

PRESIDENT
Elizabeth J. Kazinskas

COUNCILLORS AT LARGE
Calvin D. Brooks
Craig R. Cormier
Brad E. Heglin
Judy A. Mack
George C. Tyros

CITY OF GARDNER
MASSACHUSETTS 01440-2630

OFFICE OF THE
CITY COUNCIL



WARD 1 COUNCILLOR
David Thibault-Muñoz

WARD 2 COUNCILLOR
Dana M. Heath

WARD 3 COUNCILLOR
Paul G. Tassone

WARD 4 COUNCILLOR
Karen G. Hardern

WARD 5 COUNCILLOR
Alek Dernalowicz, Esq.

FINANCE COMMITTEE MEETING NOTICE

Date: Monday December 2, 2024
Time: 6:30 P.M.
Location: City Council Chambers, City Hall

AGENDA

CALL TO ORDER

ANNOUNCEMENT OF OPEN MEETING RECORDINGS

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

I. First Time on the Agenda

11434 – A Communication from the Mayor Regarding the Updated Certification of FY2024 Free Cash. *Page 3*

11435 – A Communication from the Mayor Regarding the Biennial State of the City Address. *Page 7*

11436 – A Communication from the Mayor Regarding the Waterford Kitchen RFP Review Committee. *Page 8*

11437 – A Measure Waiving Parking Meter Fees from December 1, 2024 through December 31, 2024. *Page 9*

11438 – A Measure Authorizing the Mayor to Enter into a Lease Agreement with Growing Places for space in the Waterford Community Center. *Page 12*

11439 – A Measure Authorizing the Mayor to Enter into a Grant Lease Agreement between the City and the Gardner Community Action Committee for Portions of the Building Located at 62 Waterford Street. *Page 34*

11440 – A Measure Establishing a Revolving Account for City Owned Property Lease Payments Under M.G.L. Chapter 440, §3, as Amended. *Page 56*

11441 – A Measure Declaring Portions of the Building Located at 62 Waterford Street Surplus for the Purpose of Leasing. *Page 58*

11442 – An Order Appropriating \$356,049.00 from Free Cash to Principal Inside Debt Account. *Page 63*

11443 – An Order Appropriating \$100,00000 from Free Cash to DPW New Equipment Expense Account. *Page 67*

ADJOURNMENT

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

CITY COUNCIL OF GARDNER

Elizabeth J. Kazinskas

ELIZABETH J. KAZINSKAS

Chair, Finance Committee



City of Gardner - *Executive Department*

Mayor Michael J. Nicholson

RECEIVED
2024 NOV 25 AM 9:27
CITY CLERK'S OFFICE
GARDNER, MA

November 20, 2024

Hon. Elizabeth J. Kazinskas, Council President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant Street
Gardner, MA 01440

RE: A Communication from the Mayor Regarding the Updated Certification of FY2024 Free Cash

Dear Madam President and Councilors,

At the October 21, 2024, City Council Meeting, during discussion for *Item #11409: A Communication from the Mayor Regarding the Certification of FY2024 Free Cash*, I mentioned that the City Auditor and the City Administration were appealing a reduction in free cash that was made by the Massachusetts Department of Revenue.

As was stated in that meeting, the Department of Revenue reduces certified free cash by any liabilities they believe are existing on the City's balance sheet due to timing of expense, differences between grant expenditures and reimbursements, and several other factors.

The City was notified on November 19, 2024, that following this appeal, the City's certified free cash amount was increased by \$514,000.00. This brings our total amount of certified free cash for FY2024 to \$3,150,168.00.

Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner

Mayor

From: dlssupport@dor.state.ma.us
Sent: Tuesday, November 19, 2024 3:24 PM
To: leblanc37@comcast.net; Lauren Stinnett; Chris Kumar; duncan.burns75@gmail.com; rivard-diane@montytech.net; Jennifer Dymek; Mayor; John Richard; dlsgateway@dor.state.ma.us
Cc: guzmanda@dor.state.ma.us
Subject: [EXTERNAL] FREE CASH CERTIFICATION UPDATE - Gardner
Attachments: FreeCashCertificationUpdate.PDF

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.

Massachusetts Department of Revenue Division of Local Services

Geoffrey E. Snyder, Commissioner

Sean R. Cronin, Senior Deputy Commissioner of Local Services

11/19/2024

Re: FREE CASH CERTIFICATION UPDATE - Gardner

Based upon information submitted to the Bureau of Accounts, I hereby certify an update to "free cash" for Gardner in the amount of \$514,000.00. This amount may be appropriated in addition to the amount certified as of Tuesday, October 8, 2024.

This certification is in accordance with the provisions of G. L. Chapter 59, §23, as amended. Please be advised that the Bureau will be unable to approve a request to certify an update to free cash next year if negative free cash is certified as of next July 1st.

Update certification letters will be emailed to the mayor/manager, board of selectmen, prudential committee, finance director and treasurer immediately upon approval, provided an email address is reported in DLS' Local Officials Directory. Please forward to other officials as you deem appropriate.

Sincerely,



Deborah A. Wagner
 Director of Accounts
 Massachusetts Department of Revenue

This email and any attachments may contain information that has been classified as Confidential or Restricted if indicated as such. It is intended exclusively for the use of the individual(s) to whom it is addressed. If inappropriately disclosed, this information could seriously damage the mission, safety or integrity of an agency, its staff, or its constituents. This information may be protected by federal and state



City of Gardner - *Executive Department*

Mayor Michael J. Nicholson

November 19, 2024

Hon. Elizabeth J. Kazinskas, Council President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant Street
Gardner, MA 01440

RE: A Communication From the Mayor Regarding the Biennial State of the City Address

Dear Madam President and Councilors,

During Gardner's 101 years as a City, during January of an odd numbered year, the Mayor has delivered a report on the State of the City to the City Council.

I am writing to state that, in following this tradition, the Administration will be ready to deliver this address in 2025 when the City Council and School Committee are able to coordinate the schedule for the report.

Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner



City of Gardner - *Executive Department*

Mayor Michael J. Nicholson

November 19, 2024

Hon. Elizabeth J. Kazinskas, Council President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant Street
Gardner, MA 01440

RE: A Communication from the Mayor Regarding the Waterford Kitchen RFP Review Committee

Dear Madam President and Councilors,

The Request for Proposals (RFP) period for the Kitchen Space at the Waterford Community Center concluded at noon on Friday, November 15th, 2024.

As I have done in the past, I have appointed a committee of three (3) individuals to conduct the initial review of the materials that were received from this process to make the recommendation for award to my office for final approval.

For this purpose, I have appointed the following:

- City Councilor George Tyros
 - Councilor Tyros has been appointed by the Council President as the City Council's liaison for this project. Where it has always been the practice of my office to include at least one City Councilor in these review panels, this made the most sense.
- Ms. Carla Wojtukiewicz
 - Mrs. Wojtukiewicz is a former Gardner Public School teacher who spent the majority of her career teaching elementary school students at the Waterford Street School facility. Since her retirement, she has been an active member of the community, serving as a Trustee of the Williams-Rockwell Educational Gift Fund, and a member of the Gardner Women's Circle of Giving. As such, not only does she have a unique familiarity with the building itself, but also a strong understanding of the needs facing the community that tenants in a non-profit community center would be able to provide.
- Mr. Walter Dubzinski
 - Mr. Dubzinski, or "Coach" as many people in the City refer to him, was a long time educator in the City, having previously served as the principal of Gardner High School and the long time Wildcat Football Coach. He and his family have also been heavily involved in philanthropic endeavors in the City. He knows Gardner and gets what the community needs and understands our vision for moving Gardner forward.

Once these three individuals have conducted their review of the materials received and submitted them to my office, I will make the final award for the lease agreement. My plan is to have a lease agreement for the winning proposal before the City Council for consideration in December.

Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner



City of Gardner - *Executive Department*

Mayor Michael J. Nicholson

November 19, 2024

Hon. Elizabeth J. Kazinskas, Council President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant Street
Gardner, MA 01440

RECEIVED
2024 NOV 26 AM 11:37
CITY CLERK'S OFFICE
GARDNER, MA

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Mayor, City of Gardner



City of Gardner - *Executive Department*

Mayor Michael J. Nicholson

November 19, 2024

Hon. Elizabeth J. Kazinskas, Council President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant Street
Gardner, MA 01440

RECEIVED
2024 NOV 26 AM 10:07
CITY CLERK'S OFFICE
GARDNER, MA

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Dear Madam President and Councilors,

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Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner



City of Gardner - *Executive Department*

Mayor Michael J. Nicholson

November 20, 2024

Hon. Elizabeth J. Kazinskas, Council President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant Street
Gardner, MA 01440

RE: A Measure Waiving Parking Meter Fees from December 1, 2024 through December 31, 2024

Dear Madam President and Councilors,

At the June 17, 2024, Meeting of the Gardner City Council, an appropriation to purchase and install new parking meters was approved. These meters are currently being installed.

With the installation still being done, the pending ordinance change in cost of the meters, and out of tradition for us in Gardner, I am hereby requesting that the City Council vote to waive the parking meter fees for the month of December.

As has been done in the past, I have signed an Executive Order temporarily waiving the parking meter fees for December 1st and December 2nd, since the City Council will not be meeting until December 2nd.

Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner

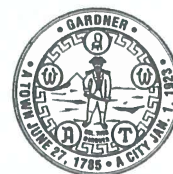
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2024 NOV 26 AM 9:27
CITY OF GARDNER'S OFFICE
GARDNER, MA

AUTHORIZING FREE PARKING AT DOWNTOWN METERS
FROM DECEMBER 1 THROUGH DECEMBER 31

VOTED: To approve a request, to allow free parking at metered locations within the downtown areas from December 1 through December 31, 2024 in order to promote the availability and convenience of the many fine downtown shops for the holiday season.

City of Gardner, *Executive Department*

Michael J. Nicholson, Mayor



EXECUTIVE ORDER

An Order Suspending the Operation of Parking Meters in the City of Gardner from December 1, 2024 through midnight on December 2, 2024

WHEREAS, the Mayor has declared the holiday shopping season as Small Business Month;

WHEREAS, the City Council will consider the suspension of the use and operation of parking meters in the City of Gardner at its December 2, 2024 regularly scheduled meeting; and

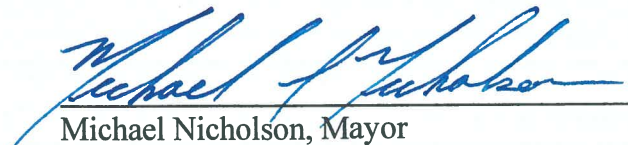
WHEREAS, the City desires to encourage the support of the City's local small businesses located in the City's downtown area;

NOW, THEREFORE, pursuant to the authority vested in me as Chief Executive Officer of the City of Gardner as set forth in the Charter for the City of Gardner and every other power hereto enabling, I hereby order and direct as follows:

1. The use of and operation of all parking meters in the City of Gardner is hereby suspended from Sunday, December 1, 2024 through Monday, December 2, 2024

Enacted this 20 day of November, 2024




Michael Nicholson, Mayor



City of Gardner - *Executive Department*

Mayor Michael J. Nicholson

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2024 NOV 25 AM 9:27
CITY OF GARDNER'S OFFICE
GARDNER, MA

November 20, 2024

Hon. Elizabeth J. Kazinskas, Council President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant Street
Gardner, MA 01440

RE: A Measure Authorizing the Mayor to Enter into a Lease Agreement with Growing Places for space in the Waterford Community Center

Dear Madam President and Councilors,

At the August 5th, 2024 meeting of the City Council, it was voted to declare the property located at 62 Waterford Street as surplus for the purpose of leasing the property to various non-profits to create a new community center for the City.

Per the requirements of the General Laws of the Commonwealth, the Request for Proposals for leasing the kitchen space was issued in the Central Register for the Commonwealth on October 16th, and was advertised in ComBuys and the City's website on the same day with two publications in the Gardner News on October 18th and October 24th. The submission period for these proposals was November 15th.

The City received one proposal for the area from Growing Places.

This proposal was initially reviewed by a committee consisting of Councilor George Tyros, Mrs. Carla Wojtukiewicz, and Mr. Walter Dubzinski, who all recommended favorable on granting Growing Places a Lease for the space per their proposal.

As such, in agreement with the recommendations of the committee, and because I believe this to be in the best interest of the City, I am hereby requesting the City Council vote to authorize the Mayor to enter into this lease on behalf of the City.

Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner

**AUTHORIZING A LEASE AGREEMENT BETWEEN THE CITY OF GARDNER AND
GROWING PLACES FOR A PORTION OF THE BUILDING LOCATED AT 62
WATERFORD STREET**

VOTED: To authorize the Mayor to enter into a lease agreement with Growing Places, in accordance with prevailing General Laws, a portion of the building located at 62 Waterford Street, consisting of the first floor of Zone D, as designated by Exhibit A attached to this document, with an approximate area of 1,225 square feet, further identified on a plan prepared by Austin Design Cooperative, 167 Main Street, Suite 302, Brattleboro, VT 05301, entitled, “City of Gardner Waterford School Conceptual Re-Use Layout Plans, 63 Waterford St., Gardner, MA 01440, 29 March 2024 Rev. 10-9-2024, Rev. 10-10-2024 (GARDNER ENG)”, at the rental rate of \$16 per square foot. The lease agreement shall expire on December 31, 2039.

Exhibit A

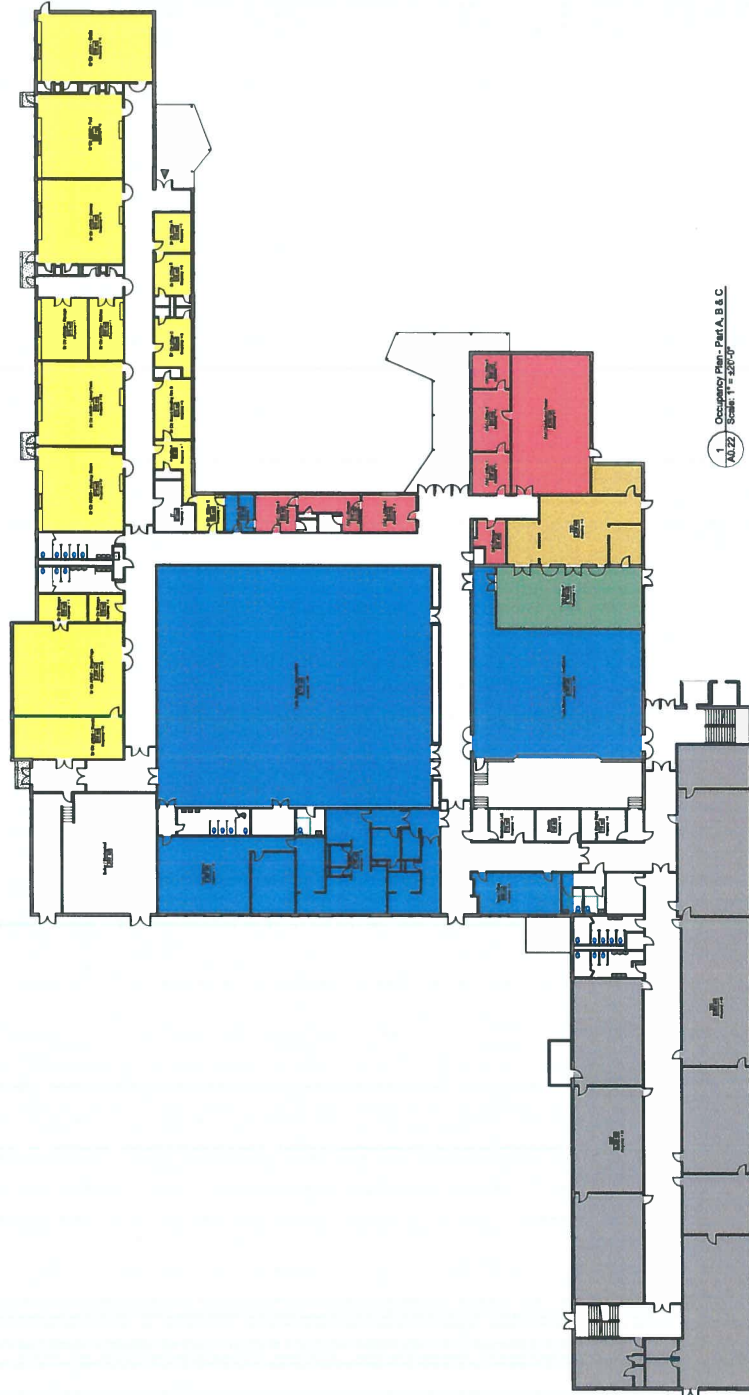


City of Gardner
Waterford School
Conceptual Re-Use
Layout Plans
63 Waterford St.
Gardner, MA 01440
29 March 2024

REV: 10-6-2024
REV: 10-10-2024
(GARDNER ENG.)

Occupancy Key:

- Zone A
- Zone B
- Zone C
- Zone D
- Zone E
- Zone F



1 Occupancy Plan - Part A, B & C
A0.22
Scale: 1" = 20'-0"

A0.22

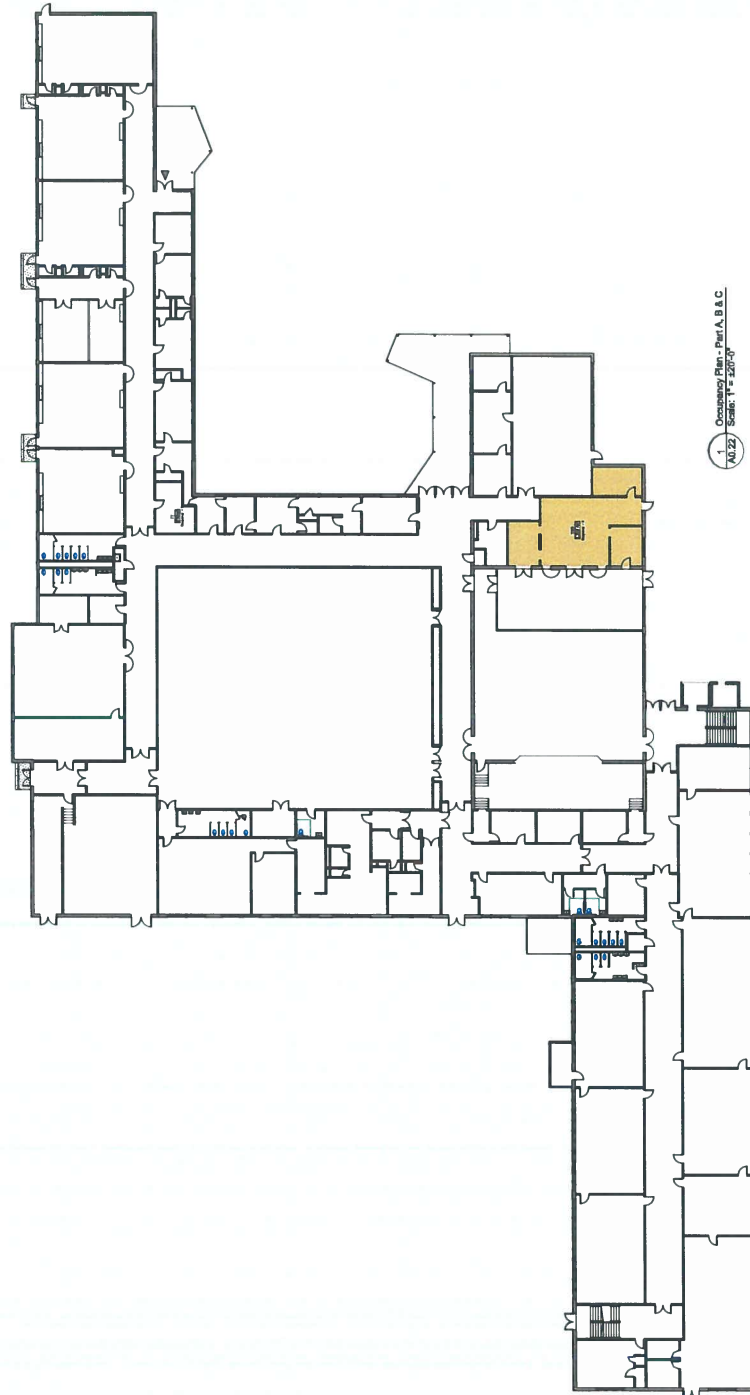
2024 City of Gardner - City of Gardner Engineering, Inc.



City of Gardner
Waterford School
Conceptual Re-Use
Layout Plans

63 Waterford St.
Gardner, MA 01440
29 March 2024

Rev. 10-6-2024
Rev. 10-10-2024
(GARDNER ENG.)



1. Occupancy Plan - Part A, B & C
A0.22 Scale: 1" = 20'-0"

A0.22

City of Gardner Engineering

Exhibit B

THE CITY OF GARDNER
NON-GOVERNMENT LEASE
WATERFORD STREET COMMUNITY CENTER

This lease entered into as of this ___ day of _____, 20___ by and between the CITY OF GARDNER, through its Mayor duly elected and authorized, having a mailing address at City of Gardner, 95 Pleasant Street, Gardner, Massachusetts 01440 (hereinafter called the “Lessor” or “City”, which expression shall include its successors and assigns where the context so admits), and _____, a Massachusetts not for profit corporation, having a mailing address at _____ (hereinafter called the “Lessee”, which expression shall include its successors and assigns where the context so admits).

LEASED PREMISES

In consideration of the rent, taxes (to the extent applicable), and covenants herein reserved and contained on the part of the Lessee to be paid, performed and observed, the Lessor does hereby demise and lease unto the Lessee, the land with the buildings and improvements thereon owned by the Lessor situated in the City of Gardner, Worcester County, Massachusetts, described as follows:

1. That portion of the building located at 62 Waterford Street, commonly known as the Waterford Street Community Center (the “Premises”), consisting of 1,225 square feet, being Unit B as shown on Exhibit “A” attached hereto and incorporated herein by reference (the “Unit Plans”) to be used as set forth in this Lease (hereinafter called the “Leased Premises”).

USE OF LEASED PREMISES

Except with the express written consent or permission of the Lessor, no addition or alteration to or upon the Leased Premises shall be made and no trade, occupation or activity other than the Lessee’s use be made of the Leased Premises by the Lessee. Lessee’s use shall be limited to the declared use as set forth in the original bid documents and the acceptance thereof, which bid documents shall be incorporated herein by reference. Any change in Lessee’s use shall be subject to the approval of the City of Gardner by and through its Mayor and Purchasing Agent.

It is agreed and understood that only those activities which promote the Lessee and its activities or other community events may be undertaken on the Premises. No alcoholic beverages shall be permitted, stored, consumed or used on the Premises without the express written permission or consent of the Lessor which permission shall not be unreasonably withheld or delayed if the storage, consumption or use of alcohol is in connection with Lessee’s fundraising or other functions and activities, and in accordance with all legal requirements. Nothing contained herein shall however imply that the Lessor will approve the use of alcohol on the Premises and any such approval shall not preclude the denial of approval thereafter. The Lessee shall operate the Leased Premises so as to not unreasonably disturb other businesses, governmental operations and residences in the property or the surrounding area. In carrying out its activities, the Lessee shall direct persons on the Premises to

conduct themselves in a manner that does not unreasonably disturb the area reasonably proximate to the Premises or which constitutes a breach of the peace or otherwise violates the law.

In no event shall any trade, occupation, use or activity be conducted or permitted thereon by the Lessee which shall be unlawful or improper, inconsistent with or contrary to any law of the United States, the Commonwealth of Massachusetts, the Ordinances of the City of Gardner, or rules and regulations thereof, as the same may be in effect from time to time, or injurious to any person or property. The Lessee shall be responsible for ascertaining, obtaining and maintaining all required permits and authorizations for the conduct of any activity on the Premises.

TERM

The term of this Lease shall be for a period of fifteen (15) years consisting of three (3) five-year terms as described below commencing on January 1, 2025 and ending on December 31, 2039 (the "Term") upon the terms and conditions contained in this lease. The City may sell or otherwise convey some or all of the Premises with City Council approval and in compliance with all legal requirements, but any sale or conveyance shall not affect the Lessee's rights under this Lease or law. However, nothing contained herein shall be construed as an obligation of the City to sell some or all of the Premises or offer some or all of the Premises for sale.

RENT & RENT COMMENCEMENT

The rent payable by the Lessee for each five-year term shall be in the initial amount of Sixteen Dollars (\$16.00) per square foot annually and shall be paid to the Lessor in monthly installments on the first day of each month of the Term by ACH. Rent shall increase for each successive five (5) year term at a rate of 12.5% which rent shall then be fixed for such five (5) year term. The rent for each term shall be as follows.

Unit B

| Term | Rate | Sg. Footage | Annual Rent | Monthly Rent |
|--------------------|-------------|--------------------|--------------------|---------------------|
| 1/1/25 to 12/31/29 | \$16.00 | 1,225 | \$19,600.00 | \$1,633.33 |
| 1/1/30 to 12/31/34 | \$18.00 | 1,225 | \$22,050.00 | \$1,837.50 |
| 1/1/35 to 12/31/39 | \$20.25 | 1,225 | \$24,806.25 | \$2,067.19 |

In the event that the initial term commences on a day other than January 1 of a calendar year, the Monthly Installment shall be prorated for the portion of the month in which the Lessee has possession of the Leased Premises. Notwithstanding any other provision of this Lease, Lessee shall take possession of the Leased Premises no later than thirty (30) days from the bid award. Rent shall commence upon Lessee taking possession of the Leased Premises.

To the extent the Lessee is not approved by the City of Gardner Board of Assessors as a real estate tax exempt Lessee of public property, and to the extent otherwise applicable, the Lessee covenants and agrees to pay to the City of Gardner as the same become due in accordance with the

General Laws of the Commonwealth of Massachusetts, all real estate taxes assessed to the Lessee under the provisions of Section 2b of Chapter 59 of the General Laws or any other acts or amendments thereto or in substitution thereof. In the event of the repeal of Section 2b of Chapter 59 of the General Laws or the non-applicability of Section 2b of Chapter 59 of the General Laws or the failure to enact similar Legislation in substitution thereof, the Lessee covenants and agrees to pay as rent to the Lessor within thirty (30) days of the time tax bills are issued, a sum equal to the amount of taxes that would have been due and payable in each fiscal tax year by that date for said property. It shall be the responsibility of the Lessee, at its sole cost and expense, to seek, obtain and maintain any exemption from the obligation to pay real estate taxes or payments in lieu of real estate taxes. Lessee acknowledges that the Lessor has no control over any decision of the applicable body or entity which makes such determinations.

Notwithstanding and in addition to any of the remedies and rights of the City of Gardner for non-payment of real estate taxes as provided by law, should the Lessee fail or neglect to pay in full by the due date any real estate taxes or payment in lieu of real estate taxes assessed or charged by the City of Gardner to the Lessee for the Leased Premises, this lease may be terminated by the City by giving written notice of such termination to the Lessee. In such event, this lease will terminate in accordance with the notice, provided however, that the Lease will not be construed to have terminated if within fourteen (14) days following such notice, full payment of all such real estate taxes together with all charges and interest is made at the office of the tax collector of the City of Gardner.

During the term of this lease, or thereafter for any year included within the term hereof, the Lessee will not, and does hereby waive any rights under law, file an application for nor accept an abatement of taxes assessed to the Lessee for the Leased Premises and buildings owned by the City of Gardner more than once every three (3) years, unless except in a year during which the Leased Premises or any part thereof or building or part thereof or building or part thereof owned by the City of Gardner shall have been damaged by fire or other unavoidable casualty. Lessor shall be supplied by Lessee with copies of all notices or papers filed relative to any such abatement application when filed with the Board of Assessors.

Without waiving any other remedy available by law or under the terms of this lease for any breach thereof, including failure to pay the rent provided for, interest at the rate of 1.0% per month may be assessed by the Lessor to any delinquent payments.

DEPOSIT

Upon execution of this Lease, Lessee shall pay to Lessor a sum equal to two times the Monthly Rent which constitutes a deposit equal to first and last month's rent of the Term. Said funds shall be deposited with Lessor for the benefit of Lessor and credited to Lessee's account in accordance herewith.

QUIET ENJOYMENT

Lessee, upon paying the rent and other charges herein provided for and observing and keeping the covenants and agreements of this Lease on its part to be kept, shall quietly have and

enjoy the use of the Leased Premises during the Term, without hindrance or molestation by the Lessor or anyone claiming by or through Lessor.

ASSIGNMENT

The Lessee covenants and agrees that it will not assign this lease nor sublet the whole or any part of the Leased Premises or otherwise encumber the Leased Premises without the express prior written permission of the City.

INSURANCE AND INDEMNIFICATION

The Lessee covenants and agrees to defend, indemnify, and save the Lessor its officials, agents, servants and employees harmless from and against any claims and demands for damages to persons or property suffered on account of the acts, action, fault or omission of the Lessee or arising from the violation by it of any law, ordinance, or statute or from the use of the Leased Premises by the Lessee or those upon the Leased Premises. The indemnification, defense and hold harmless rights and obligations shall accrue immediately upon the utterance of a claim or complaint covered by this agreement, regardless of other claims simultaneously brought, and shall not be contingent upon the merits of such claim or questions of fact raised by the claim or complaint. This section will survive the expiration or termination of this Lease.

The Lessee covenants and agrees that at the commencement of the term hereof and for each successive term thereafter or during any period the Lessee holds over with the permission (implied or expressed) of the Lessor, it shall provide and send to the Lessor policies of insurance or evidence thereof, insuring both the Lessor and the Lessee for public liability. If such policies are accepted by the Lessor, they shall become a part of this lease.

All insurance shall be with companies authorized to do business in Massachusetts and reasonably acceptable to the Lessor and shall be in such form and contain such terms and conditions as are reasonably acceptable to the Lessor and shall include the Lessor as an additional insured.

The obligations of the Lessee hereunder shall extend to the Premises, including any walkways, buildings, ramps, open space, parking areas and common areas located thereon. As relates to events sponsored or permitted by the Lessee which extend outside of the demised premises, the Lessee shall ensure that said insurance or a rider to same will cover the area used outside of the demised premises.

The Lessor and the Lessee mutually covenant and agree that the Premises shall be protected and insured against loss by fire and other casualties initially as set forth below in such amounts, types and terms as may be reasonably designated from time to time by the Lessor and which shall be reasonably obtainable by the Lessee. Said insurance shall be obtained initially in the following amounts, types and terms and shall be subject to reasonable change in amounts, types and terms by the Lessor within thirty (30) days after written notice to Lessee, and shall extend in coverage to the

Premises and the operations of the Lessee thereon:

General Liability:

\$1,000,000.00 Per Occurrence

\$2,000,000.00 Aggregate

Fire Legal Liability:

\$500,000.00 or such additional amount as the Lessor may reasonably require and which shall be reasonably obtainable to the Lessee. This insurance, or an alternative reasonably satisfactory to the Lessor, shall be obtained within 30 days after written notice to Lessee.

Umbrella/Excess Liability:

\$2,000,000.00

Whereas the Lease Premises includes commercial kitchen space, Lessee covenants and agrees that it will save the Lessor harmless from all loss and damage occasioned by the use or escape of water upon said premises or the bursting of the pipes in the kitchen, or by any nuisance made or suffered by Lessee on the Premises.

It is agreed that in the event that the Lessee neglects to provide or cannot reasonably secure the insurance on its part to be obtained as herein provided, or in the event the same or any part thereof is canceled or a policy or policies lapse for whatever reason, so that at any time during the term of this Lease there is in force less than the required types and amounts of insurance, the Lessor may, by giving notice in writing to the Lessee, terminate this Lease, and in such event, the Lease will terminate in accordance with the notice; provided however, that the Lease will not be construed to have been terminated if within fourteen (14) business days following such notice, the required insurance is obtained and evidence thereof delivered to the Purchasing Department.

Notwithstanding any other provision of this Lease, in the event that the Lessee does not have in full force and effect the required insurance, then in that event all operations and activities on the Premises shall immediately cease, and the Lessee shall take all necessary steps to secure the Leased Premises and prevent access to and use of the same, until such time as the required insurance is obtained or the Lease is terminated.

The Lessor shall not be responsible in any manner for the contents of the demised Premises. Any insurance for the contents shall be the sole cost and responsibility of the Lessee.

It is agreed that cost of any insurance shall not be a factor in determining whether insurance is reasonable or reasonably obtainable.

PARKING

Lessee shall have access to all parking areas located on the Premises, in common with all

other tenants and occupants of the Premises, and shall not designate any parking spaces as exclusive or for Lessee's use only. Lessee shall also have, in common with all other tenants and occupants of the Premises all ingresses and egresses, all sidewalks, and the main front entrance of the Premises.

COMMON AREAS

All automobile parking areas, entrances and exits thereto, and other facilities furnished by Lessor from time to time on the Premises, including, without limitation, employee and customer parking areas, pedestrian sidewalks and ramps, landscaped areas, exterior and interior stairways, hallways, public bathrooms, display and exhibit areas and other areas and improvements provided by Lessor for general use, in common, of tenants of the Premises, their officers, agents, employees and customers shall at all times be subject to the exclusive control and management of Lessor or its designees and Lessor shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to all facilities and areas mentioned in this paragraph. All of said facilities and areas and all utility systems not installed by or exclusively serving a single lessee of the Premises, (including, without limitation all storm and sanitary drainage systems, waste water treatment facilities or other utility systems) are hereinafter collectively called the "Common Areas". Lessor or its designees shall have the right: to construct, maintain and operate the lighting and parking facilities hereinafter referred to; to restrict parking by tenants, their officers, agents and employees to an employee parking area; to close all or any portion of said areas or facilities to such extent as may, in the opinion of the Lessor's counsel, be legally sufficient to prevent dedication thereof or accrual of any rights therein to any person or the public; to close temporarily all or any portion of the parking areas or facilities; to discourage non-customer parking; and to do and perform such other acts in and to said areas and improvements as, in the use of reasonable business judgment, the Lessor shall determine to be advisable; provided that no such changes shall deny or materially interfere with reasonable ingress to, or egress from the Premises. Lessor shall have the unfettered right to close down or restrict access to any part of the Common Areas on a temporary basis to make such alterations, modifications or repairs to the Premises as shall be advisable in Lessor's sole discretion. In such event, Lessor shall have no liability to Lessee for any loss or damage that may accrue to Lessee's business by reason thereof. Lessor will use best efforts not to interfere with the Lessee's business.

Areas identified on Exhibit A identified as Common Areas (restricted) shall be available to all tenants of the Premises by advanced reservation on a first come first served basis. Restricted Common Areas can be reserved by contacting the City of Gardner Mayor's Office.

MAINTENANCE AND REPAIR

The Lessee covenants and agrees that during the term hereof and for any period during which the Lessee holds over, the Lessee will at its own expense, keep the Leased Premises in good order, repair and condition, and in the same condition or better than it was at the commencement of this Lease, reasonable wear and tear and damage by fire or other unavoidable casualty only excepted, and it will keep the grounds in a clean and orderly condition. The Lessee further covenants and agrees

that it will keep in good repair with glass of the same kind and quality as that which may be damaged or broken, all the glass now or hereafter on the Leased Premise. Lessee shall specifically see that no debris, rubbish or waste remains on the Premises.

Lessee will pay all the expenses of maintaining and cleaning the Leased Premises, improvements and fixtures of the Lessee constituting personal property, and those of all persons claiming under it, including the removal of snow and ice from all ingresses and egresses exclusive to the Lease Premises, and will peacefully yield up to the Lessor the said Leased Premises and all improvements and additions wrought into and forming a part of the real property of the Lessor in the same repair, order and condition in all respects as they were at the commencement of this Lease, or better condition, reasonable wear and tear excluded, damage by fire and other casualty excepted and will deliver the Premises in a broom clean and debris-free condition.

LESSOR MAINTENANCE AND REPAIR: Lessor shall maintain all common areas including snow and ice removal from all parking areas, walkways, sidewalks, and common entrances. Lessor covenants and agrees to maintain or cause to be maintained only the foundations and roof of the Premises, and the structural soundness of the underground subgrade floors and exterior and demising walls in good order, repair and condition, exclusive of any work required because of damage caused by any act, omission or negligence of Lessee, any subtenant or their respective employees, agents, licensees or contractors. Lessor shall not be required to commence any such repair until fifteen (15) days after written notice from Lessee that the same is necessary, except in the event of an emergency in which event the Lessor shall commence such repair as soon as practically possible. The provisions of this Section shall not apply in the case of damage or destruction by fire or other casualty or a taking under the power of eminent domain, in which event the obligations of the Lessor shall be controlled by the Articles of this Lease dealing therewith.

If Lessor is required to make repairs to the Premises by reason of Lessee's acts, omissions or negligence, other than reasonable wear and tear, or if Lessee refuses or neglects to repair as required hereunder to the reasonable satisfaction of Lessor, Lessor shall provide notice to Lessee of its intent to conduct such repairs seven (7) days prior to commencement of such work (except in the event of an emergency in which event the Lessor shall commence such repair as soon as practically possible), Lessor may make such repairs without liability to Lessee for any loss or damage that may accrue to Lessee's merchandise, fixtures, or other property or to Lessee's business by reason thereof. Upon completion thereof, Lessee shall reimburse Lessor's costs for making such repairs.

UTILITY CHARGES

The Lessee covenants and agrees that it shall be responsible for any and all utility charges and further covenants and agrees that it shall be responsible for and will pay any sewer use, hook-up and/or betterment charges which may be assessed against the Premises, or which may be required, and all expenses related to the installation, repair and maintenance of the same, except as otherwise provided for herein.

TAKING OF PROPERTY

If the Premises, or any substantial part thereof, or the whole or any substantial part of the

building owned by the City of Gardner on the Premises shall be taken for any purpose by exercise of the power of eminent domain or condemnation after the execution thereof, then this Lease and said term shall terminate at the option of the Lessor and such option may be exercised in case of any such taking, notwithstanding the entire interest of the Lessor may have been divested by such taking. The Lessee hereby assigns to the Lessor any and all claims and demands for damage on account of any such taking or for compensation for anything lawfully done and pursuant to any public authority and covenants with the Lessor that the Lessee will from time to time execute and deliver to the Lessor such further instruments of assignment of any such claim and demands as the Lessor shall request.

DEFAULT AND TERMINATION

The occurrence of any one or more of the following events shall constitute a material default and breach of the Lease by Lessee:

(a) The permanent vacating, abandonment or cessation of operation of the Premises by Lessee or ceasing use and operation for more than thirty (30) days without the prior written consent of the Lessor

(b) The failure by Lessee to observe or perform any of the covenants, conditions or provisions to be observed or performed by Lessee or any requirement of law, where such failure shall continue for a period of thirty (30) days after written notice thereof from City to Lessee, unless otherwise excused or extended in writing by the City.

It is agreed and understood that this Lease is upon the condition, that if the Lessee shall neglect or fail to perform or observe any of the covenants contained in these presents on its part to be performed or observed or otherwise be in breach or default and such default is not cured within any grace periods provided for herein, the Lessor lawfully may, with 30 days prior written notice, or such lesser or greater notice as it determines reasonably necessary, enter into and upon the Premises or any part thereof in the name of the City, and upon doing so it shall be considered that the City has repossessed the same as its former estate, and if it so desires expel the Lessee and those claiming through or under it and remove its effects (forcibly, if necessary) without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise accrue for any present or preceding breach of covenant, and upon entry as aforesaid and/or the posting of a notice on the Premises that the City is exercising its rights to terminate (even if there is no actual entry), this Lease shall terminate and the City shall be entitled to possession of the Premises except as stated in said notice; and the Lessee covenants that in case of such termination it will indemnify, defend and hold harmless the Lessor against all losses and claims which it may incur by reason of such termination. Any termination by the Lessor shall be without risk or liability to the Lessor, its agents, servants, officials, officers and employees.

Without limiting the right of the Lessor to exercise any other legal remedy or recourse, should the Lessee fail to promptly remove all of its property or property on the Premises placed or permitted to have been placed there under the authority of the Lessee, or property thereon which is the responsibility of the Lessee, and to restore the Premises to a clean and safe site, properly graded and otherwise to leave same in a condition as required by this Lease, upon any termination or expiration of this Lease, the Lessor may arrange for the removal and or disposal (including treating

such property as discarded and or rubbish and trash to be disposed of as same) of the same, with the cost for same being an obligation of the Lessee (and the Lessee hereby irrevocably authorizes the Lessor as its agent to do so) and if the Lessee shall fail to promptly pay for the same and the Lessor pays for or becomes obligated to pay for the same, then the Lessee shall promptly reimburse the Lessor for the reasonable costs related thereto, including any interest, reasonable attorney's fees (whether for inhouse and/or outside legal counsel) and expenses arising therefrom.

Excepted from any grace period shall be any failure or other actions which constitute a threat to public safety and welfare, in which event the City may take such actions as it reasonably deems necessary.

ALTERATIONS

The Lessee covenants and agrees that in the event it desires to make changes of the present Leased Premises (other than ordinary maintenance and repair of the Property), any proposed alterations shall require approval of the City of Gardner City Council. All permanent improvements and renovations to the Leased Premises shall remain with the Premises and shall inure to the benefit of the Lessor.

The Lessee shall indemnify the City from any claims for mechanic's liens that are asserted in connection with work done by Lessee or Lessee's contractors and shall not allow any mechanic's liens to be placed or exist against the Premises for a period of more than forty-five (45) days.

INSPECTION OF PROPERTY

The Lessee covenants and agrees that the City's Mayor, the Director of Public Health, and the Building Commissioner of the City or their subordinates and designees, or other such agent duly appointed by the City, may at reasonable times enter to view and inspect the Leased Premises and may show the Leased Premises to others, and that any time within six (6) months prior to the expiration of the term hereof, may affix to any suitable part of the Premises a notice for letting or selling the same.

DAMAGE/DESTRUCTION OF PREMISES

It is agreed and understood that if the Premises or any substantial part thereof, or the whole or any substantial part of any building owned by the City of Gardner on the Premises, shall be destroyed or substantially damaged by casualty after the execution hereof and before the expiration of the term or any extension or renewal thereof, then this Lease and said term shall terminate at the option of the Lessor, and all rights of the Lessee therein shall at the option of the Lessor likewise terminate and the Lessor shall be under no obligation to restore the Premises to their former condition nor to supply the proceeds of any insurance to that purpose. Notwithstanding total or partial deprivation of use of the Leased Premises or building by the Lessee, the Lessee acknowledges that the matter of abatement of taxes assessed to the Lessee as such rests with the judgment and discretion of the Board of Assessors. Such restoration, if any, shall be conducted and carried out in full compliance of all applicable laws. Any changes in any structures or appurtenances thereto from

what was previously there or used shall be subject to the prior written approval of the Lessor.

ANTI-DISCRIMINATION CLAUSE

The Lessee covenants and agrees that it shall not discriminate in any way against any person desiring to Participate in its programs, visit the Leased Premises and/or make use of its facilities and/or services or partake in any of its programs or in its employment practices.

NOTICES

Any notice from the Lessor to the Lessee relating to the Premises or the occupancy thereof shall be deemed to be delivered when posted or left at the Leased Premises addressed to the Lessee or if actually delivered in hand to an agent of the Lessee at the Lessee's address as set forth in the Bid Documents. Any change in address must include a valid street address to be effective.

Any notice from the Lessee to the Lessor relating to the Premises or the occupancy thereof shall be deemed to have been delivered if posted or left at the office of the Mayor, City Hall, 95 Pleasant Street, Gardner, MA 01440 or person performing said functions. Service of notices may also be made in the same manner as for civil process or if served by a Police Officer.

ENVIRONMENTAL PROVISIONS

A. Environmental Laws. Lessee agrees, at its own expense, to comply with all applicable laws, ordinances, regulations and administrative agency or court orders relating to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality. In the event any discharge, leakage, spillage, emission or pollution of any type occurs caused by any act or omission of the Lessee (recognizing that the exterior of the Premises is accessible by the public) upon or from the Premises during the Lease Term or any holdover thereafter, Lessee agrees to immediately notify the City and shall, at Lessee's own expense, take measures to clean and restore the Premises, in compliance with applicable law, to its condition as of 1981 when the Lessee first took occupancy of the Leased Premises.

B. Hazardous Materials on Premises. During the term of this Lease and any holdover thereof, Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Lessee, its agents, employees, contractors or invitees, except for those materials that are customarily used, stored or disposed of in connection with the Lessee's use. The use, storage or disposal of such Hazardous Materials shall be performed in compliance with applicable environmental and other laws, bylaws, codes, rules and regulations.

C. Environmental Indemnity. Lessee agrees to indemnify, hold harmless and defend City against all liability, cost and expense including, without limitation, any fines, penalties, diminution in value of the Premises, assessment and clean-up costs, judgments, litigation costs and attorneys' fees (whether for inhouse and/or outside legal counsel) incurred by or levied against the City as a result of Lessee's breach of this section or as a result of any discharge, leakage, spillage, emission or pollution on or discharged from the Premises caused by the Lessee. Notwithstanding anything contained herein to the contrary, Lessee shall have no liability as to the foregoing for any Hazardous Material existing or events occurring or generated, at, in, on, under or in connection with the

Premises or any part thereof prior to the occupancy of Lessee, or for asbestos or lead paint. Lessee shall not be obligated to protect, defend, indemnify and save the City harmless from and against any claims, liabilities or penalties that are asserted to the extent that they are a result of the fault, negligence, omission or conduct of the City or third parties not directly under the direction or control of the Lessee or its agents, contractors, servants, licensees, employees or invitees.

D. "Hazardous Material". For purposes of this Lease, the term "Hazardous Material" means any hazardous or toxic substances, material or waste, including but not limited to those substances, materials and wastes listed in the U.S. Department of Transportation Hazardous Materials Table (49 CFR § 172.101) or by the U.S. Environmental Protection Agency as hazardous substances (40 CFR Part 302), and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law, or is otherwise listed or determined by any federal, state or local authority to be hazardous, and including asbestos, and lead paint.

E. Remediation of Existing Hazardous Material. The Lessee covenants and agrees that if the Lessee undertakes any capital improvements or renovations to the Leased Premises during the term of this Lease, the Lessee will use commercially reasonable efforts to remediate any Hazardous Material that are reasonably connected to and or exposed by the relevant capital improvements or renovations; provided that, the Lessee is not obligated to remediate any Hazardous Material that were introduced to the Premises before the Lessee took occupancy, if the Lessee cannot obtain funding to perform such remediation. The parties agree that this provision does not apply to Hazardous Material introduced to the Property by the Lessee. Both parties agree that the City is not obligated by the terms of this Lease to remediate any Hazardous Materials, even if a competent environmental or health authority determines that the presence of such Hazardous Material means that the Premises cannot be safely occupied. If a competent environmental or health authority determines that the Property cannot be safely occupied due to the presence of Hazardous Material, the Lessee's sole recourse will be to terminate the Lease (per the paragraph below) and to receive from the City a pro-rata share of any rent already paid to the City. The Lessee hereby waives any claims against the City relating to lost revenue or capital improvements to the Property.

If a competent environmental or health authority determines that the Property cannot be safely occupied due to the presence of Hazardous Material, then the parties agree to work in good faith and cooperatively to address the issues provided that if the parties cannot mutually agree, then after two (2) years, then either or both parties may terminate the lease.

F. Environmental Testing. If there is reasonable cause to believe Lessee violated the above provisions of this Section, the City may request independent environmental testing of the Premises. Lessee agrees that it shall be solely responsible for all costs and expenses associated with the performance of environmental testing of the Premises, which may be reasonably required by the City upon reasonable belief that there has been a violation by the Lessee of applicable environmental laws, bylaws, codes, rules and regulations. Such environmental testing shall be conducted by an independent and qualified engineering or environmental consulting firm reasonably acceptable to City. In the event that the City receives environmental test results and/or reports and data, the City shall deliver to the Lessee within seven (7) business days from receipt of same, copies of such test results and/or reports and data.

MISCELLANEOUS

Lessor shall be included as an additional insured in the general liability and fire legal liability and umbrella/excess liability insurance policies, or in lieu thereof, may, if the Lessor so agrees in its discretion, if available and at the reasonable cost and expense to Lessee, shall be furnished an owner's contingent policy or owner's protective liability policy, all with the same amount of coverage and subject to the terms and conditions as stated under the specified insurance requirements of this Lease.

This is a lease of the Leased Premises only, and the Lessee shall be responsible for obtaining all necessary permits, licenses, and any and all other necessary authorizations or complying with legal requirements to operate its business at the Premises.

No garbage, junk or refuse, shall be kept on or placed in or upon the Premises other than that generated by the normal operation of the Leased Premises, which garbage, junk or refuse shall be kept in proper and appropriate containers, which containers shall not be left in public view nor on Premises other than that which is herein leased to the Lessee, other than property of the Lessee. All such containers shall be properly secured in appropriately screened areas or such other areas not generally accessible to public access or view.

No permanent exterior banners, signs, neon signs or lighted signs visible from the exterior shall be displayed unless approved in advance by the Lessor, which consent shall not be unreasonably withheld or delayed. The Lessor is not inclined to approve of any lighted banners or neon signs. Temporary banners displayed for no more than 30 days are exempt.

In addition to any other language in this lease, upon any termination of this Lease or expiration of said Lease, whichever occurs first, Lessee covenants, agrees, warrants and represents that any structures or equipment, material or other such items placed thereon which are not owned by the City of Gardner, shall be promptly removed and the Premises shall be left in a safe condition in accordance with the reasonable instructions of the City of Gardner. Such work shall be at the sole cost and expense and obligation of the Lessee.

Forbearance on the part of the Lessor to any default, right, or remedy shall not preclude an action at a later time by the Lessor nor shall the same be viewed as a waiver.

The Lessee shall be obligated to reimburse the Lessor for any costs or expenses (including reasonable attorney's fees based on the actual costs or a sum equal to time expended by the Lessor's counsel times the customary rates of a comparable private attorney) for collecting sums due under this lease and for enforcing the provisions of this lease or in any litigation or claim relating to this lease or the activities thereon.

After the initial term of this Lease, at the option of the Lessor while a renewal or extension of this Lease or new solicitation of a lease is being considered and undertaken, this Lease shall continue on a month to month basis, under the terms set forth herein, subject to the right of the Lessor to terminate and discontinue same following a sixty (60) day notice to the Lessee. In all other respects the Lessee shall be bound by the terms of this agreement including those pertaining to termination.

All section headings and captions used in this Lease are solely for convenience and shall not affect the interpretation of this Lease nor shall the same limit the covenants and obligations of this Lease.

The Lessor and Lessee agree to execute any documents reasonably requested by the Lessor or Lessee concerning the Lease and the Leased Premises, as long as the same does not in any way alter, impair, diminish, or affect any of the rights, benefits, covenants, obligations, and duties of the Lessor and Lessee under this Lease.

It is agreed that time is of the essence.

The Lessee shall maintain a legal existence in the Commonwealth of Massachusetts during the term of this Lease and any extended term or holdover, and on request of the Lessor shall provide a Certificate of Legal Existence from the Office of the Massachusetts Secretary of State.

Following any expiration or termination of this Lease, and should the Lessee holdover, without the Lessor's permission, the Lessee shall be bound by all the provisions of this Lease except as to the term and subject to the right of the Lessor to assess use and occupancy charges. All rights and remedies of the Lessor are expressly reserved and not waived. Such hold over shall not establish any new tenancy.

Lessor and Lessee agree that they will execute and record at the expense of the Lessee a Notice of this Lease with the Worcester South District Registry of Deeds.

Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating a relationship of principal and agent or of partnership or of joint venture between the parties hereof. Neither this Lease, nor any of the terms and provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of lessor and lessee. The Lessee shall ensure that in its activities it does not imply otherwise or that it is an agency or department of the City or that the City is involved in its operations.

The invalidity of any provision of the Lease as determined by a court of final and competent jurisdiction shall in no way affect the validity of any other provisions hereof.

Each provision performable by Lessee hereunder shall be deemed both a covenant and a condition. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. The Lease may be modified in writing only, signed by the parties in interest at the time of modification.

This Lease shall bind the parties, their personal representatives, successors and assigns. The Lease shall be governed by the laws of the Commonwealth of Massachusetts and venue for any legal action shall be and remain in Worcester County.

The Effective Date of the Lease shall be the bid award date without amendment or deletion to the Lease and its Exhibits.

The Lessee acknowledges that the Lessor makes no warranties or representations as to the condition of the Leased Premises or its suitability for any use the Lessee may make. Except as may otherwise be set forth herein, the Lessor shall be under no obligation to make any repairs, undertake any maintenance or improve the Leased Premises.

Nothing contained herein shall constitute or be construed to be explicit and specific assurances of safety or assistance.

WITNESS the execution hereof under seal as of the date first set forth above.

LESSOR:

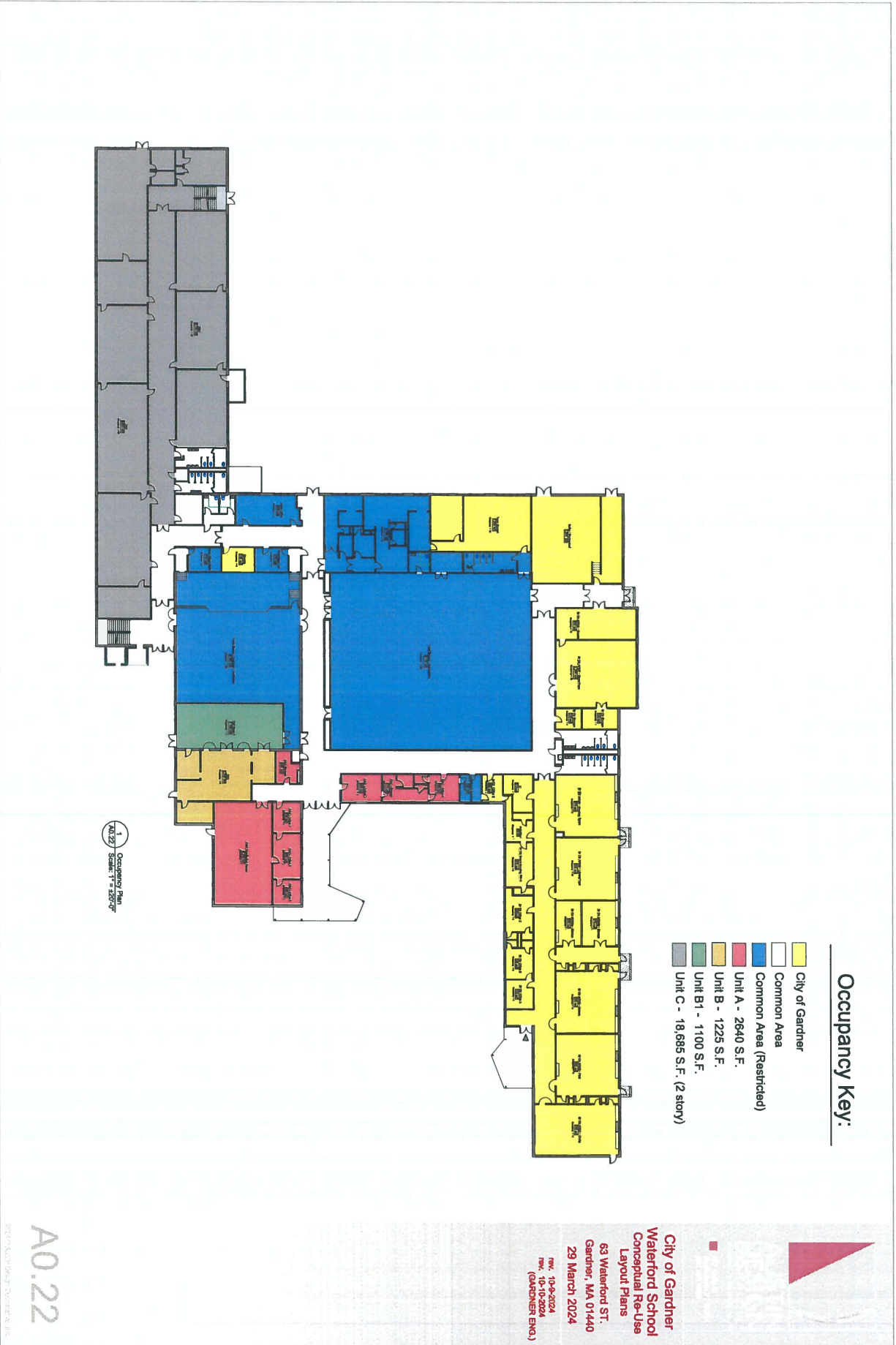
THE CITY OF GARDNER

By:
Its: Mayor (Attach certificate of vote of authorization)

LESSEE:

By:
Its:

EXHIBIT "A"



Occupancy Key:

- City of Gardner
- Common Area
- Common Area (Restricted)
- Unit A - 2640 S.F.
- Unit B - 1225 S.F.
- Unit B1 - 1100 S.F.
- Unit C - 18,685 S.F. (2 story)

11 Occupancy Plan
Scale: 1" = 200'

City of Gardner
Waterford School
 Conceptual Re-Use
 Layout Plans
 63 Waterford St.
 Gardner, MA 01440
 29 March 2024

Rev. 10-0-2024
 Rev. 10-0-2024
 (GARDNER ENG.)

A0.22

2024 City of Gardner School Re-Use Conceptual Re-Use



City of Gardner - *Executive Department*

Mayor Michael J. Nicholson

RECEIVED
2024 NOV 26 AM 9:27
CITY OF GARDNER OFFICE
GARDNER, MA

November 20, 2024

Hon. Elizabeth J. Kazinskas, Council President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant Street
Gardner, MA 01440

RE: A Measure Authorizing the Mayor to Enter into a Grant Lease Agreement between the City and the Gardner Community Action Committee for Portions of the Building Located at 62 Waterford Street

Dear Madam President and Councilors,

In discussions with the Gardner Community Action Committee (CAC) and the Administration, it was brought up that the CAC may need additional food preparation space for the meal programs they provide to the public and through their contract for meal preparation services with the Gardner Senior Center.

As such, the plan was proposed to lease a portion of the cafetorium of the Waterford Community Center to the CAC for them to divide off from the rest of the space and make into an auxiliary kitchen. This plan was approved by the City's Health and Building Departments as the best way forward to accomplish the services that the CAC wish to provide to the site as well.

As such, I hereby request the City Council vote to allow the Administration to lease this portion of the building to the Gardner CAC as part of our process to convert the former school into our new non-profit community center.

Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner

**AUTHORIZING A LEASE AGREEMENT BETWEEN THE CITY OF GARDNER AND
COMMUNITY ACTION COMMITTEE FOR A PORTION OF THE BUILDING
LOCATED AT 62 WATERFORD STREET**

VOTED: To authorize the Mayor to enter into a lease agreement with Community Action Committee, in accordance with prevailing General Laws, a portion of the building located at 62 Waterford Street, consisting of the first floor of Zone F, as designated by Exhibit A attached to this document, with an approximate area of 1,100 square feet, further identified on a plan prepared by Austin Design Cooperative, 167 Main Street, Suite 302, Brattleboro, VT 05301, entitled, “City of Gardner Waterford School Conceptual Re-Use Layout Plans, 63 Waterford St., Gardner, MA 01440, 29 March 2024 Rev. 10-9-2024, Rev. 10-10-2024 (GARDNER ENG)”, at the rental rate of \$1 per year. The lease agreement shall expire on June 30, 2029..

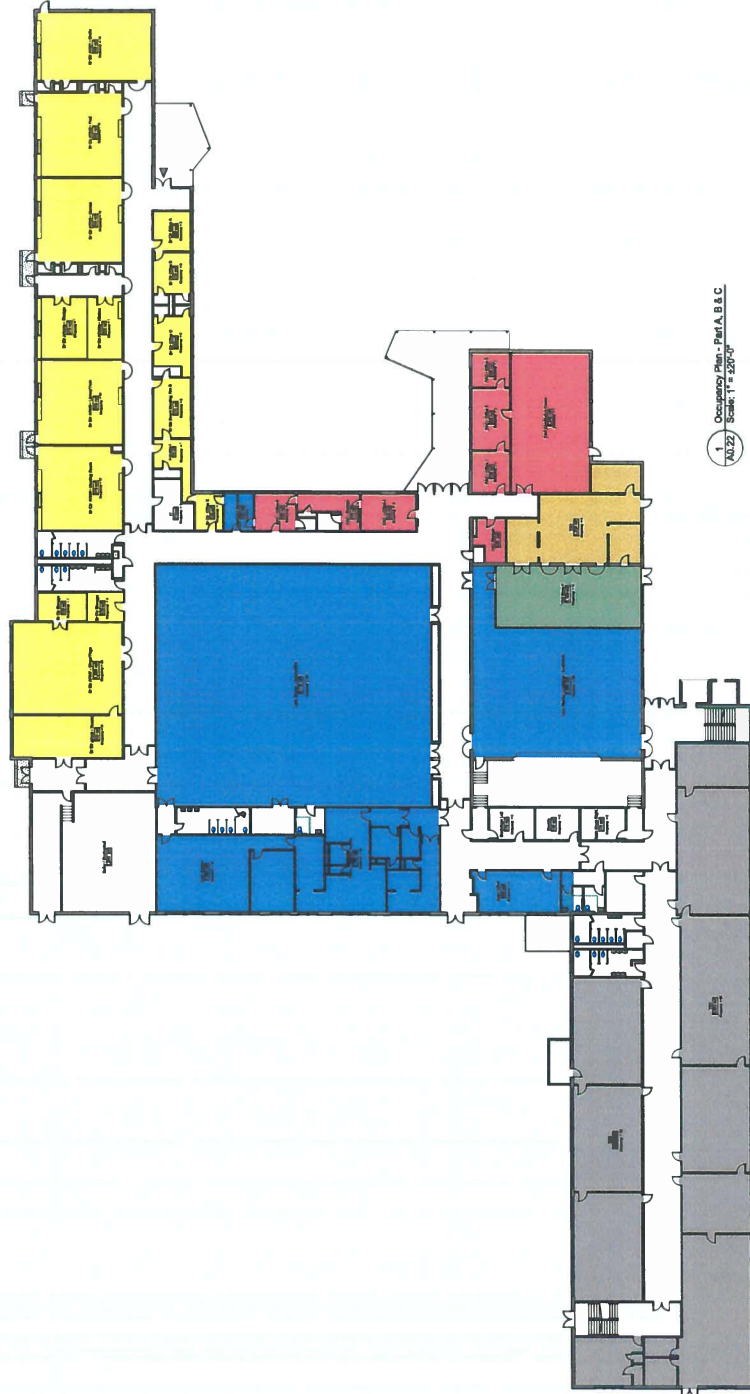
Exhibit A



City of Gardner
 Waterford School
 Conceptual Re-Use
 Layout Plans
 63 Waterford St.
 Gardner, MA 01440
 29 March 2024
 rev. 10-9-2024
 rev. 10-10-2024
 (GARDNER ENG.)

Occupancy Key:

- Zone A
- Zone B
- Zone C
- Zone D
- Zone E
- Zone F



1 Occupancy Plan - Part A, B & C
 A0.22 Scale: 1" = 320'-0"

A0.22

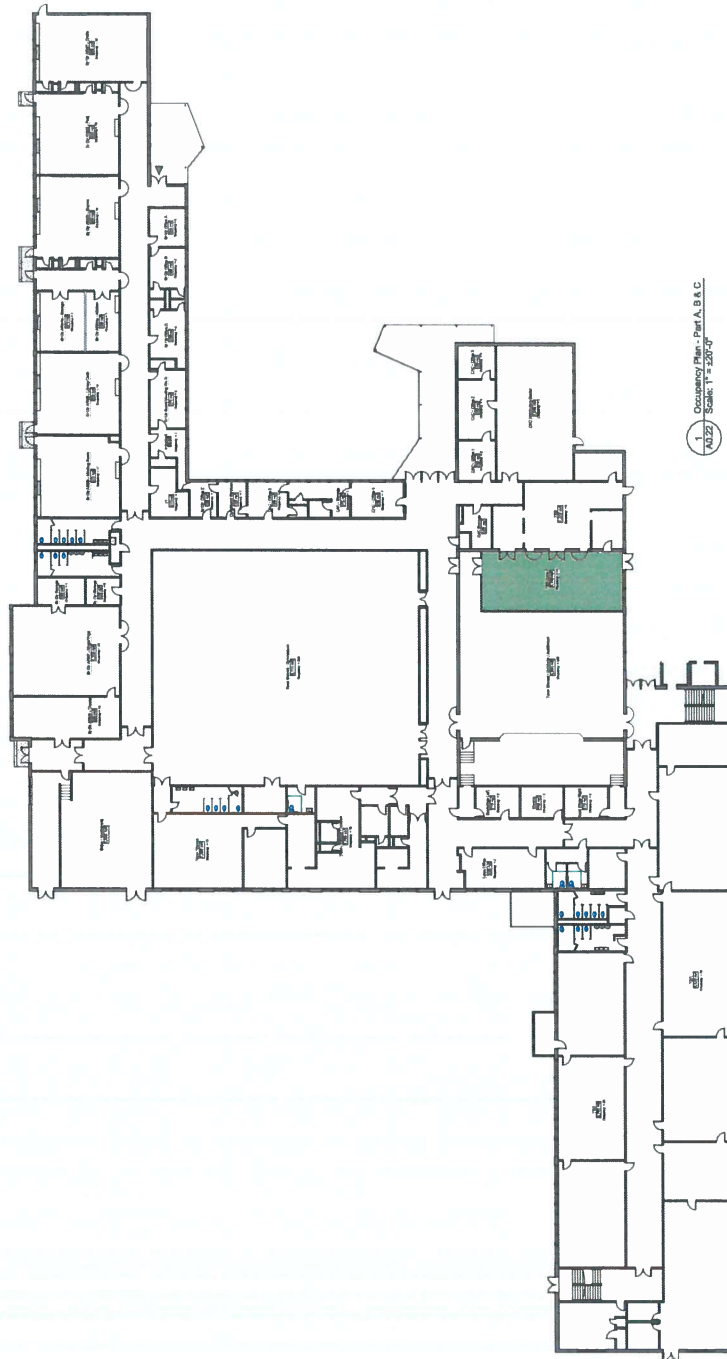
THE DESIGN CENTER, INC.



City of Gardner
 Waterford School
 Conceptual Re-Use
 Layout Plans
 63 Waterford St.
 Gardner, MA 01440
 29 March 2024
 rev. 10-9-2024
 rev. 10-10-2024
 (GARDNER ENG.)

Occupancy Key:

Zone F

1 Occupancy Plan - Part A, B & C
 (A0.22) Scale: 1" = 250'-0"

A0.22

03/29/2024 10:10:24 AM

Exhibit B

THE CITY OF GARDNER
NON-GOVERNMENT GRANT LEASE
WATERFORD STREET COMMUNITY CENTER

This lease entered into as of this ____ day of _____, 20____ by and between the CITY OF GARDNER, through its Mayor duly elected and authorized, having a mailing address at City of Gardner, 95 Pleasant Street, Gardner, Massachusetts 01440 (hereinafter called the “Lessor” or “City”, which expression shall include its successors and assigns where the context so admits), and the Gardner Community Action Committee, Inc., a Massachusetts not for profit corporation, having a mailing address at 294 Pleasant Street, Gardner, MA 01440(hereinafter called the “Lessee”, which expression shall include its successors and assigns where the context so admits).

LEASED PREMISES

In consideration of the consideration set forth herein , the sufficiency of which the Parties acknowledge and together with the covenants herein reserved and contained on the part of the Lessee to be paid, performed and observed, the Lessor does hereby demise and lease unto the Lessee, the land with the buildings and improvements thereon owned by the Lessor situated in the City of Gardner, Worcester County, Massachusetts, described as follows:

1. **Unit A:** That portion of the building located at 62 Waterford Street, commonly known as the Waterford Street Community Center (the “Premises”), consisting of 2,640 square feet, being Unit A as shown on Exhibit “A” attached hereto and incorporated herein by reference (herein the “Waterford Unit Plan”) to be used as set forth in this Lease (hereinafter called the “Leased Premises”).
2. **Unit B1:** That portion of the building located at 83 Waterford Street, commonly known as the Waterford Street Community Center (the “Premises”), consisting of 1,100 square feet, being Unit B1 as shown on Exhibit “A” attached hereto and incorporated herein by reference (the “Unit Plans”) to be used as set forth in this Lease (hereinafter called the “Leased Premises”). Lessee shall be responsible for constructing a demising wall in accordance herewith as shown on Exhibit A. Lessee shall, at all times, permit the Lessee of Unit A to pass an repass through Unit B1 for the sole purpose of accessing the exterior egress located within Unit B1.

It is specifically acknowledged by the Parties that this is a lease by grant of the City to the Gardner CAC in exchange for the services that the CAC provides to the residents of the City of Gardner.

USE OF LEASED PREMISES

Except with the express written consent or permission of the Lessor, no addition or alteration to or upon the Leased Premises shall be made and no trade, occupation or activity other than the Lessee’s use be made of the Leased Premises by the Lessee. Lessee’s use shall be limited to the provision of community support services provided to economically disadvantaged individuals

throughout the greater Gardner community, including but not limited to the operation of a food pantry, and heating fuel assistance program.

It is agreed and understood that only those activities which promote the Lessee and its activities or other community events may be undertaken on the Premises. No alcoholic beverages shall be permitted, stored, consumed or used on the Premises without the express written permission or consent of the Lessor which permission shall not be unreasonably withheld or delayed if the storage, consumption or use of alcohol is in connection with Lessee's fundraising or other functions and activities, and in accordance with all legal requirements. Nothing contained herein shall however imply that the Lessor will approve the use of alcohol on the Premises and any such approval shall not preclude the denial of approval thereafter. The Lessee shall operate the Leased Premises so as to not unreasonably disturb other businesses, governmental operations and residences in the property or the surrounding area. In carrying out its activities, the Lessee shall direct persons on the Premises to conduct themselves in a manner that does not unreasonably disturb the area reasonably proximate to the Premises or which constitutes a breach of the peace or otherwise violates the law.

In no event shall any trade, occupation, use or activity be conducted or permitted thereon by the Lessee which shall be unlawful or improper, inconsistent with or contrary to any law of the United States, the Commonwealth of Massachusetts, the Ordinances of the City of Gardner, or rules and regulations thereof, as the same may be in effect from time to time, or injurious to any person or property. The Lessee shall be responsible for ascertaining, obtaining and maintaining all required permits and authorizations for the conduct of any activity on the Premises.

TERM

The term of this Lease shall be for a period of fifteen (15) years consisting of three (3) five-year terms as described below commencing on November 1, 2024 and ending on October 31, 2039 (the "Term") upon the terms and conditions contained in this Lease. This grant of lease shall automatically renew for successive one year terms (each referred to as an "Extension Term") under the same terms and conditions as set forth herein unless either party provides the other with no less than ninety (90) days' notice prior to the end of the Term or an Extension Term.

The City may sell or otherwise convey some or all of the Premises with City Council approval and in compliance with all legal requirements, any sale or conveyance may affect the Lessee's rights under this Lease or law. However, nothing contained herein shall be construed as an obligation of the City to sell some or all of the Premises or offer some or all of the Premises for sale.

RENT & RENT COMMENCEMENT

The rent payable by the Lessee for each five-year term shall be in the initial amount of One Dollar (\$1.00) annually and shall be paid to the Lessor On or before October 1 of each year of the Term. It is expressly agreed that this is a grant lease to Lessor in exchange for the charitable services that the Lessor shall provide to economically disadvantaged residents of the greater Gardner communities. The rent for each term shall be as follows.

To the extent the Lessee is not approved by the City of Gardner Board of Assessors as a real estate tax exempt Lessee of public property, and to the extent otherwise applicable, the Lessee

covenants and agrees to pay to the City of Gardner as the same become due in accordance with the General Laws of the Commonwealth of Massachusetts, all real estate taxes assessed to the Lessee under the provisions of Section 2b of Chapter 59 of the General Laws or any other acts or amendments thereto or in substitution thereof. In the event of the repeal of Section 2b of Chapter 59 of the General Laws or the non-applicability of Section 2b of Chapter 59 of the General Laws or the failure to enact similar Legislation in substitution thereof, the Lessee covenants and agrees to pay as rent to the Lessor within thirty (30) days of the time tax bills are issued, a sum equal to the amount of taxes that would have been due and payable in each fiscal tax year by that date for said property. It shall be the responsibility of the Lessee, at its sole cost and expense, to seek, obtain and maintain any exemption from the obligation to pay real estate taxes or payments in lieu of real estate taxes. Lessee acknowledges that the Lessor has no control over any decision of the applicable body or entity which makes such determinations.

Notwithstanding and in addition to any of the remedies and rights of the City of Gardner for non-payment of real estate taxes as provided by law, should the Lessee fail or neglect to pay in full by the due date any real estate taxes or payment in lieu of real estate taxes assessed or charged by the City of Gardner to the Lessee for the Leased Premises, this lease may be terminated by the City by giving written notice of such termination to the Lessee. In such event, this lease will terminate in accordance with the notice, provided however, that the Lease will not be construed to have terminated if within fourteen (14) days following such notice, full payment of all such real estate taxes together with all charges and interest is made at the office of the tax collector of the City of Gardner.

During the term of this lease, or thereafter for any year included within the term hereof, the Lessee will not, and does hereby waive any rights under law, file an application for nor accept an abatement of taxes assessed to the Lessee for the Leased Premises and buildings owned by the City of Gardner more than once every three (3) years, unless except in a year during which the Leased Premises or any part thereof or building or part thereof or building or part thereof owned by the City of Gardner shall have been damaged by fire or other unavoidable casualty. Lessor shall be supplied by Lessee with copies of all notices or papers filed relative to any such abatement application when filed with the Board of Assessors.

Without waiving any other remedy available by law or under the terms of this lease for any breach thereof, including failure to pay the rent provided for, interest at the rate of 1.0% per month may be assessed by the Lessor to any delinquent payments.

QUIET ENJOYMENT

Lessee, upon paying the rent and other charges herein provided for and observing and keeping the covenants and agreements of this Lease on its part to be kept, shall quietly have and enjoy the use of the Leased Premises during the Term, without hindrance or molestation by the Lessor or anyone claiming by or through Lessor.

ASSIGNMENT

The Lessee covenants and agrees that it will not assign this lease nor sublet the whole or any

part of the Leased Premises or otherwise encumber the Leased Premises without the express prior written permission of the City. In the event that such authorization is granted by the Lessor, Lessee may not charge any subtenant a rent or use and occupancy rate greater than that charged the Lessee by the Lessor.

INSURANCE AND INDEMNIFICATION

The Lessee covenants and agrees to defend, indemnify, and save the Lessor its officials, agents, servants and employees harmless from and against any claims and demands for damages to persons or property suffered on account of the acts, action, fault or omission of the Lessee or arising from the violation by it of any law, ordinance, or statute or from the use of the Leased Premises by the Lessee or those upon the Leased Premises. The indemnification, defense and hold harmless rights and obligations shall accrue immediately upon the utterance of a claim or complaint covered by this agreement, regardless of other claims simultaneously brought, and shall not be contingent upon the merits of such claim or questions of fact raised by the claim or complaint. This section will survive the expiration or termination of this Lease.

The Lessee covenants and agrees that at the commencement of the term hereof and for each successive term thereafter or during any period the Lessee holds over with the permission (implied or expressed) of the Lessor, it shall provide and send to the Lessor policies of insurance or evidence thereof, insuring both the Lessor and the Lessee for public liability. If such policies are accepted by the Lessor, they shall become a part of this lease.

All insurance shall be with companies authorized to do business in Massachusetts and reasonably acceptable to the Lessor and shall be in such form and contain such terms and conditions as are reasonably acceptable to the Lessor and shall include the Lessor as an additional insured.

The obligations of the Lessee hereunder shall extend to the Premises, including any walkways, buildings, ramps, open space, parking areas and common areas located thereon. As relates to events sponsored or permitted by the Lessee which extend outside of the demised premises, the Lessee shall ensure that said insurance or a rider to same will cover the area used outside of the demised premises.

The Lessor and the Lessee mutually covenant and agree that the Premises shall be protected and insured against loss by fire and other casualties initially as set forth below in such amounts, types and terms as may be reasonably designated from time to time by the Lessor and which shall be reasonably obtainable by the Lessee. Said insurance shall be obtained initially in the following amounts, types and terms and shall be subject to reasonable change in amounts, types and terms by the Lessor within thirty (30) days after written notice to Lessee, and shall extend in coverage to the Premises and the operations of the Lessee thereon:

General Liability:

\$1,000,000.00 Per Occurrence

\$2,000,000.00 Aggregate

Fire Legal Liability:

\$500,000.00 or such additional amount as the Lessor may reasonably require and which shall be reasonably obtainable to the Lessee. This insurance, or an alternative reasonably satisfactory to the Lessor, shall be obtained within 30 days after written notice to Lessee.

Umbrella/Excess Liability:

\$2,000,000.00

It is agreed that in the event that the Lessee neglects to provide or cannot reasonably secure the insurance on its part to be obtained as herein provided, or in the event the same or any part thereof is canceled or a policy or policies lapse for whatever reason, so that at any time during the term of this Lease there is in force less than the required types and amounts of insurance, the Lessor may, by giving notice in writing to the Lessee, terminate this Lease, and in such event, the Lease will terminate in accordance with the notice; provided however, that the Lease will not be construed to have been terminated if within fourteen (14) business days following such notice, the required insurance is obtained and evidence thereof delivered to the Purchasing Department.

Notwithstanding any other provision of this Lease, in the event that the Lessee does not have in full force and effect the required insurance, then in that event all operations and activities on the Premises shall immediately cease, and the Lessee shall take all necessary steps to secure the Leased Premises and prevent access to and use of the same, until such time as the required insurance is obtained or the Lease is terminated.

The Lessor shall not be responsible in any manner for the contents of the demised Premises. Any insurance for the contents shall be the sole cost and responsibility of the Lessee.

It is agreed that cost of any insurance shall not be a factor in determining whether insurance is reasonable or reasonably obtainable.

PARKING

Lessee shall have access to all parking areas located on the Premises, in common with all other tenants and occupants of the Premises, and shall not designate any parking spaces as exclusive or for Lessee's use only. Lessee shall also have, in common with all other tenants and occupants of the Premises all ingresses and egresses, all sidewalks, and the main front entrance of the Premises.

COMMON AREAS

All automobile parking areas, entrances and exits thereto, and other facilities furnished by Lessor from time to time on the Premises, including, without limitation, employee and customer parking areas, pedestrian sidewalks and ramps, landscaped areas, exterior and interior stairways, hallways, public bathrooms, display and exhibit areas and other areas and improvements provided by

Lessor for general use, in common, of tenants of the Premises, their officers, agents, employees and customers shall at all times be subject to the exclusive control and management of Lessor or its designees and Lessor shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to all facilities and areas mentioned in this paragraph. All of said facilities and areas and all utility systems not installed by or exclusively serving a single lessee of the Premises, (including, without limitation all storm and sanitary drainage systems, waste water treatment facilities or other utility systems) are hereinafter collectively called the "Common Areas". Lessor or its designees shall have the right: to construct, maintain and operate the lighting and parking facilities hereinafter referred to; to restrict parking by tenants, their officers, agents and employees to an employee parking area; to close all or any portion of said areas or facilities to such extent as may, in the opinion of the Lessor's counsel, be legally sufficient to prevent dedication thereof or accrual of any rights therein to any person or the public; to close temporarily all or any portion of the parking areas or facilities; to discourage non-customer parking; and to do and perform such other acts in and to said areas and improvements as, in the use of reasonable business judgment, the Lessor shall determine to be advisable; provided that no such changes shall deny or materially interfere with reasonable ingress to, or egress from the Premises. Lessor shall have the unfettered right to close down or restrict access to any part of the Common Areas on a temporary basis to make such alterations, modifications or repairs to the Premises as shall be advisable in Lessor's sole discretion. In such an event, Lessor shall have no liability to Lessee for any loss or damage that may accrue to Lessee's business by reason thereof. Lessor will use best efforts not to interfere with the Lessee's business.

Areas identified on Exhibit A identified as Common Areas (restricted) shall be available to all tenants of the Premises by advanced reservation on a first come first served basis. Restricted Common Areas can be reserved by contacting the City of Gardner Building Department.

MAINTENANCE AND REPAIR

The Lessee covenants and agrees that during the term hereof and for any period during which the Lessee holds over, the Lessee will at its own expense, keep the Leased Premises in good order, repair and condition, and in the same condition or better than it was at the commencement of this Lease, reasonable wear and tear and damage by fire or other unavoidable casualty only excepted, and it will keep the grounds in a clean and orderly condition. The Lessee further covenants and agrees that it will keep in good repair with glass of the same kind and quality as that which may be damaged or broken, all the glass now or hereafter on the Leased Premise. Lessee shall specifically see that no debris, rubbish or waste remains on the Premises.

Lessee will pay all the expenses of maintaining and cleaning the Leased Premises, improvements and fixtures of the Lessee constituting personal property, and those of all persons claiming under it, including the removal of snow and ice from all ingresses and egresses exclusive to the Lease Premises, and will peacefully yield up to the Lessor the said Leased Premises and all improvements and additions wrought into and forming a part of the real property of the Lessor in the same repair, order and condition in all respects as they were at the commencement of this Lease, or better condition, reasonable wear and tear excluded, damage by fire and other casualty excepted and

will deliver the Premises in a broom clean and debris-free condition.

LESSOR MAINTENANCE AND REPAIR: Lessor shall maintain all common areas including snow and ice removal from all parking areas, walkways, sidewalks, and common entrances. Lessor covenants and agrees to maintain or cause to be maintained only the foundations and roof of the Premises, and the structural soundness of the underground subgrade floors and exterior and demising walls in good order, repair and condition, exclusive of any work required because of damage caused by any act, omission or negligence of Lessee, any subtenant or their respective employees, agents, licensees or contractors. Lessor shall not be required to commence any such repair until fifteen (15) days after written notice from Lessee that the same is necessary, except in the event of an emergency in which event the Lessor shall commence such repair as soon as practically possible. The provisions of this Section shall not apply in the case of damage or destruction by fire or other casualty or a taking under the power of eminent domain, in which event the obligations of the Lessor shall be controlled by the Articles of this Lease dealing therewith.

If Lessor is required to make repairs to the Premises by reason of Lessee's acts, omissions or negligence, other than reasonable wear and tear, or if Lessee refuses or neglects to repair as required hereunder to the reasonable satisfaction of Lessor, Lessor shall provide notice to Lessee of its intent to conduct such repairs seven (7) days prior to commencement of such work (except in the event of an emergency in which event the Lessor shall commence such repair as soon as practically possible), Lessor may make such repairs without liability to Lessee for any loss or damage that may accrue to Lessee's merchandise, fixtures, or other property or to Lessee's business by reason thereof. Upon completion thereof, Lessee shall reimburse Lessor's costs for making such repairs.

UTILITY CHARGES

The Lessee covenants and agrees that it shall be responsible for any and all utility charges and further covenants and agrees that it shall be responsible for and will pay any sewer use, hook-up and/or betterment charges which may be assessed against the Premises, or which may be required, and all expenses related to the installation, repair and maintenance of the same, except as otherwise provided for herein.

TAKING OF PROPERTY

If the Premises, or any substantial part thereof, or the whole or any substantial part of the building owned by the City of Gardner on the Premises shall be taken for any purpose by exercise of the power of eminent domain or condemnation after the execution thereof, then this Lease and said term shall terminate at the option of the Lessor and such option may be exercised in case of any such taking, notwithstanding the entire interest of the Lessor may have been divested by such taking. The Lessee hereby assigns to the Lessor any and all claims and demands for damage on account of any such taking or for compensation for anything lawfully done and pursuant to any public authority and covenants with the Lessor that the Lessee will from time to time execute and deliver to the Lessor such further instruments of assignment of any such claim and demands as the Lessor shall request.

DEFAULT AND TERMINATION

The occurrence of any one or more of the following events shall constitute a material default and breach of the Lease by Lessee:

(a) The permanent vacating, abandonment or cessation of operation of the Premises by Lessee or ceasing use and operation for more than thirty (30) days without the prior written consent of the Lessor

(b) The failure by Lessee to observe or perform any of the covenants, conditions or provisions to be observed or performed by Lessee or any requirement of law, where such failure shall continue for a period of thirty (30) days after written notice thereof from City to Lessee, unless otherwise excused or extended in writing by the City.

It is agreed and understood that this Lease is upon the condition, that if the Lessee shall neglect or fail to perform or observe any of the covenants contained in these presents on its part to be performed or observed or otherwise be in breach or default and such default is not cured within any grace periods provided for herein, the Lessor lawfully may, with 30 days prior written notice, or such lesser or greater notice as it determines reasonably necessary, enter into and upon the Premises or any part thereof in the name of the City, and upon doing so it shall be considered that the City has repossessed the same as its former estate, and if it so desires expel the Lessee and those claiming through or under it and remove its effects (forcibly, if necessary) without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise accrue for any present or preceding breach of covenant, and upon entry as aforesaid and/or the posting of a notice on the Premises that the City is exercising its rights to terminate (even if there is no actual entry), this Lease shall terminate and the City shall be entitled to possession of the Premises except as stated in said notice; and the Lessee covenants that in case of such termination it will indemnify, defend and hold harmless the Lessor against all losses and claims which it may incur by reason of such termination. Any termination by the Lessor shall be without risk or liability to the Lessor, its agents, servants, officials, officers and employees.

Without limiting the right of the Lessor to exercise any other legal remedy or recourse, should the Lessee fail to promptly remove all of its property or property on the Premises placed or permitted to have been placed there under the authority of the Lessee, or property thereon which is the responsibility of the Lessee, and to restore the Premises to a clean and safe site, properly graded and otherwise to leave same in a condition as required by this Lease, upon any termination or expiration of this Lease, the Lessor may arrange for the removal and or disposal (including treating such property as discarded and or rubbish and trash to be disposed of as same) of the same, with the cost for same being an obligation of the Lessee (and the Lessee hereby irrevocably authorizes the Lessor as its agent to do so) and if the Lessee shall fail to promptly pay for the same and the Lessor pays for or becomes obligated to pay for the same, then the Lessee shall promptly reimburse the Lessor for the reasonable costs related thereto, including any interest, reasonable attorney's fees (whether for inhouse and/or outside legal counsel) and expenses arising therefrom.

Excepted from any grace period shall be any failure or other actions which constitute a threat to public safety and welfare, in which event the City may take such actions as it reasonably deems necessary.

ALTERATIONS

The Lessee covenants and agrees that in the event it desires to make changes of the present Leased Premises (other than ordinary maintenance and repair of the Property), any proposed alterations shall require approval of the City of Gardner City Council. All permanent improvements and renovations to the Leased Premises shall remain with the Premises and shall inure to the benefit of the Lessor.

The Lessee shall indemnify the City from any claims for mechanic's liens that are asserted in connection with work done by Lessee or Lessee's contractors and shall not allow any mechanic's liens to be placed or exist against the Premises for a period of more than forty-five (45) days.

INSPECTION OF PROPERTY

The Lessee covenants and agrees that the City's Mayor, the Director of Public Health, and the Building Commissioner of the City or their subordinates and designees, or other such agent duly appointed by the City, may at reasonable times enter to view and inspect the Leased Premises and may show the Leased Premises to others, and that any time within six (6) months prior to the expiration of the term hereof, may affix to any suitable part of the Premises a notice for letting or selling the same.

DAMAGE/DESTRUCTION OF PREMISES

It is agreed and understood that if the Premises or any substantial part thereof, or the whole or any substantial part of any building owned by the City of Gardner on the Premises, shall be destroyed or substantially damaged by casualty after the execution hereof and before the expiration of the term or any extension or renewal thereof, then this Lease and said term shall terminate at the option of the Lessor, and all rights of the Lessee therein shall at the option of the Lessor likewise terminate and the Lessor shall be under no obligation to restore the Premises to their former condition nor to supply the proceeds of any insurance to that purpose. Notwithstanding total or partial deprivation of use of the Leased Premises or building by the Lessee, the Lessee acknowledges that the matter of abatement of taxes assessed to the Lessee as such rests with the judgment and discretion of the Board of Assessors. Such restoration, if any, shall be conducted and carried out in full compliance of all applicable laws. Any changes in any structures or appurtenances thereto from what was previously there or used shall be subject to the prior written approval of the Lessor.

ANTI-DISCRIMINATION CLAUSE

The Lessee covenants and agrees that it shall not discriminate in any way against any person desiring to Participate in its programs, visit the Leased Premises and/or make use of its facilities and/or services or partake in any of its programs or in its employment practices.

NOTICES

Any notice from the Lessor to the Lessee relating to the Premises or the occupancy thereof shall be deemed to be delivered when posted or left at the Leased Premises addressed to the Lessee or if actually delivered in hand to an agent of the Lessee at the Lessee's address as set forth herein.

Any change in address must include a valid street address to be effective.

Any notice from the Lessee to the Lessor relating to the Premises or the occupancy thereof shall be deemed to have been delivered if posted or left at the office of the Mayor, City Hall, 95 Pleasant Street, Gardner, MA 01440 or person performing said functions. Service of notices may also be made in the same manner as for civil process or if served by a Police Officer.

ENVIRONMENTAL PROVISIONS

A. Environmental Laws. Lessee agrees, at its own expense, to comply with all applicable laws, ordinances, regulations and administrative agency or court orders relating to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality. In the event any discharge, leakage, spillage, emission or pollution of any type occurs caused by any act or omission of the Lessee (recognizing that the exterior of the Premises is accessible by the public) upon or from the Premises during the Lease Term or any holdover thereafter, Lessee agrees to immediately notify the City and shall, at Lessee's own expense, take measures to clean and restore the Premises, in compliance with applicable law, to its condition as of 1981 when the Lessee first took occupancy of the Leased Premises.

B. Hazardous Materials on Premises. During the term of this Lease and any holdover thereof, Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Lessee, its agents, employees, contractors or invitees, except for those materials that are customarily used, stored or disposed of in connection with the Lessee's use. The use, storage or disposal of such Hazardous Materials shall be performed in compliance with applicable environmental and other laws, bylaws, codes, rules and regulations.

C. Environmental Indemnity. Lessee agrees to indemnify, hold harmless and defend City against all liability, cost and expense including, without limitation, any fines, penalties, diminution in value of the Premises, assessment and clean-up costs, judgments, litigation costs and attorneys' fees (whether for inhouse and/or outside legal counsel) incurred by or levied against the City as a result of Lessee's breach of this section or as a result of any discharge, leakage, spillage, emission or pollution on or discharged from the Premises caused by the Lessee. Notwithstanding anything contained herein to the contrary, Lessee shall have no liability as to the foregoing for any Hazardous Material existing or events occurring or generated, at, in, on, under or in connection with the Premises or any part thereof prior to the occupancy of Lessee, or for asbestos or lead paint. Lessee shall not be obligated to protect, defend, indemnify and save the City harmless from and against any claims, liabilities or penalties that are asserted to the extent that they are a result of the fault, negligence, omission or conduct of the City or third parties not directly under the direction or control of the Lessee or its agents, contractors, servants, licensees, employees or invitees.

D. "Hazardous Material". For purposes of this Lease, the term "Hazardous Material" means any hazardous or toxic substances, material or waste, including but not limited to those substances, materials and wastes listed in the U.S. Department of Transportation Hazardous Materials Table (49 CFR § 172.101) or by the U.S. Environmental Protection Agency as hazardous substances (40 CFR Part 302), and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law, or is otherwise listed or

determined by any federal, state or local authority to be hazardous, and including asbestos, and lead paint.

E. Remediation of Existing Hazardous Material. The Lessee covenants and agrees that if the Lessee undertakes any capital improvements or renovations to the Leased Premises during the term of this Lease, the Lessee will use commercially reasonable efforts to remediate any Hazardous Material that are reasonably connected to and or exposed by the relevant capital improvements or renovations; provided that, the Lessee is not obligated to remediate any Hazardous Material that were introduced to the Premises before the Lessee took occupancy, if the Lessee cannot obtain funding to perform such remediation. The parties agree that this provision does not apply to Hazardous Material introduced to the Property by the Lessee. Both parties agree that the City is not obligated by the terms of this Lease to remediate any Hazardous Materials, even if a competent environmental or health authority determines that the presence of such Hazardous Material means that the Premises cannot be safely occupied. If a competent environmental or health authority determines that the Property cannot be safely occupied due to the presence of Hazardous Material, the Lessee's sole recourse will be to terminate the Lease (per the paragraph below) and to receive from the City a pro-rata share of any rent already paid to the City. The Lessee hereby waives any claims against the City relating to lost revenue or capital improvements to the Property.

If a competent environmental or health authority determines that the Property cannot be safely occupied due to the presence of Hazardous Material, then the parties agree to work in good faith and cooperatively to address the issues provided that if the parties cannot mutually agree, then after two (2) years, then either or both parties may terminate the lease.

F. Environmental Testing. If there is reasonable cause to believe Lessee violated the above provisions of this Section, the City may request independent environmental testing of the Premises. Lessee agrees that it shall be solely responsible for all costs and expenses associated with the performance of environmental testing of the Premises, which may be reasonably required by the City upon reasonable belief that there has been a violation by the Lessee of applicable environmental laws, bylaws, codes, rules and regulations. Such environmental testing shall be conducted by an independent and qualified engineering or environmental consulting firm reasonably acceptable to City. In the event that the City receives environmental test results and/or reports and data, the City shall deliver to the Lessee within seven (7) business days from receipt of same, copies of such test results and/or reports and data.

MISCELLANEOUS

Lessor shall be included as an additional insured in the general liability and fire legal liability and umbrella/excess liability insurance policies, or in lieu thereof, may, if the Lessor so agrees in its discretion, if available and at the reasonable cost and expense to Lessee, shall be furnished an owner's contingent policy or owner's protective liability policy, all with the same amount of coverage and subject to the terms and conditions as stated under the specified insurance requirements of this Lease.

This is a lease of the Leased Premises only, and the Lessee shall be responsible for obtaining all necessary permits, licenses, and any and all other necessary authorizations or complying with

legal requirements to operate its business at the Premises.

No garbage, junk or refuse, shall be kept on or placed in or upon the Premises other than that generated by the normal operation of the Leased Premises, which garbage, junk or refuse shall be kept in proper and appropriate containers, which containers shall not be left in public view nor on Premises other than that which is herein leased to the Lessee, other than property of the Lessee. All such containers shall be properly secured in appropriately screened areas or such other areas not generally accessible to public access or view.

No permanent exterior banners, signs, neon signs or lighted signs visible from the exterior shall be displayed unless approved in advance by the Lessor, which consent shall not be unreasonably withheld or delayed. The Lessor is not inclined to approve of any lighted banners or neon signs. Temporary banners displayed for no more than 30 days are exempt.

In addition to any other language in this lease, upon any termination of this Lease or expiration of said Lease, whichever occurs first, Lessee covenants, agrees, warrants and represents that any structures or equipment, material or other such items placed thereon which are not owned by the City of Gardner, shall be promptly removed and the Premises shall be left in a safe condition in accordance with the reasonable instructions of the City of Gardner. Such work shall be at the sole cost and expense and obligation of the Lessee.

Forbearance on the part of the Lessor to any default, right, or remedy shall not preclude an action at a later time by the Lessor nor shall the same be viewed as a waiver.

The Lessee shall be obligated to reimburse the Lessor for any costs or expenses (including reasonable attorney's fees based on the actual costs or a sum equal to time expended by the Lessor's counsel times the customary rates of a comparable private attorney) for collecting sums due under this lease and for enforcing the provisions of this lease or in any litigation or claim relating to this lease or the activities thereon.

After the initial term of this Lease, at the option of the Lessor while a renewal or extension of this Lease or new solicitation of a lease is being considered and undertaken, this Lease shall continue on a month to month basis, under the terms set forth herein, subject to the right of the Lessor to terminate and discontinue same following a sixty (60) day notice to the Lessee. In all other respects the Lessee shall be bound by the terms of this agreement including those pertaining to termination.

All section headings and captions used in this Lease are solely for convenience and shall not affect the interpretation of this Lease nor shall the same limit the covenants and obligations of this Lease.

The Lessor and Lessee agree to execute any documents reasonably requested by the Lessor or Lessee concerning the Lease and the Leased Premises, as long as the same does not in any way alter, impair, diminish, or affect any of the rights, benefits, covenants, obligations, and duties of the Lessor and Lessee under this Lease.

It is agreed that time is of the essence.

The Lessee shall maintain a legal existence in the Commonwealth of Massachusetts during the term of this Lease and any extended term or holdover, and on request of the Lessor shall provide a Certificate of Legal Existence from the Office of the Massachusetts Secretary of State.

Following any expiration or termination of this Lease, and should the Lessee holdover, without the Lessor's permission, the Lessee shall be bound by all the provisions of this Lease except as to the term and subject to the right of the Lessor to assess use and occupancy charges. All rights and remedies of the Lessor are expressly reserved and not waived. Such hold over shall not establish any new tenancy.

Lessor and Lessee agree that they will execute and record at the expense of the Lessee a Notice of this Lease with the Worcester South District Registry of Deeds.

Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating a relationship of principal and agent or of partnership or of joint venture between the parties hereof. Neither this Lease, nor any of the terms and provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of lessor and lessee. The Lessee shall ensure that in its activities it does not imply otherwise or that it is an agency or department of the City or that the City is involved in its operations.

The invalidity of any provision of the Lease as determined by a court of final and competent jurisdiction shall in no way affect the validity of any other provisions hereof.

Each provision performable by Lessee hereunder shall be deemed both a covenant and a condition. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. The Lease may be modified in writing only, signed by the parties in interest at the time of modification.

This Lease shall bind the parties, their personal representatives, successors and assigns. The Lease shall be governed by the laws of the Commonwealth of Massachusetts and venue for any legal action shall be and remain in Worcester County.

The Effective Date of the Lease shall the date first written above.

The Lessee acknowledges that the Lessor makes no warranties or representations as to the condition of the Leased Premises or its suitability for any use the Lessee may make. Except as may otherwise be set forth herein, the Lessor shall be under no obligation to make any repairs, undertake any maintenance or improve the Leased Premises.

Nothing contained herein shall constitute or be construed to be explicit and specific assurances of safety or assistance.

WITNESS the execution hereof under seal as of the date first set forth above.

LESSOR:

THE CITY OF GARDNER

By: Michael J. Nicholson
Its: Mayor (Attach certificate of vote of authorization)

LESSEE:

The Gardner Community Action Committee

By: Julie Meehan
Its: Executive Director (duly authorized)

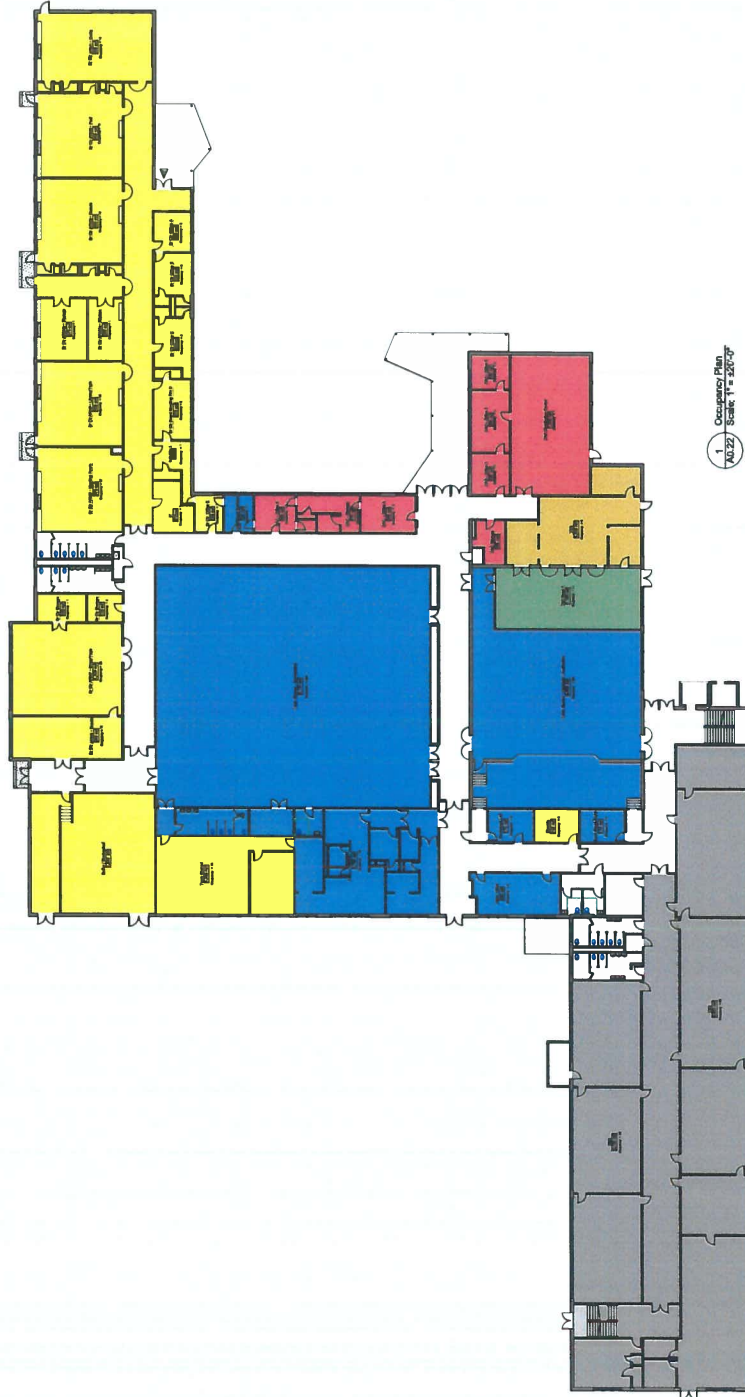
EXHIBIT "A"



City of Gardner
 Waterford School
 Conceptual Re-Use
 Layout Plans
 63 Waterford ST.
 Gardner, MA 01440
 29 March 2024
 rev. 10-9-2024
 rev. 10-10-2024
 (GARDNER ENG.)

Occupancy Key:

- City of Gardner
- Common Area
- Common Area (Restricted)
- Unit A - 2640 S.F.
- Unit B - 1225 S.F.
- Unit B1 - 1100 S.F.
- Unit C - 18,685 S.F. (2 story)



A0.22

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City of Gardner - *Executive Department*

Mayor Michael J. Nicholson

November 20, 2024

Hon. Elizabeth J. Kazinskas, Council President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant Street
Gardner, MA 01440

RECEIVED
2024 NOV 26 AM 9:27
CITY OF GARDNER OFFICE
GARDNER, MA

RE: A Measure Establishing a Revolving account for City Owned Property Lease Payments
Under M.G.L. Chapter 40, §3, As Amended

Dear Madam President and Councilors,

With the City now entering into lease agreements for the Waterford Community Center, the Administration is requesting that a new revolving account be created so that the lease payments collected on the property can go directly into this account to offset the costs associated with the operation of the building.

Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner

ESTABLISHING A REVOLVING ACCOUNT FOR CITY OWNED PROPERTY
LEASE PAYMENTS
UNDER AMENDMENTS TO M.G.L. CHAPTER 40, §3

VOTED: To establish a revolving account, pursuant to amendments that were made by the Municipal Modernization Act, to Section 3 of Chapter 40 of the Mass. General Laws, for the purpose of collecting rental or lease payments.



City of Gardner - *Executive Department*
Mayor Michael J. Nicholson

RECEIVED
2024 NOV 26 PM 9:27
CITY CLERK'S OFFICE
GARDNER, MA

November 19, 2024

Hon. Elizabeth J. Kazinskas, Council President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant Street
Gardner, MA 01440

RE: A Measure Declaring Portions of the Building of Located at 62 Waterford Street Surplus for the Purpose of Leasing

Dear Madam President and Councilors,

In reviewing the two-story classroom wing of the Waterford Community Center, discussions have taken place in the Administration regarding the amount of work that needs to be done in the space in order to make it usable, and the limited use of the second floor of the structure, due to the building not having an elevator.

As such, I am hereby submitting this request to reduce the amount per square foot for this area of the building to \$10 per square foot, in acknowledgement of the amount of work that would need to be done to make the space usable if leased out.

Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner

**DECLARING SURPLUS FOR PURPOSE OF DISPOSAL OF
A PORTION OF THE BUILDING LOCATED AT 62 WATERFORD STREET**

VOTED: To declare surplus for the purpose of disposal, in accordance with prevailing General Laws a portion of the building located at 62 Waterford Street, consisting of the first floor of Zone E, as designated by Exhibit A attached to this document, with an approximate area of 9,380 square feet, further identified on a plan prepared by Austin Design Cooperative, 167 Main Street, Suite 302, Brattleboro, VT 05301, entitled, “City of Gardner Waterford School Conceptual Re-Use Layout Plans, 63 Waterford St., Gardner, MA 01440, 29 March 2024 Rev. 10-9-2024, Rev. 10-10-2024 (GARDNER ENG)”, for the minimum cost of \$10/sq. ft., to be paid for any conveyance of said property, and to authorize the Mayor to convey said land, or part thereof, for such amount or a larger amount, and upon such other terms as the mayor shall consider proper in accordance with this Vote.

Exhibit A

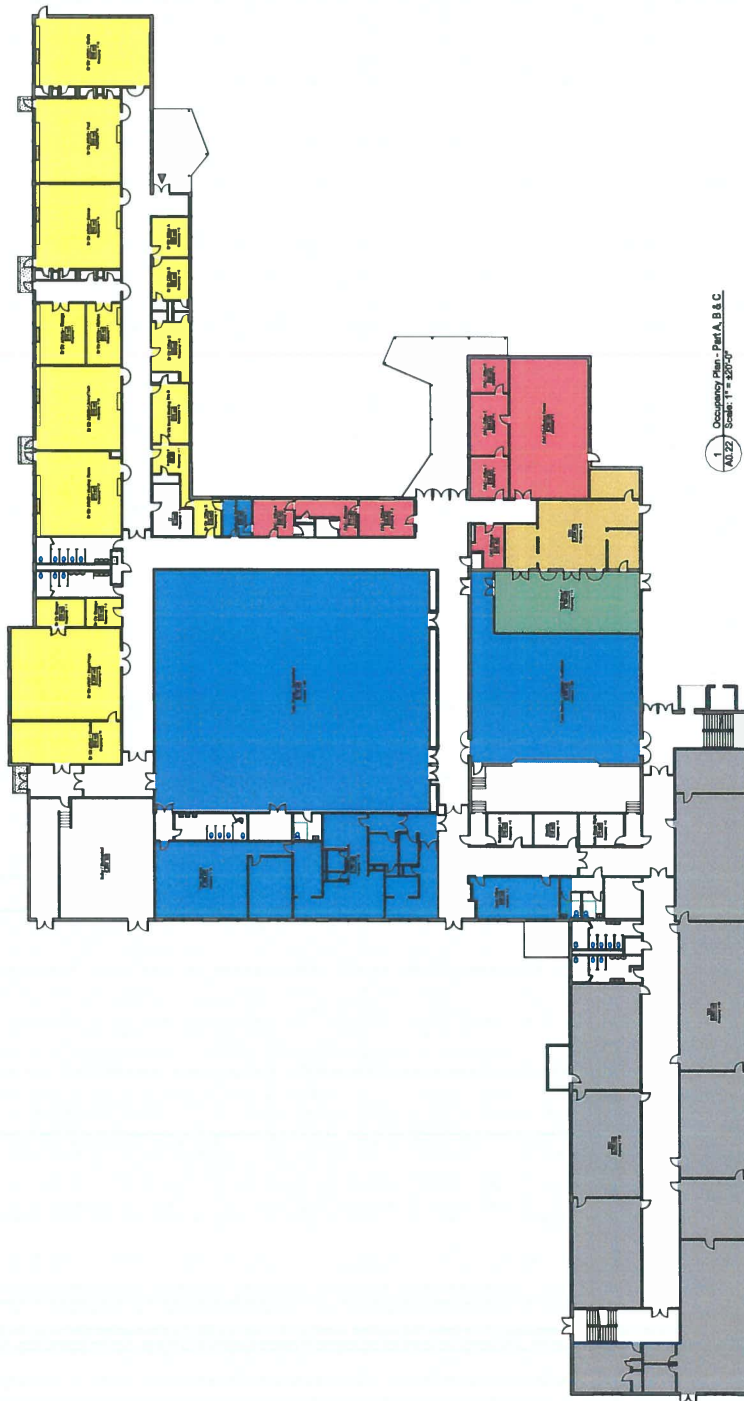


City of Gardner
Waterford School
Conceptual Re-Use
Layout Plans

63 Waterford St.
Gardner, MA 01440
29 March 2024
Rev. 10-9-2024
Rev. 10-10-2024
(GARDNER ENG.)

Occupancy Key:

- Zone A
- Zone B
- Zone C
- Zone D
- Zone E
- Zone F



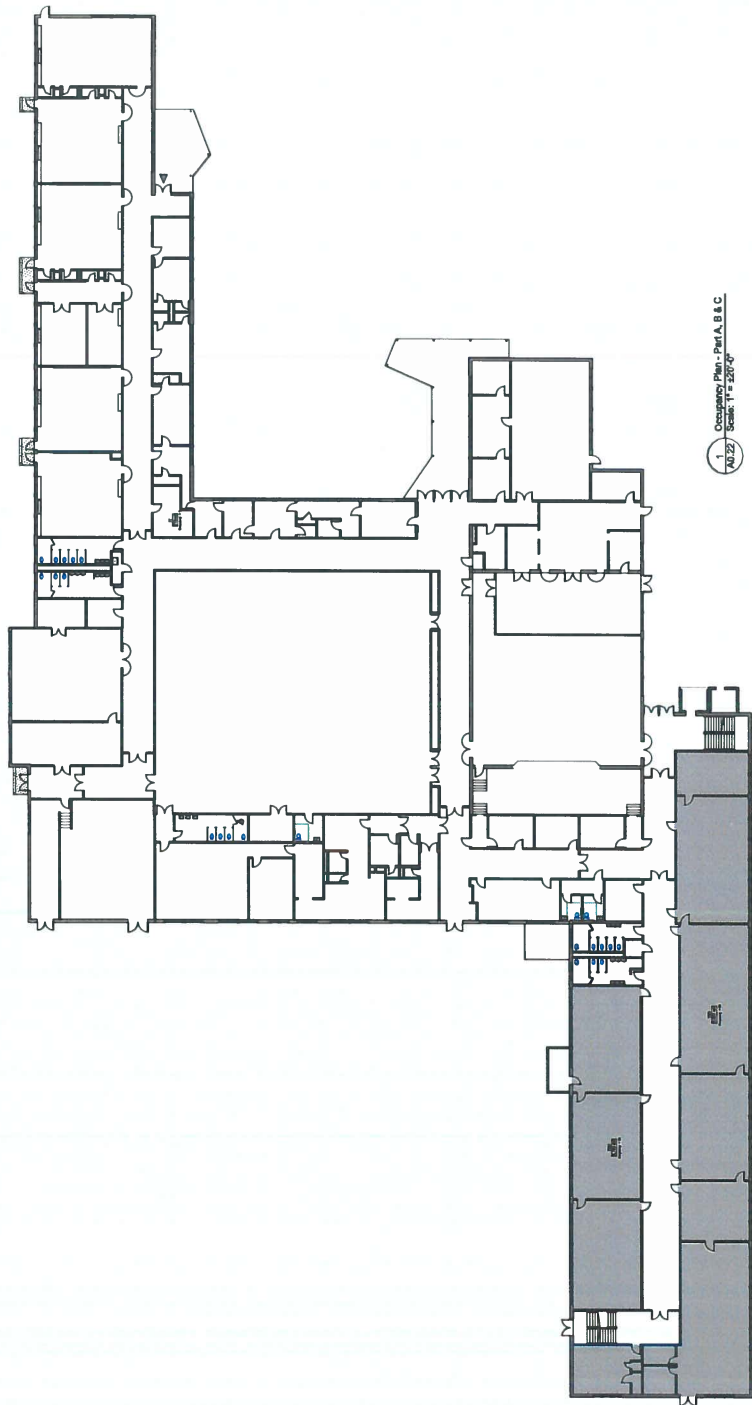
1 Occupancy Plan - Part A, B & C
(ALJZ) Scale: 1" = 20'-0"

A0.22

10/10/2024 10:00 AM



City of Gardner
Waterford School
Conceptual Re-Use
Layout Plans
63 Waterford St.
Gardner, MA 01440
29 March 2024
rev. 10-6-2024
rev. 10-10-2024
(GARDNER ENG.)



1. Occupancy Plan - Part A, B & C
A0.22) Scale: 1" = 20'-0"

A0.22

City of Gardner, MA - Gardner, MA, Inc.



City of Gardner - *Executive Department*

Mayor Michael J. Nicholson

November 20, 2024

Hon. Elizabeth J. Kazinskas, Council President
 And City Councilors
 Gardner City Hall, Rm 121
 95 Pleasant Street
 Gardner, MA 01440

RECEIVED
 2024 NOV 26 AM 9:27
 CITY CLERK'S OFFICE
 GARDNER, MA

RE: An Order Appropriating \$356,049.00 from Free Cash to Principal Inside Debt Account

Dear Madam President and Councilors,

At the September 18, 2023 Meeting of the City Council, it was voted to approve a \$550,000 loan order for renovations that needed to be made to convert the former Waterford Street School Building into a new non-profit Community Center.

Since that time several renovations have been done to the property and the City has begun the process of entering into lease agreements with different entities for space in the building. Additionally, several grant funds have been received for the purpose of outfitting the new community center. Some of these entities have already begun the work to outfit their spaces to meet their needs, with services anticipated to be opening there within the next twelve (12) months.

The attached appropriation request is being submitted to **pay off, in full**, the remaining amount of the \$550,000.00 loan that has not yet been paid and fully remove this loan from the City's books.

Due to the ways in which the City was able to proactively, and effectively handle the financials of this project, this loan is being paid off approximately three (3) years faster than was originally presented when the loan order was approved.

Respectfully Submitted,

Michael J. Nicholson
 Mayor, City of Gardner

AN ORDER APPROPRIATING FROM FREE CASH TO PRINCIPAL INSIDE DEBT.

ORDERED:

That there be and is hereby appropriated the sum of Three Hundred Fifty-Six Thousand Forty-Nine Dollars and No Cents (\$356,049.00) from Free Cash to Principal Inside Debt.

BOND ORDER NO. _____

IN CITY COUNCIL

_____, 2023

A BOND ORDER TO PAY COSTS OF REMODELING AND EQUIPPING AN EXISTING CITY BUILDING FOR USE BY THE COUNCIL ON AGING AND VARIOUS OTHER COMMUNITY ORGANIZATIONS

BE IT ORDERED, BY THE CITY COUNCIL OF THE CITY OF GARDNER AS FOLLOWS:

That there be raised and appropriated the sum of Five Hundred Fifty Thousand Dollars (\$550,000) to pay costs of remodeling and equipping an existing City-owned building for use by the Council on Aging and various other community organizations, and for the payment of all other costs incidental and related thereto, and to meet this appropriation, the City Treasurer, with the approval of the Mayor, be and hereby is authorized to borrow said amount under and pursuant to M.G.L. c. 44, §7(1), or pursuant to any other enabling authority, and to issue bonds or notes of the City therefor. The Mayor is authorized to accept and expend any federal or state grants that may be available for the City on account of the projects described above. The amount authorized to be borrowed pursuant to this loan order shall be reduced to the extent of any federal or Commonwealth grants received by City on account of the project approved by this vote.

A TRUE COPY, ATTEST:

Jite Scribner
CITY CLERK, CITY OF GARDNER

Order No. 13174

Order



In City Council
September 5, 2023

Order Passed
September 18, 2023
10 years, 1 days.
St. Skinghorn Clerk

Presented to Mayor for approval
September 27, 2023

Approved on September 27, 2023
Richard J. Pugh Mayor
Mayor's Signature



City of Gardner - *Executive Department*

Mayor Michael J. Nicholson

November 20, 2024

Hon. Elizabeth J. Kazinskas, Council President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant Street
Gardner, MA 01440

RECEIVED
2024 NOV 26 AM 9:37
CITY CLERK'S OFFICE
GARDNER, MA

RE: An Order Appropriating \$100,000 from Free Cash to DPW New Equipment Expense Account

Dear Madam President and Councilors,

The attached order is being requested to purchase a new crane hoist for the Mechanics Division of the Department of Public Works.

This piece of equipment is essential in repairs being made to the City's fleet, particularly the plows that are deployed in inclement weather events.

This appropriation is being requested now so that the equipment can be ordered and installed in a timely manner so it can be set for when the snow comes.

This new crane hoist would replace an existing hoist that is no longer operable.

Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner

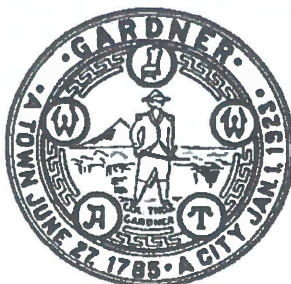
AN ORDER APPROPRIATING FROM FREE CASH TO THE DPW NEW EQUIPMENT EXPENSE ACCOUNT.

ORDERED:

That there be and is hereby appropriated the sum of One Hundred Thousand Dollars and No Cents (\$100,000.00) from Free Cash to the DPW New Equipment Expense Account.

CITY OF GARDNER
Department of Public Works

Highway
Water
Sewer
Forestry
Parks/Playgrounds
Cemeteries



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

Mayor Michael J. Nicholson
City Hall
95 Pleasant Street
Gardner, MA 01440

November 20, 2024

Dear Mayor Nicholson:

The Department of Public Works is requesting **\$100,000** from available funds to **DPW New Equipment 14421-55123** for the purchase of a **Crane Hoist**.

The existing crane hoist located at the DPW is 53 years old, attached to columns hanging overhead in the garage, and becoming a safety concern to the operators. This crane hoist is used to lift and maneuver plows, along with other equipment, weighing thousands of pounds so they can be repaired.

This piece of equipment is not specifically listed on the Capital Improvement List, however it is part of a larger line item "DPW Facility Improvements" which includes several building repairs and upgrades.

We went out to bid through the Purchasing Department for this piece of equipment and the low bid came in at \$129,410. The remaining \$29,410 will be covered under existing funds in the DPW budget.

If you have any questions on any of these requests, please do not hesitate to contact my office.

Sincerely

Dane E. Arnold, Director
Department of Public Works

Pc: Public Service Committee
John Richard, City Auditor



CITY of GARDNER
Office of the City Auditor

John Richard, City Auditor
95 Pleasant Street, Room 126
Gardner, MA 01440

Phone: 978-632-1900 ext. 8020 • Fax: 978-630-3778
Email: jrichard@gardner-ma.gov

To: City Council

Re: Money Orders for consideration on December 02, 2024

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

These balances are as of November 27, 2024:

| | | | <u>Money Order</u> | <u>Balance</u> |
|---|-------------|----|------------------------|-----------------|
| Free Cash | 10000-35400 | | | \$1,944,380.00 |
| Free Cash Certification Update additional funding | 10000-35400 | \$ | 514,000.00 | \$ 2,458,380.00 |
| to Debt Services for Principal- Inside Debt | 17710-57600 | \$ | 356,049.00 | \$ 2,102,331.00 |
| to DPW for New Equipment Expense | 14421-55123 | \$ | 100,000.00 | \$2,002,331.00 |
| | | | | \$2,002,331.00 |

| STABILIZATION FUNDS | CUR BAL |
|------------------------------|---------------------|
| ASSESSOR STABILIZATION FUND | \$ 100,392 |
| MAIN CITY STABILIZATION FUND | \$ 3,162,705 |
| OPEB STABILIZATION FUND | \$ 268,143 |
| VEHICLE STABILIZATION FUND | \$ 16,254 |
| | |
| TOTAL | \$ 3,547,494 |

The Snow & Ice account currently has available \$231,593.74
14421-52210

Sincerely

copies: Mayor
City Clerk

John Richard
City Auditor