	6"	10"
1U-3C-96	150.81	452.43	754.05	1131.08	2262.16	3016.20	6"	10"
1U-3C-102	170.25	510.75	851.25	1276.88	2553.75	3405.00	6"	12"
1U-3C-108	190.86	572.64	954.40	1431.45	2862.90	3817.20	8"	12"
1U-3C-114	212.64	637.92	1063.20	1594.80	3189.60	4252.80	8"	12"
1U-3C-120	235.62	706.86	1178.10	1767.15	3534.30	4712.40	8"	12"

Laterals

The laterals in the Whitten Pressure Filtration System are attached to the interior perimeter of the tank by end-nipples which ensure stabilization during periods of backwash and high volume flow.

Over Drain

Whitten internal over drain distribution system is carefully designed to provide the most uniform and efficient flows through the filter sand-media bed. Precise distribution of water flow ensures longer filter runs and maximum dirt holding capacity of the filter sand-media bed.



10326

ation Systems

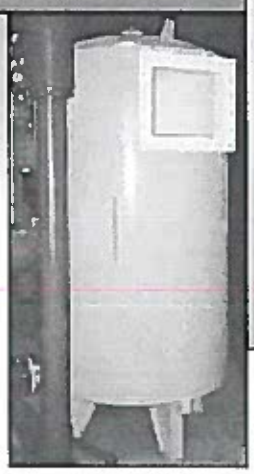
DUAL TANK								
MODEL NUMBER	FILTER AREA	FLOW RATE G.P.M./SQ. FT.					PIPE CONNECTION (FOR 3 TO 15 GPM)	
	SQ. FT	3 G.P.M. FILTER RATE	5 G.P.M. FILTER RATE	7.5 G.P.M. FILTER RATE	15 G.P.M. FILTER RATE	20 G.P.M. FILTER RATE	INFLUENT/ EFFLUENT	BACK-WASH
2U-2C-36	14.04	42.12	70.20	105.30	210.60	280.00	3"	3"
2U-2C-42	19.24	57.72	96.20	144.30	288.60	384.80	3"	4"
2U-2C-48	25.14	75.42	125.70	188.55	377.10	502.80	3"	4"
2U-2C-54	31.80	95.40	159.00	238.50	477.00	636.00	4"	6"
2U-2C-60	39.28	117.75	196.40	294.60	589.20	785.60	4"	6"
2U-2C-66	47.52	142.56	237.60	356.40	712.80	950.40	4"	6"
2U-2C-72	56.54	169.62	282.70	424.05	848.10	1130.80	6"	6"
2U-2C-78	66.36	199.08	331.80	497.70	995.40	1327.20	6"	8"
2U-2C-84	76.96	230.88	384.80	577.20	1154.40	1539.20	6"	8"
2U-2C-90	88.36	265.08	441.80	662.70	1325.40	1767.20	6"	8"
2U-2C-96	100.54	301.62	502.70	754.05	1508.10	2010.80	6"	8"
2U-2C-102	113.50	340.50	567.50	851.25	1702.50	2270.00	6"	10"
2U-2C-108	127.24	381.72	636.20	954.30	1908.60	2544.80	8"	10"
2U-2C-114	144.76	434.28	708.80	1063.20	2126.40	2835.20	8"	10"
2U-2C-120	157.08	471.24	785.40	1178.10	2356.20	3141.60	8"	10"
2U-4C-36	28.08	84.24	144.40	210.60	421.20	560.00	3"	6"
2U-4C-42	38.48	115.44	192.40	288.60	577.20	769.60	3"	6"
2U-4C-48	50.28	150.84	251.60	377.10	754.20	1005.60	3"	6"
2U-4C-54	63.60	190.80	318.00	477.00	954.00	1272.00	4"	8"
2U-4C-60	78.56	235.50	392.80	589.20	1178.40	1571.20	4"	8"
2U-4C-66	95.04	285.12	475.20	712.80	1425.60	1900.80	4"	8"
2U-4C-72	113.08	339.24	565.40	848.10	1696.20	2261.60	6"	10"
2U-4C-78	132.72	398.16	663.60	995.40	1990.80	2654.40	6"	10"
2U-4C-84	153.92	461.76	769.60	1154.40	2308.80	3078.40	6"	10"
2U-4C-90	176.72	512.16	883.60	1325.40	2650.80	3534.40	6"	12"
2U-4C-96	201.08	603.24	1005.40	1508.01	3016.20	4021.60	6"	12"
2U-4C-102	227.00	681.00	1135.00	1702.50	3405.00	4540.00	6"	12"
2U-4C-108	254.48	763.44	1272.40	1908.60	3817.20	5089.60	8"	14"
2U-4C-114	289.52	868.56	1417.60	2126.40	4252.80	5852.74	8"	14"
2U-4C-120	314.16	942.48	1570.80	2356.20	4712.40	6283.20	8"	14"
2U-6C-36	42.42	127.80	212.10	318.15	636.30	848.40	3"	6"
2U-6C-42	57.72	173.16	288.60	432.90	865.80	1154.40	3"	6"
2U-6C-48	75.42	226.26	377.10	565.68	1131.32	1514.44	3"	8"
2U-6C-54	95.40	286.20	477.00	715.50	1431.00	1908.00	4"	8"
2U-6C-60	117.84	353.52	589.20	883.80	1767.60	2356.80	4"	8"
2U-6C-66	142.56	427.68	712.80	1069.20	2138.40	2851.20	4"	10"
2U-6C-72	169.62	527.04	848.10	1272.16	2544.30	3392.40	6"	10"
2U-6C-78	199.08	597.84	989.40	1493.10	2986.20	3981.60	6"	12"
2U-6C-84	230.88	692.64	1154.40	1731.60	3463.20	4617.60	6"	12"
2U-6C-90	265.08	795.24	1325.40	1988.10	3976.20	5301.60	6"	14"
2U-6C-96	301.62	904.86	1508.10	2262.16	4524.32	6032.40	6"	14"
2U-6C-102	340.50	1021.50	1702.50	2553.75	5107.50	6810.00	6"	16"
2U-6C-108	381.72	1145.28	1908.80	2862.90	5725.80	7634.40	8"	16"
2U-6C-114	425.28	1275.84	2126.40	3189.60	6379.20	8505.60	8"	16"
2U-6C-120	471.24	1413.72	2356.20	3534.30	7068.60	9424.80	8"	18"

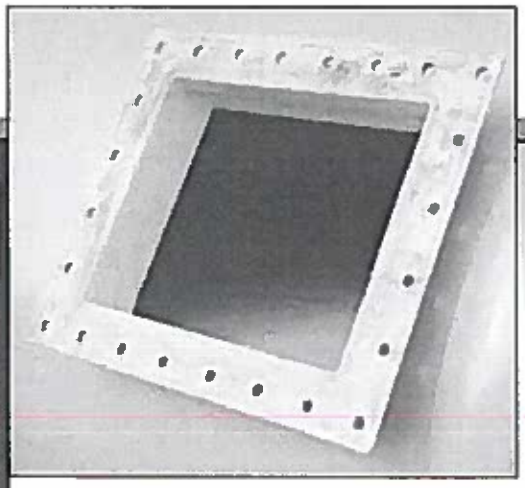
Face Piping

Whitten face piping incorporates user friendly single lever linkage. This allows operator simplicity by moving one lever in order to activate valves for backwashing. Whitten's standard valves are nylon coated with undercut wafer for early valve-seating and efficiency.

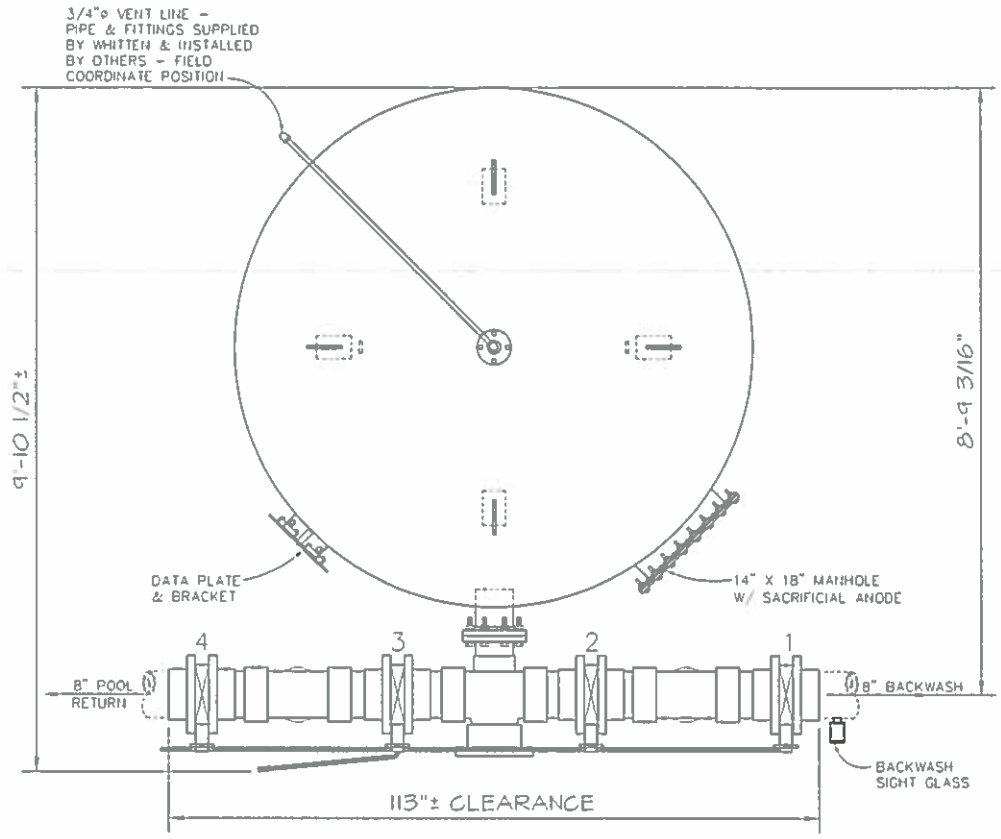
Access Hatch

An oversized access hatch is standard on all Whitten Pressure filters. With its rectangular shape and a size of 18" x 14", it allows for easy operator inspection of internal components or media. It features an industrial grade heavy-duty gasket that is designed to be reused after each inspection. The Whitten gasket eliminates the inconvenience and cost of reordering and replacing gaskets each time you inspect the filter.

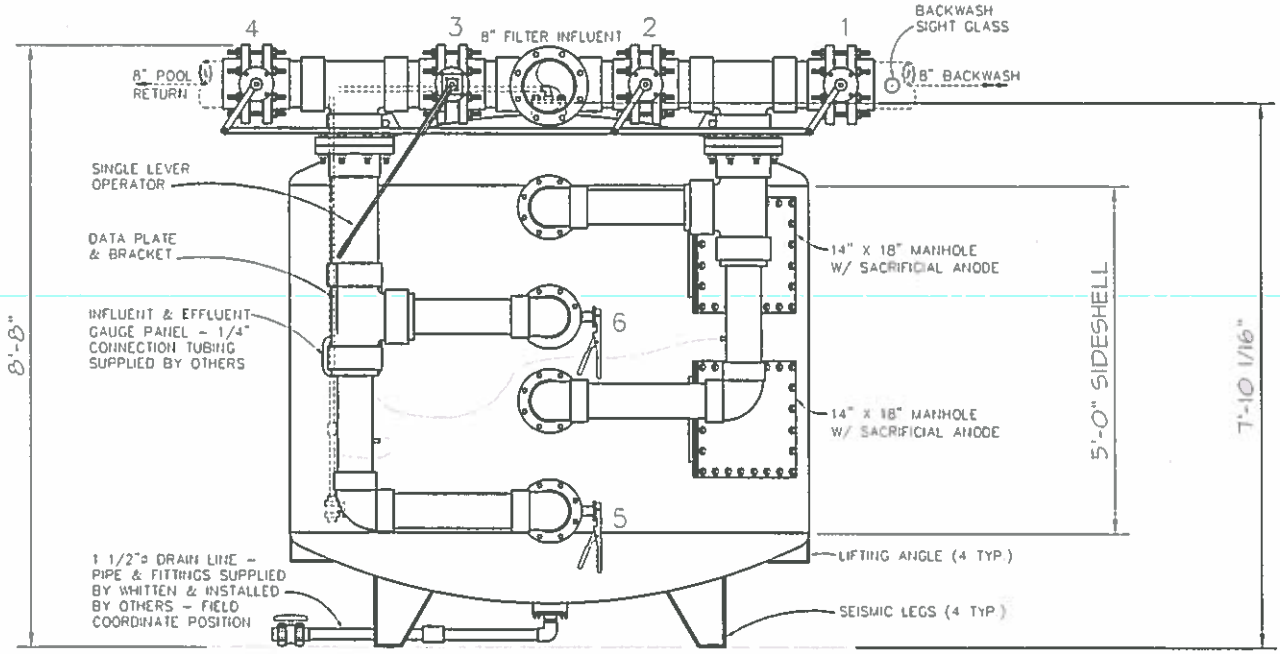




10326



PLAN VIEW



ELEVATION

1U-2C-90 MULTI-CELL FILTER

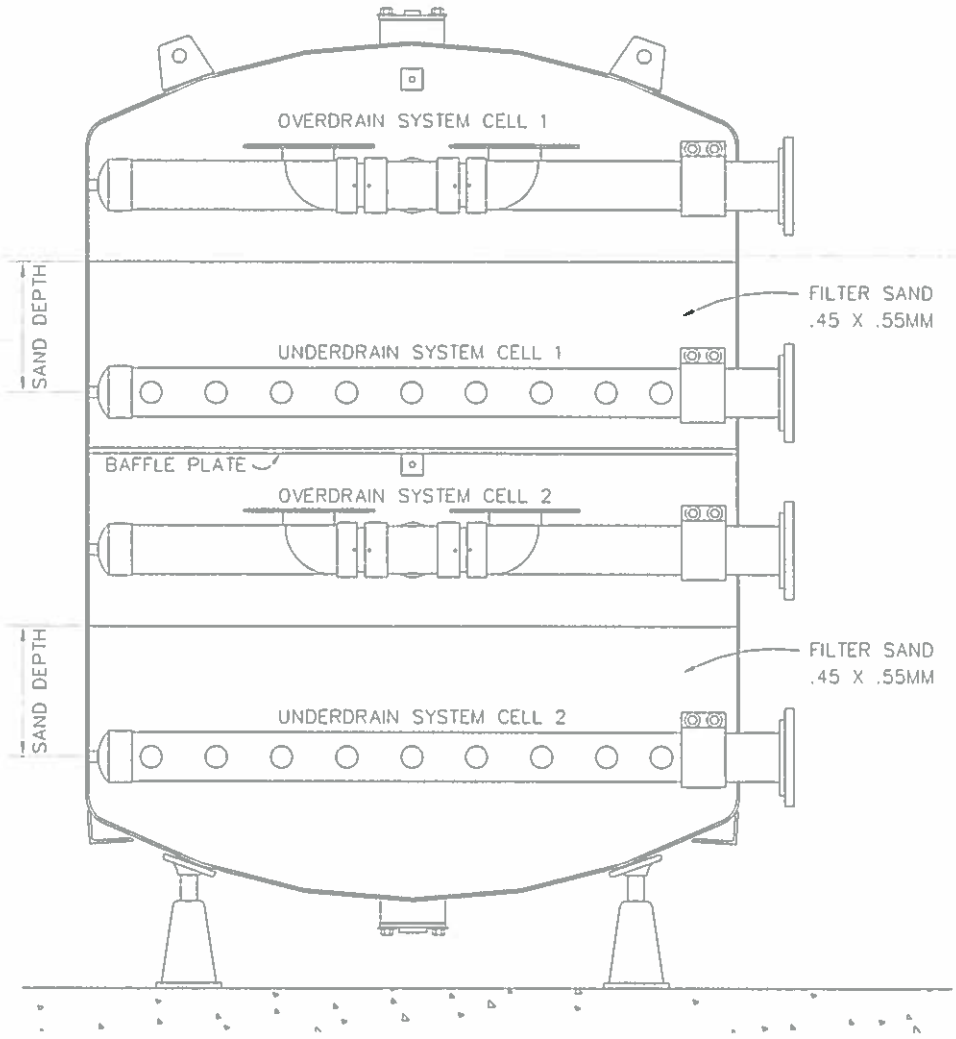
DATE: -
JOB NO.: -
FILE NO: -

WHITTEN PRODUCTS
DIVISION of HYDROTECH SYSTEMS Ltd.

P.O.Box 648
One Aquatic Center
Cohoes, NY 12047
Tel.518-783-0038
Fax 518-783-0474

AQUATIC DEVELOPMENT GROUP

/0326



FILTER SIZE	# of 100 lb. Bags .44mm X .55mm	FILTER SIZE	# of 100 lb. Bags .44mm X .55mm
1U-2C-36	20	1U-2C-84	110
1U-2C-42	36	1U-2C-90	146
1U-2C-48	42	1U-2C-96	160
1U-2C-54	45	1U-2C-102	210
1U-2C-60	65	1U-2C-108	235
1U-2C-66	84	1U-2C-114	255
1U-2C-72	92	1U-2C-120	276
1U-2C-78	110		

2 CELL (1U-2C) MEDIA DEPTH CHART

DATE: 7/17/07

FILE NO:

WHITTEN PRODUCTS
DIVISION of HYDROTECH SYSTEMS Ltd.

P.O.Box 648
One Aquatic Center
Cohoes, NY 12047
Tel.518-783-0038
Fax 518-783-0474

AQUATIC DEVELOPMENT GROUP

10329-10330

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

September 3, 2020

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

Re: City of Gardner and Heywood Memorial Hospital

Dear Councilors:

Enclosed please find:

- Eighth Amendment to Lease
- Easement Relocation Agreement (with exhibits).

At the request of Mayor Hawke, in 2019 I prepared a complete history of the 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, I advised the Mayor that, in my opinion, the Hospital is currently occupying land which is not included in the Lease. The situation is complicated by two facts. The Hospital's solar parking facility was constructed on a portion of the City's property not subject to the Lease, and it also stands on part of an easement the City previously granted to Massachusetts Electric Company (now National Grid).

The situation may be remedied by a series of agreements by and between the parties. First, the City and the Hospital may amend the Lease as set forth in the enclosed Eighth Amendment to Lease. Second, National Grid may relocate its easement. In fact, National Grid has agreed to relocate its easement and developed the enclosed package of documents to reflect this relocation.

Since the Easement Relocation Agreement is between the City and the utility, and is being done as an accommodation to resolve the matter with the least amount of expense to all concerned, it requires the City to pay the utility's relocation costs. These are estimated to be $1,650 and are capped at $2,500. The Hospital has agreed to reimburse the City for this expense. On behalf of the City, I reviewed and approve the enclosed Eight Amendment to Lease and the Easement Relocation Agreement.

At this time, in my opinion, the Council may vote to further amend the 1968 Lease between the City and the Hospital as set forth in the enclosed Eighth Amendment to Lease, and vote to grant National Grid the easement as set forth in the enclosed Easement Relocation Agreement. Following the endorsement and recording of these documents, National Grid will endorse and record a release of the earlier easement, upon which the Hospital's parking structure stands.

For further background, you will find a complete history of the Lease arrangement between the City and the Hospital commencing in 1968 in my letter of September 17, 2019, addressed to Mayor Hawke. A short summary of that history may be found in my letter of January 28, 2020 addressed to the Finance Committee.

I want to thank the City Clerk, the Planning Department and the City's Engineer for the excellent assistance and cooperation lent to me while I worked on this project. As always, it is a pleasure and a privilege to serve the City. If you have any further questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,

C. Deborah Phillips/ST

C. Deborah Phillips

Enclosures

10329

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 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: Michael J. Nicholson, 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 _____, 2020

Then personally appeared the above named, Michael J. Nicholson, 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 _____, 2020

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 _____, 2020

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:

10329

Alan Agnelli

From: Mayor
Sent: Wednesday, September 2, 2020 2:31 PM
To: Alan Agnelli
Cc: Debbie Phillips
Subject: FW: Follow-up on April 1968 lease amendment

Councilors,

Attached, please find an email from President Brown of Heywood Hospital confirming that Heywood would reimburse the City up to $2,600.00 for all costs associated with the items on the Council Agenda.

Best,

Mike Nicholson

Michael J Nicholson
Mayor, City of Gardner
95 Pleasant Street, Room 125
Gardner, MA 01440
(O) 978-630-1490

From: Brown, Win <win.brown@heywood.org>
Sent: Wednesday, September 2, 2020 2:20 PM
To: Rachel Stephano (Mayor's Office) <Mayor_Secretary@gardner-ma.gov>
Cc: Michael Abbatiello <mike.abbatiello@heywood.org>
Subject: Follow-up on April 1968 lease amendment

CAUTION: This email originated from a sender outside of the City of Gardner mail system. Do not click on links or open attachments unless you verify the sender and know the content is safe.
Mike, this email confirms our conversation today that Heywood Hospital will cover up to $2,600.00 in any fees incurred related to the April 1968 lease between the hospital and the City of Gardner and the relocation of the Easement.

Best regards,

Win Brwon

--
Winfield S. Brown MHA, MSB, FACHE
President & Chief Executive Officer

Office: 978-630-6225
Fax: 978-630-6596

10329-10330

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

September 3, 2020

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

Re: City of Gardner and Heywood Memorial Hospital

Dear Councilors:

Enclosed please find:

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The situation may be remedied by a series of agreements by and between the parties. First, the City and the Hospital may amend the Lease as set forth in the enclosed Eighth Amendment to Lease. Second, National Grid may relocate its easement. In fact, National Grid has agreed to relocate its easement and developed the enclosed package of documents to reflect this relocation.

Since the Easement Relocation Agreement is between the City and the utility, and is being done as an accommodation to resolve the matter with the least amount of expense to all concerned, it requires the City to pay the utility's relocation costs. These are estimated to be $1,650 and are capped at $2,500. The Hospital has agreed to reimburse the City for this expense. On behalf of the City, I reviewed and approve the enclosed Eight Amendment to Lease and the Easement Relocation Agreement.

At this time, in my opinion, the Council may vote to further amend the 1968 Lease between the City and the Hospital as set forth in the enclosed Eighth Amendment to Lease, and vote to grant National Grid the easement as set forth in the enclosed Easement Relocation Agreement. Following the endorsement and recording of these documents, National Grid will endorse and record a release of the earlier easement, upon which the Hospital's parking structure stands.

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I want to thank the City Clerk, the Planning Department and the City's Engineer for the excellent assistance and cooperation lent to me while I worked on this project. As always, it is a pleasure and a privilege to serve the City. If you have any further questions or concerns regarding this matter, please do not hesitate to contact me.

Very truly yours,

C. Deborah Phillips/ST

C. Deborah Phillips

Enclosures

LIST OF EXHIBITS

EXHIBIT A – New Easement

EXHIBIT B – Easement Relocation Plan

EXHIBIT C – Partial Release of Easement

EXHIBIT A

[See Attached]

Upon Recording, please return to:
Megan Tipper, Esq.
National Grid
40 Sylvan Road
Waltham, MA 02451

Property address: Off Green Street, Gardner, MA

GRANT OF EASEMENT

THE CITY OF GARDNER, a municipal corporation with an address c/o City Hall, 95 Pleasant Street, Gardner, MA 01440, acting by and through its Department of Public Works (the "Grantor"), for and in consideration of One Dollar ($1.00) and other valuable consideration paid, grants to **MASSACHUSETTS ELECTRIC COMPANY**, a Massachusetts corporation with an address of 40 Sylvan Road, Waltham, Massachusetts 02451 (the "Grantee"), with Quitclaim Covenants, the perpetual right and easement to construct, reconstruct, install, repair, replace, maintain, operate, use, inspect and patrol for the transmission and distribution of high and low voltage electric energy and for the transmission of intelligence, by any means, whether now existing or hereafter devised a single line of poles (any of which may be erected and/or constructed at the same or different times) with wires and cables strung upon and from the same, together with all guy wires, foundations, anchors, antennae, braces, fittings, buried ground wires and any other equipment or appurtenances reasonably required (collectively hereinafter referred to as the "Facilities"), including without limitation such footbridges, causeways, and ways of access, if any, as may be necessary for the convenient construction, reconstruction, installation, repair, replacement, maintenance, operation, use, inspection and patrolling of said Facilities over, under, through, across and upon a strip of land located on the Grantor's Land (as hereinafter defined) in Gardner, Worcester County, Massachusetts, approximately thirty (30') feet in width, and shown as "PROPOSED 30' WIDE MASSACHUSETTS ELECTRIC COMPANY EASEMENT AREA "B" = 11,881 S.F." and "AREA "A" = 5,932 S.F." (collectively, the "Easement Area") on that plan entitled: "EASEMENT PLAN OF LAND IN GARDNER, MASSACHUSETTS; SCALE 1" = 40'; DATE: MAR. 15, 2019" prepared by Hannigan Engineering, Inc. of Leominster, MA, to be recorded with the Registry (as hereinafter defined), and a reduced copy of which Plan is attached hereto as Exhibit A.

As used herein, the "Grantor's Land" is described in that deed from Heywood Farm, Inc., to the Grantor dated July 29, 1937 and recorded with the Worcester District Registry of Deeds (the "Registry") in Book 2701, Page 9.

Also the perpetual right and easement from time to time, without further payment therefor, to clear and keep cleared by physical, chemical or other means, the Easement Area of trees, underbrush and above and below ground buildings, structures or objects (the first clearing may be for less than the full width and may be widened from time to time to the full width) provided, however, that when chemical means of clearing are to be used, the Grantee will use only such chemicals as are approved in writing by the Public Works Board or the Director of Public Works of the City of Gardner; the perpetual exclusive right and easement to renew, replace, remove, add to, modify and otherwise change the Facilities and each and every part thereof and all appurtenances thereto and the locations thereof within the Easement Area; the perpetual right and easement to pass and repass on foot and with vehicles and equipment along the Easement Area to and from the adjoining lands and to pass and repass over the Grantor's Land to and from the Easement Area as reasonably required; and the right and easement to excavate, remove soils from, fill, and/or change the grade of the Easement Areas as is

reasonable, necessary and proper in connection with the exercise of the foregoing rights and easements.

The Grantor for itself, its successors and assigns, hereby covenants and agrees with the Grantee, its successors and assigns, that (i) no acts will be permitted within the Easement Area which are inconsistent with the rights and easements hereby granted; (ii) no permanent or temporary buildings or structures, or replacements thereof or additions thereto, or obstructions will be erected or constructed above or below grade within the Easement Area; (iii) Grantor shall not excavate or fill or otherwise change or alter the present grade or ground level of the Easement Area; and (iv) Grantor shall have no right to change the location of or modify the dimensions of the Easement Area in any way or otherwise amend, supplement, change or modify this Grant of Easement, without the prior written consent of the Grantee.

It is agreed that the Facilities 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.

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 construct, reconstruct, install, repair, maintain, operate, use, inspect, patrol, renew, replace, add to, and otherwise change, for the transmission and distribution of high and low voltage electric energy and the transmission of intelligence, the Facilities over, under, through, across, within, and upon the Easement Area, and the Grantor hereby agrees to execute, acknowledge, and deliver to the Grantee, its successors and assigns, such further deeds or instruments as may be necessary to secure to them the rights and easements intended to be herein granted.

This easement is a commercial easement in gross for the benefit of Grantee, its successors and assigns, and the parties agree that these provisions shall run with the Grantor's Land and shall inure to the benefit of and bind the respective heirs, legal representatives, successors and assigns of the parties hereto. It is the intention of the parties that the rights and easements granted herein shall be fully apportionable and fully assignable or transferable, all or in part, and in all respects, by the Grantee, its successors and assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed by its duly authorized representative(s) as of the _____ day of _____, 2020.

THE CITY OF GARDNER

By_____
Name:
Title:

THE COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this _____ day of _____ 2020, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, ☐ personal knowledge of the undersigned, to be the person(s) whose name(s) is/are signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as the _____ for _____.

Before me,

_____
(type or print name) Notary Public
My commission expires:

EXHIBIT B

Easement Relocation Plan
(see attached)

EASEMENT RELOCATION AGREEMENT

THIS EASEMENT RELOCATION AGREEMENT (this "Agreement") is made as of the __ day of _____, 2020, by and between MASSACHUSETTS ELECTRIC COMPANY, a Massachusetts corporation, having an office at 40 Sylvan Road, Waltham, MA 02451 ("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 (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 (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 Memorial Hospital ("HHH");

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

WHEREAS, to resolve the interference with the Existing MEC Easement caused by the Project, MEC has agreed to relocate a portion of the Existing MEC Easement to another location on the Property, which relocation shall include the following (hereinafter collectively the "Easement Relocation"): (a) the grant by the City of a permanent 30' wide easement on the Property, free and clear of all encumbrances having priority over the easement, in the form attached hereto as Exhibit A and made a part hereof (hereinafter the "New Easement") for those locations shown as "PROPOSED 30' WIDE MASSACHUSETTS ELECTRIC COMPANY EASEMENT AREA "B" = 11,881 S.F." and "AREA "A" = 5,932 S.F." on that plan (the "Easement Relocation Plan") entitled: "EASEMENT PLAN OF LAND IN GARDNER, MASSACHUSETTS; SCALE 1" = 40'; DATE: MAR. 15, 2019," prepared by Hannigan Engineering, Inc. of Leominster, MA, a reduced copy of which Easement Relocation Plan is attached hereto as Exhibit B and made a part hereof, and which Easement Relocation Plan shall be recorded with the Registry on or before the recording of the New Easement; (b) delivery to MEC of any 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 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, any and all costs associated with the development of Easement Relocation Plan and any and all recording fees; (the "Costs") 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 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. It is agreed and understood that the City's total financial responsibility for the Costs of this Easement Relocation Plan shall not exceed Two Thousand Five Hundred ($2,500.00) Dollars.

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, up to Two Thousand Five Hundred ($2,500.00) Dollars.

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 all votes and authority documents ("Authority Documents") evidencing the City's and, (e) 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. It is agreed and understood that the City may be reimbursed and/or indemnified by HHH to the full extent of the Costs and liabilities under this Agreement and that such reimbursement and/or indemnification shall not be interpreted as a violation of this Section 6.1 of this Agreement.

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, 2021 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 Plan, not to exceed Two Thousand Five Hundred ($2,500.00) Dollars.

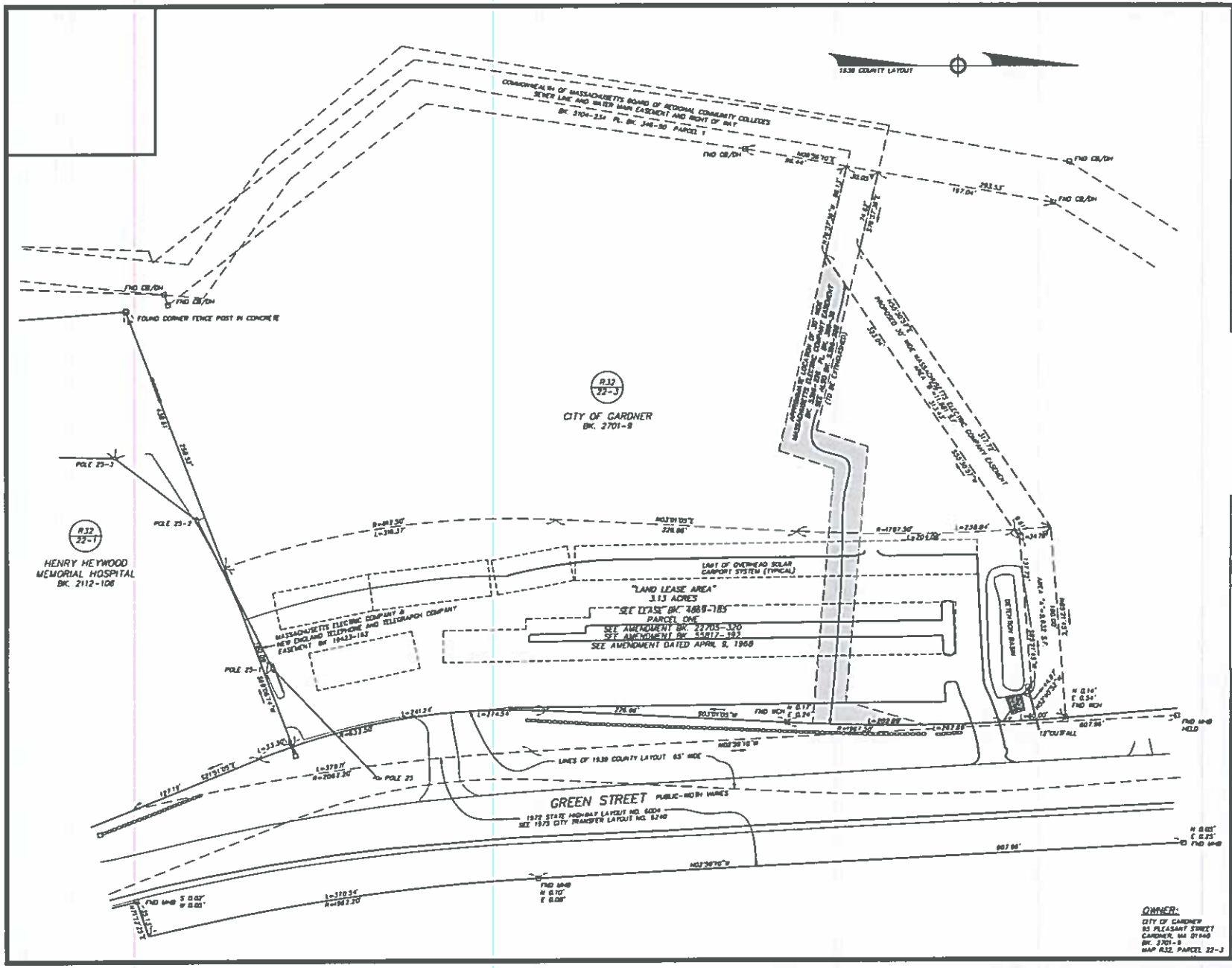
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives, under seal, on the day and year first written above.

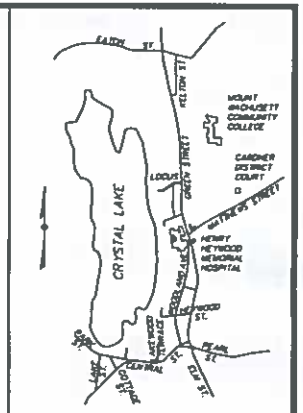
MASSACHUSETTS ELECTRIC COMPANY

By: _____
Title:
Name:

CITY OF GARDNER

By: _____
Name:
Title:





LOCUS MAP

SCALE: N.T.S.

M.G.L. CH 301B SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES DIVIDING EXISTING OWNERSHIPS AND THE LINES OF THE STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS AND WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR THE DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN

DAVID J. LAPOT, PLS #47616 DATE

I CERTIFY THAT THIS PLAN CONFORMS WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.

DAVID J. LAPOT, PLS #47616 DATE

HANNIGAN ENGINEERING, INC.

CIVIL ENGINEERS & LAND SURVEYORS

EASEMENT PLAN OF LAND
IN
GARDNER, MASSACHUSETTS

PREPARED FOR:
HEYWOOD SOLAR PCS, LLC
PEDRAM RAHIMI
701 WEST KIMBERLY AVENUE SUITE 220
PLACENTIA, CA 92870
TEL: (657) 444 2990

GRAPHIC SCALE: 1"=40'

CALC: D.A.	DRWN: D.A.	SCALE: 1"=40'
CHKD: LRS	APPD: D.A.	DATE: MAR 13, 2018
SRV: 64C	FB: 53-68	JOB NO: 2018.1
TAB: EASE	SHEET 1 OF 1	PLAN NO: C-13-27

OWNER:
CITY OF GARDNER
95 PLEASANT STREET
GARDNER, MA 01440
BK. 3701-9
MAP R.32, PARCEL 22-3

EXHIBIT C

PARTIAL RELEASE OF EASEMENT

WHEREAS, **MASSACHUSETTS ELECTRIC COMPANY**, a Massachusetts corporation (hereinafter "MEC") with a place of business at 40 Sylvan Road, Massachusetts, is the owner of certain rights and easements over land located in the City of Gardner, Worcester County, Massachusetts, acquired under that certain easement deed from the City of Gardner to MEC 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 "Easement");

WHEREAS, the **CITY OF GARDNER**, a municipal corporation with an address c/o City Hall, 95 Pleasant Street, Gardner, MA 01440 (hereinafter, the "City"), is the owner of that 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 "Land"), which Land is subject, in part, to the Easement;

WHEREAS, the City has requested a partial release of the Easement on the Land, and MEC has agreed to such partial release as hereainfter set forth.

NOW THEREFORE, MEC, for consideration of One Dollar ($1.00) and other good and valuable consideration paid, and for the other covenants and agreements described herein, the receipt and sufficiency of which are hereby acknowledged, hereby releases to the City and unto all persons claiming by, through and under the City, that portion of the Easement on the Land shown shaded and labeled as "APPROXIMATE LOCATION OF 30' WIDE MASSACHUSETTS ELECTRIC COMPANY EASEMENT BK. 5396-226 PL. BK. 389-38 SEE ALSO BK. 5396-228 (TO BE EXTINGUISHED)" (the "Released Portion") on a plan (the "Plan") entitled " EASEMENT PLAN OF LAND IN GARDNER, MASSACHUSETTS; SCALE 1" = 40'; DATE: MAR. 15, 2019," prepared by Hannigan Engineering, Inc., of Leominster, MA. Said Plan is recorded with the Registry in Plan Book _____, Plan _____.

It is the intention of MEC and the City that this instrument constitutes only a partial release of the Released Portion of the Easement located on the Land. For the avoidance of doubt, pursuant to this Partial Release, MEC hereby releases only the Released Portion of the Easement located on the Land; no other portions of the Easement on the Land or other title and interest in and to said other portions of the Easement are affected or released hereby. MEC further reserves for itself and its successors and assigns all remaining portions of the Easement not specifically described on Exhibit A attached hereto and made a part hereof and all other title and interest in and to said remaining portions of the Easement. In addition, to the extent that MEC or its predecessors in title may have acquired other rights and easements affecting the Land by or under any other deeds or instruments of record, this Partial Release of Easement shall also in no way affect or impair any such other rights and easements.

IN WITNESS WHEREOF, MEC has caused this Partial Release of Easement to be duly executed by its duly authorized officer(s), under seal, this _____ day of _____, 2020.

MASSACHUSETTS ELECTRIC COMPANY

By: _____
Name:
Title:

THE COMMONWEALTH OF MASSACHUSETTS

County of Middlesex, ss:

On this _____ day of _____, 2020, before me, the undersigned notary public, personally appeared _____, as Authorized Representative for Massachusetts Electric Company, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Authorized Representative for Massachusetts Electric Company.

(AFFIX SEAL)

_____
My Commission Expires_____

6-10330

Rachel Stephano (Mayor's Office)

From:	Debbie Phillips <dphillips@NPOlegal.com>
Sent:	Wednesday, August 26, 2020 10:39 AM
To:	Mayor
Cc:	Rachel Stephano (Mayor's Office)
Subject:	HHH/ National Grid
Attachments:	Easement Relocation CDP and NS edits clean (003) w_exhibits 7_20_20 (003).docx; 2670-Base-EASE 3-15-19 (003).pdf; Eighth Amendment to Lease - CDP Final.docx

CAUTION: This email originated from a sender outside of the City of Gardner mail system. Do not click on links or open attachments unless you verify the sender and know the content is safe.

Mayor,

Thanks for the conversation last week. To confirm where we are, here follows my understanding of the current status, and next steps.

National Grid has decided that it doesn't need subordination from the hospital if the 8the Amendment (adding the almost 1 acre of city land to their leasehold) is recorded first in time. Henry Heywood agreed to reimburse the city for costs up to the cap set forth in the attached copy of the "Relocation Agreement" between the city and Grid. You will confirm that agreement with Win Brown and the fact that we don't need a formal "waiver and indemnification" agreement to insure reimbursement. If you and he are content with a 'gentleman's agreement' on the reimbursement I'm fine with that. It's a fairly small sum – all things considered. The city will simply invoice the hospital and it will send a check.

In terms of an 'agenda' for closing out this whole deal, in accordance with my communications with Grid's attorney, Grid will take responsibility for recording all the documents. In order to accomplish that, Grid will need;

- The Easement Relocation Agreement signed by you and a check for $1,650.00;
- The original 8th Amendment between the HHH and the City, also signed.;
- Assuming the costs to this point don't exceed $1,650.00, Grid will also record the release of the old easement at the same time;
- If the costs exceed $1,650.00 -up to a cap of $2,500.00 - Grid will record the release when it receives an additional payment from the city if that becomes necessary.

To get to the point where Grid has all of the documents and a check in hand, we need the following approvals;

-Vote that the city through its mayor further amend the 1968 Lease (as set forth in the Eighth Amendment to Lease)

-Vote that the city through its mayor grant the relocation of an easement to National Grid (as set forth in the Easement Relocation Agreement)

-Appropriate $2000.00 to cover the costs of the easement relocation and recording fees.

Grid will send a final for endorsement and remove Exhibit D – the subordination which is no longer needed- but attached is the final (clean) version as edited by me and Grid's attorney. As I mentioned, they cannot/will not remove the default provisions without an Act of Congress or dispensation from the Pope. It really doesn't apply anyway, because we will send a city check with the signed documents to Grid's counsel.

Please don't hesitate to let me know if you need anything else or have any questions. Thanks again.

Debbie