

**THE CITY OF GARDNER AND THE TOWN OF HUBBARDSTON
INTERMUNICIPAL AGREEMENT FOR
BUILDING DEPARTMENT SERVICES AND ZONING ENFORCEMENT**

This Intermunicipal Agreement (“Agreement”), made and entered into this first day of July, 2019, pursuant to the provisions of Massachusetts General Laws, Chapter 40, Section 4A, by and between the City of Gardner, a municipal corporation within the County of Worcester and the Commonwealth of Massachusetts, acting by and through its Mayor, hereinafter referred to as "Gardner," and the Town of Hubbardston, a municipal corporation within the County of Worcester and the Commonwealth of Massachusetts, acting by and through its Board of Selectmen, hereinafter referred to as "Hubbardston" (collectively, Gardner and Hubbardston shall be referred to as the “Municipalities,” and sometimes each of the Municipalities are referred to individually as “party”)

-WITNESSETH

WHEREAS, the Municipalities wish to enter into this Agreement to utilize existing building department staff of the City of Gardner to provide building, wiring/electrical, plumbing/gas permitting and inspection services, and zoning enforcement for Hubbardston, as set forth in Exhibit 1 hereto (hereinafter referred to collectively as the “Services”);

WHEREAS, pursuant to Massachusetts General Laws, Chapter 143, Section 3, two or more municipalities may combine and share expenses in the appointment of any building commissioner or inspector of buildings and local inspectors;

WHEREAS, it is advantageous for Hubbardston to contribute toward the cost of Gardner’s building staff rather than to retain its own staff for such Services;

WHEREAS, Gardner has an existing full-time building department with sufficient resources to supply the Services to Hubbardston, and will benefit from additional monetary resources; and

WHEREAS, the Municipalities have determined that it is therefore mutually beneficial to enter into this Agreement pursuant to which the Municipalities share such benefits and costs of such Services in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the mutual goals and covenants contained herein, and the mutual benefits to result therefrom, the Municipalities agree as follows:

1. The Mayor of Gardner and Hubbardston Town Administrator will be the Municipalities’ respective representatives to oversee the Agreement (the “Representatives”). Notwithstanding, the approval of the Mayor and the Hubbardston Board of Selectmen will be required to amend this

Agreement, such amendment to be in writing.

2. All the privileges and immunities from liability and exemptions from laws, by-laws, ordinances and regulations that Inspectors (as defined herein) by any of the Municipalities hereto have in their respective jurisdictions shall be effective in the jurisdiction in which they are giving assistance unless otherwise prohibited by law. Notwithstanding anything herein to the contrary, Hubbardston shall defend, indemnify and hold Gardner and its agents, employees, officers, boards, and others acting by or through it harmless from and against all injury, harm, damage, loss, cost, expense, and liability that may arise due to or in connection with the services provided by Gardner and its respective Inspectors to the Town of Hubbardston and its residents, except to the extent resulting directly from the willful misconduct of Gardner. Hubbardston shall provide the City of Gardner with a Certificate of Insurance naming Gardner as an additional insured.

3. Term. Gardner shall be the lead party (“Lead Party”) and responsible for the hiring and employee support necessary to sustain the Services as set forth herein. The term of this Agreement is for three (3) years commencing on July 1, 2019 and ending on June 30, 2022 unless or until terminated by either party upon prior written notice which shall be provided ninety (90) days prior to the end of the then current fiscal year, except that such termination shall become effective as of the last day of the succeeding fiscal year after such notice is received by the other party (the “Term”). In the event that Hubbardston fails to pay any invoice to Gardner and fails to cure such failure within thirty (30) days after written notice thereof by Gardner, or in the event Hubbardston fails to approve a Building Department Budget that fully supports this Agreement, all as provided for herein and subject to appropriation by Hubbardston Town Meeting, then Gardner may immediately suspend its services under this Agreement for non-performance. Upon receipt of the past due payments, Gardner shall immediately commence performing its services again for the duration of the Term.

4. Cost sharing. During the Term, Hubbardston shall pay to Gardner for all complete and satisfactory Services a percentage of costs for each year of the Term in the following amounts, payable monthly as set forth herein:

FY2020 - \$26,100

FY2021 - \$26, 750

FY2022 - \$27,400

The Commissioner (as defined herein) shall assign a mutually agreeable permit fee annually for zoning determination requests properly filed with the Town of Hubbardston. Such permit fee shall payable by the respective applicant and all such revenue collected from zoning

determinations will be the property of Gardner (the "Permit Fee").

Gardner shall issue monthly invoices in writing to Hubbardston and Gardner shall thereafter receive payment monthly associated with complete and satisfactory provision of the Services, which includes, but is not limited to, work Permit Fees that cost the applicant \$2,500 or less. Payment to Gardner for Permit Fees that cost the applicant more than \$2,500 will be negotiated on a case by case basis between the Representatives, above and beyond the aforementioned monthly payments. Payments will be due to Gardner on the first day of each month following receipt of the above-described invoice by Hubbardston.

All budgets in each of the Municipalities associated with Services hereunder are subject to appropriation.

5. Services. In providing the Services to Hubbardston hereunder, Gardner shall employ or contract, through its standard personnel practices, a full-time Inspector of Buildings/Building Commissioner ("Commissioner"), and such other part-time local building inspectors, electrical/wiring inspectors, and plumbing and gas inspectors (collectively with the Commissioner, the "Inspectors") in accordance with the scope of services. All necessary steps in the hiring process of the Inspectors and maintenance of employee records shall be the responsibility of the Lead Party for Hubbardston's use in performing the Services. The terms and condition of employment of the Commissioner and Inspectors by the Lead Party shall be governed by any applicable contract or collective bargaining agreement.

Any hearings resulting from the actions of the Inspectors shall be held by the Board of Selectmen if such action originated in Hubbardston, in accordance with the code, regulations, or bylaws of Hubbardston. Similarly, any proceeds from enforcement actions, and any costs, such as legal fees, shall be paid to Hubbardston in in such circumstances. Complaints received concerning the action of the Inspectors shall be resolved by the Board of Selectmen in Hubbardston if the complaint originated in Hubbardston; provided, however, that discipline or dismissal of the Inspectors shall be undertaken by the Lead Party.

6. Dispute Resolution.

The Municipalities shall confer periodically to address matters of policy, operations and logistics as may be necessary. In the event any disputes or questions arise between the Municipalities as to the interpretation of the Agreement or the satisfactory performance by any of the Municipalities hereunder, the Municipalities shall take the following steps to resolve the dispute: (1) agree in good faith to attempt to settle the dispute through negotiation; (2) agree to try other dispute resolution procedures; and, thereafter, (3) proceed to litigation.

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7. Reports.

Gardner shall maintain separate, accurate and comprehensive records of all Services performed and all funds received from Hubbardston and shall issue fiscal reports for each fiscal year to the Municipalities by December 31 of the following fiscal year.

8. Notice.

Any and all notices, or other communications required or permitted under this Agreement shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the Town Administrator and Mayor at the addresses set forth below or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.

Notices to Gardner:

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

Notices to Hubbardston:

Ryan McLane, Town Administrator
7 Main Street
Hubbardston, MA 01452

9. This Agreement constitutes the entire agreement of the Municipalities and supersedes any prior agreements or understandings, whether oral or in writing, between them. This Agreement may not be changed or modified except by a written instrument in accordance with the provisions above.

10. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, the provisions of which shall not be deemed waived by any provision hereof, and the Municipalities hereto submit to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

11. If any provision of this Agreement is declared to be illegal, unenforceable, or void, then the Municipalities shall be relieved of all obligations under that provision provided, however, that the remainder of the Agreement shall be enforced to the fullest extent permitted by law.

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In witness thereof the Municipalities hereto have executed this Agreement as of the first date written above.

For the Hubbardston Board of Selectmen

DocuSigned by:

By: 8BA651C26F1F426... 11/25/2019
Ryan M. McLane, Town Administrator

For the City of Gardner

DocuSigned by:

By: E429C2C295344CE... 11/25/2019
Mark P. Hawke, Mayor

EXHIBIT 1

SCOPE OF SERVICES

1. Gardner shall employ a Building Commissioner and additional staff who shall also serve as Inspector of Buildings and local inspectors for the Town of Hubbardston, once duly appointed by Hubbardston. Said Building Commissioner shall be duly certified by the Commonwealth of Massachusetts as an Inspector of Buildings or Building Commissioner. All other staff shall be certified local inspectors.
2. The Building Commissioner and local inspectors shall be available to Hubbardston personnel and residents for consultation and guidance on building code matters. Gardner staff shall hold office hours in the Town of Hubbardston weekly.
3. Gardner shall supply Hubbardston with an inspector for all necessary building, wiring/electrical, and plumbing/gas inspections, including zoning enforcement actions, as expeditiously as possible.
4. The Building Commissioner and/or local inspectors shall attend and give advice and counsel at Hubbardston Planning Board, Zoning Board of Appeals, and other meetings, when requested.
5. The inspector shall assist Hubbardston personnel in emergencies such as condemnations and unsafe structures.
6. The Building Commissioner and local inspectors shall perform other inspection functions as necessary within Hubbardston.
7. Zoning determinations, when properly requested, shall be made in writing to the applicant no later than 30 days from an approved application.