



**GARDINER CITY COUNCIL  
AGENDA ITEM INFORMATION SHEET**



<b>Meeting Date</b>	06/10/2020	<b>Department</b>	Planning/Economic Dev
<b>Agenda Item</b>	4.c Possibly Approve the Credit Enhancement Agreement (CEA) for Central Maine Crossing LLC		
<b>Est. Cost</b>	n/a		

**Background Information**

The City of Gardiner designated a Tax Increment Financing (TIF) District on the urgent care facility on February 19, 2020, along with the back undeveloped area behind the facility that Central Maine Crossing (CMC) is planning to develop.

As part of the original TIF proposal, CMC is seeking to enter into the attached proposed Credit Enhancement Agreement (CEA) based on the new added value of the urgent care facility.

Tracey Desjardins, EDD will be on hand to review the proposed CEA with Council and answer any questions they may have.

All pertinent materials are attached.

<b>Requested Action</b>	'I move to approve the attached Credit Enhancement Agreement for Central Maine Crossing LLC.'
<b>City Manager and/or Finance Review</b>	The City Manager recommends the above action.
<b>Council Vote/ Action Taken</b>	
<b>Departmental Follow-Up</b>	

<b>City Clerk Use Only</b>	1 <sup>st</sup> Reading _____	Advertised 06/02/2020 _____	EFFECTIVE DATE _____
	2 <sup>nd</sup> Reading _____	Advertised _____ w/in 15 Days	
	Final to Dept _____	Updated Book _____	Online _____

**CREDIT ENHANCEMENT AGREEMENT**

**between**

**THE CITY OF GARDINER, MAINE,**

**and**

**CENTRAL MAINE CROSSING, LLC**

**DATED:**

**THIS CREDIT ENHANCEMENT AGREEMENT** dated as of \_\_\_\_\_, 2020, between the City of Gardiner, Maine (the “City”), a municipal corporation and political subdivision of the State of Maine, and Central Maine Crossing, LLC (“CMC” or the “Company”), a Maine limited liability company registered to do business under the laws of the State of Maine.

**WITNESSETH THAT**

**WHEREAS**, the City designated the Central Maine Crossing Omnibus Municipal Development and Tax Increment Financing District (the “District”) pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the City Council at a meeting of the City Council held on February 19, 2020 and adopted a development program and financial plan for the District (the “Development Program”); and

**WHEREAS**, the Maine Department of Economic and Community Development (the “Department”) has approved or is expected to approve the District and Development Program as required by law; and

**WHEREAS**, the District is a so-called “omnibus” district which means that the City Council is permitted to enter into credit enhancement agreements with individual property owners in the District as it sees fit for up to the full term of the District for up to 100% of the captured assessed value so long as the City Council holds a public hearing prior to the approval of any such credit enhancement agreement; and

**WHEREAS**, this credit enhancement agreement is intended to provide reimbursement to CMC for only a portion of the costs to construct a road and associated infrastructure; and

**WHEREAS**, at a meeting of the City Council held on \_\_\_\_\_, 2020, the City Council authorized a credit enhancement agreement with CMC in the name of and on behalf of the City; and

**NOW, THEREFORE**, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

**Section 1.1. Definitions.**

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.



“Agreement” shall mean this Credit Enhancement Agreement between the City and CMC dated as of the date set forth above, as such may be amended from time to time.

“Captured Assessed Value” means the amount, stated as a percentage, of the Increased Assessed Value of the CMC Property that is retained in the District in each Tax Year during the term of the District, as specified in Section 2.3 hereof.

“City” shall have the meaning given such term in the first paragraph hereto.

“City Project Cost Subaccount” means that portion of the Project Cost Account of the Development Program Fund for the District set aside for the City as defined in the Financial Plan Section of the Development Program and established and maintained according to Article II hereof.

“CMC Project Cost Subaccount” means that portion of the Project Cost Account of the Development Program Fund set aside for CMC as described in the Financial Plan Section of the Development Program and established and maintained pursuant to Article II hereof.

“CMC Property” means the taxable real property including any real property buildings and real property improvements located thereon located in the District and taxable to Central Maine Crossing II, LLC, specifically located at Map/Lot 011-002-2. The CMC Property expressly does not include any taxable real property now or later located within the District not taxable to Central Maine Crossing II, LLC which is an entity with the same members as the Company. The CMC Property also expressly does not include any area located in the District but outside of Map/Lot 011-002-2.

“Commissioner” means the Commissioner of the Maine Department of Economic and Community Development.

“Current Assessed Value” means the then-current assessed value of the CMC Property located in the District as determined by the City Tax Assessor as of April 1 of each Tax Year during the term of this Agreement.

“Development Program” shall have the meaning given such term in the recitals hereto.

“Development Program Fund” means the Development Program Fund described in the Financial Plan section of the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A. § 5227(3)(A). The Development Program Fund shall consist of a Sinking Fund Account (as and if necessary) and a Project Cost Account with two subaccounts: the City Project Cost Subaccount and CMC Project Cost Subaccount.

“District” shall have the meaning given such term in the first recital hereto, which is more specifically comprised of approximately 23.19 acres of real property.

“Effective Date of the Development Program” means the date of final approval of the Development Program by the Commissioner pursuant to the Act.

“Financial Plan” means the financial plan described in the “Financial Plan” Section of the Development Program.

“Fiscal Year” means July 1 to June 30 each year or such other fiscal year as the City may from time to time establish.

“Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value for such year exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any given Tax Year, there is no Increased Assessed Value in that year.

“Original Assessed Value” means thirty-nine thousand two hundred dollars (\$39,200), the taxable assessed value of the CMC Property as of March 31, 2019 (April 1, 2018).

“Project Cost Account” means the project cost account described in the Financial Plan Section of the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5227(3)(A)(1) and Article II hereof.

“Property Taxes” means any and all *ad valorem* property taxes levied, charged or assessed against the CMC Property located in the District by the City, or on its behalf.

“Sinking Fund Account” means the development sinking fund account described in the Financial Plan Section of the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5227(3)(A)(2) and Article II hereof.

“State” means the State of Maine.

“Tax Increment Revenues” means that portion of all real property taxes assessed and paid to the City in any Tax Year, in excess of any state, or special district tax, upon the Captured Assessed Value.

“Tax Payment Date” means the later of the date(s) on which property taxes levied by the City are due and payable from owners of property located within the City, or are actually paid to the City with respect to taxable property located within the District.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5222(18), as amended, to wit: April 1 to March 31.

### **Section 1.2. Interpretation and Construction.**

In this Agreement, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Agreement.



(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld, delayed (within the understanding that municipal government must abide by public meetings laws which often requires more time than private entities require to take action) or conditioned unreasonably.

(f) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

(g) If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof.

## **ARTICLE II DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS**

### **Section 2.1. Creation of Development Program Fund.**

Within sixty (60) days after the execution of this Agreement, the City shall create and establish a segregated fund in the name of the City designated as the development program fund for the District (the "Development Program Fund") pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5227(3). The Development Program Fund shall consist of a Project Cost Account that is pledged to and charged with the payment of project costs as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. § 5227(3)(A)(1), and, if necessary, may also consist of a Sinking Fund Account that is pledged to and charged with the payment of City indebtedness, if any, as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. § 5227(3)(A)(2). The Project Cost Account shall also contain at least one subaccount designated as the "CMC Project Cost Subaccount." The Development Program Fund is pledged to and charged with the payment of costs in the manner and priority provided in 30-A M.R.S.A. § 5227(3)(B) and as set forth in Section 3.1(b) below.

## **Section 2.2. Liens.**

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the CMC Project Cost Subaccount described in Section 2.1 hereof or any funds therein, other than the interest in favor of CMC hereunder in and to the amounts on deposit; provided, however, that nothing herein shall prohibit the creation of property tax liens on property in the District in accordance with and entitled to priority pursuant to Maine law.

## **Section 2.3. Captured Assessed Value: Deposits into Development Program Fund.**

(a) Each year during the term of this Agreement, commencing on July 1, 2020 and continuing thereafter for a total of ten (10) years (collectively the “CEA Years”), the City shall retain in the District one hundred percent (100%) of the Increased Assessed Value as Captured Assessed Value.

(b) For each of the CEA Years, the City shall deposit into the Development Program Fund contemporaneously with each payment of Property Taxes during the term of this Agreement an amount equal to one hundred percent (100%) of that portion of the property tax payment constituting Tax Increment Revenues. Contemporaneously therewith, in each CEA Year, the City shall deposit forty percent (40%) of the Tax Increment Revenues generated on the CMC Property into the CMC Project Cost Subaccount. Notwithstanding the previous sentence, the very first deposit(s) into the CMC Project Cost Subaccount will be reduced by the costs incurred by the City in designating the District and entering into this Agreement, up to a maximum of \$15,000. That amount shall be deposited instead into the City Project Cost Subaccount for approved municipal projects. Starting in CEA Year 1, twenty percent (20%) of the Tax Increment Revenues generated each year on CMC Property will be held in an escrow subaccount by the City. Such twenty percent (20%) shall be paid to CMC if the increased assessed value in the overall District reaches seven million dollars (\$7,000,000) before April 1, 2023 (the “Target”). If the Target is achieved, the City’s payment obligation pursuant to this Agreement will become sixty percent (60%) instead of forty percent (40%) for the remaining years if the 10-year term of this Agreement. If the Target is achieved, the remaining forty percent (40%) of Tax Increment Revenues would be held in the City Project Cost Subaccount for use on approved municipal projects. If the Target is not achieved, the City will retain the additional twenty percent (20%) of Tax Increment Revenues for its own approved municipal projects. Regardless of whether the Target is achieved, following the end of the 10-year term of this Agreement, the City will capture 100% of the Tax Increment Revenues on the CMC Property to be used on approved municipal projects.

(c) Notwithstanding anything to the contrary contained herein, the City shall have the authority to decide to discontinue all or a portion of the City Project Cost Subaccount deposits and instead make those deposits to the City’s general fund without further action or consents required by CMC.



**Section 2.4. Use of Monies in Development Program Fund.**

All monies in the Development Program Fund that are allocable to and/or deposited in CMC Project Cost Subaccount shall in all cases be used and applied to fund fully the City's payment obligations to CMC as described in Articles II and III hereof.

**Section 2.5. Monies Held in Segregated Account.**

All monies required to be deposited with or paid into CMC Project Cost Subaccount under the provisions hereof and the provisions of the Development Program, and any investment earnings thereon, shall be held by the City, in trust, for the benefit of CMC in accordance with the terms of this Agreement.

**ARTICLE III  
PAYMENT OBLIGATIONS**

**Section 3.1. Company Payments.**

(a) CMC must submit to the City documentary proof showing expenses actually incurred that are associated with the road and associated infrastructure for the area to be developed on Company property, using a form substantially similar to the form attached to this Agreement as Attachment 1. The City Manager shall conclusively determine if such proof of expenses incurred is reasonably satisfactory to justify meeting the requirements of this subsection 3.1(a). The City Manager shall be permitted to, but shall not be required, to engage the services of a third party expert of the City Manager's choice to assist with the verification of the proof of expenses incurred. All reasonable costs associated with such third party shall be borne by CMC. At the option of the Company, documentation of a quote, contract or other sufficient information can be submitted to the City Manager prior to an expense, and the City Manager shall undergo the review process in advance of the work. The Company agrees to comply with all relevant and applicable ordinance and statutory requirements governing the construction of the road and associated infrastructure, including any conditions of Planning Board approvals.

(b) If CMC has complied with the reporting requirement in Section 3.1(a) hereof, the City agrees to pay CMC, within thirty (30) days following the Tax Payment Date, all amounts then on deposit in CMC Project Cost Subaccount up to the amount of expenses actually incurred as shown in documentary proof. If CMC has not complied with the reporting requirement in Section 3.1(a) hereof, no payment of CMC's share of the Tax Increment Revenues for the year concerned will be required, and the City shall be permitted to move such funds previously deposited for the given CEA Year to the City Project Cost Subaccount for use on municipal tax increment financing projects pursuant to the Development Program.

(c) Notwithstanding anything to the contrary contained herein, if, with respect to any Tax Payment Date, any portion of the property taxes assessed against the CMC Property remain unpaid, the property taxes actually paid with respect to such Tax Payment Date shall, first, be applied to taxes due on account of Original Assessed Value; and second, shall constitute payment of Property Taxes with respect to Increased Assessed Value, to be applied first to



payment in full of the amount to be deposited in the Development Program Fund for the City's use or to the general fund for the year concerned in accordance with Section 2.3; and third, to the deposit into the escrow subaccount outlined in Section 2.3(b) hereof; and fourth, to payment of CMC's share of the Tax Increment Revenues for the year concerned, to be deposited into the CMC Project Cost Subaccount. In any case where a portion of the property taxes assessed against the CMC Property remain unpaid for any reason other than a bona fide valuation dispute, no payment of CMC's share of the Tax Increment Revenues for the year concerned will be deposited into the CMC Project Cost Subaccount until such property taxes assessed against the CMC Property are paid in full.

### **Section 3.2. Failure to Make Payment.**

(a) In the event the City should fail to, or be unable to, make any of the payments at the time and in the amount required under the foregoing provisions of this Article III including in the event that the amount deposited into CMC Project Cost Subaccount is insufficient to reimburse CMC for the full amount due to CMC under this Agreement, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. CMC shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation to establish and maintain the CMC Project Cost Subaccount, its obligation to deposit Tax Increment Revenues to CMC Project Cost Subaccount and its obligation to make payment out of CMC Project Cost Subaccount to CMC.

(b) Any payment from the City to CMC not paid within thirty (30) days following the Tax Payment Date, following submission of documentation regarding costs incurred pursuant to Section 3.1(a), as specified in Section 3.1 above, shall be subject to payment of interest by the City at the same rate applicable to refunds of abated property taxes. The provision in this section 3.2(b) of an interest rate on late payments by the City shall not limit CMC's right under section 5.2 below to collect or require immediate payment of past due City payments.

### **Section 3.3. Manner of Payments.**

The payments provided for in this Article III shall be paid directly to CMC at the address specified in Section 8.7 hereof in the manner provided hereinabove for CMC's own use and benefit by check drawn on the City.

### **Section 3.4. Obligations Unconditional.**

Subject to compliance with the terms and conditions of this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, irrespective of any defense or any rights of setoff (except as otherwise provided in this Agreement), recoupment or counterclaim it might otherwise have against CMC, other than by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal. The City hereby acknowledges that CMC has the right to enforce the contractual



obligations of the City under this Agreement and that the governmental immunity of the City does not apply to actions to enforce its contractual obligations; provided however, nothing herein shall, nor is intended to, waive any defense, immunity, or limitation of liability which may be available to the city or its respective officers, agents, and employees under the Maine Tort Claims Act or any other privileges and/or immunities provided by law.

**Section 3.5. Limited Obligation.**

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Tax Increment Revenues pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues payable to CMC hereunder, whether or not actually deposited into CMC Project Cost Subaccount in the Development Program Fund. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other City or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the pledge of the Tax Increment Revenues established under this Agreement.

**ARTICLE IV  
PLEDGE AND SECURITY INTEREST**

**Section 4.1. Pledge of and Grant of Security Interest in CMC Project Cost Subaccount.**

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to CMC by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge CMC Project Cost Subaccount described in Section 2.1 hereof and all sums of money and other securities and investments therein to CMC.

**Section 4.2. Perfection of Interest.**

(a) To the extent deemed necessary or desirable by CMC, the City will at such time and from time to time as reasonably requested by CMC establish the CMC Project Cost Subaccount described in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by CMC so as to perfect CMC's interest therein. The cost of establishing and monitoring such a fund (including the cost of counsel to the City with respect thereto) shall be borne exclusively by CMC. In the event such a fund is established under the control of a trustee or fiduciary, the City shall cooperate with CMC in causing appropriate financing statements and continuation statements naming CMC as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the



appropriate state offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) In the event CMC requires the establishment of a segregated fund in accordance with this Section 4.2, the City's responsibility shall be expressly limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by CMC. The City shall have no liability for payment over of the funds concerned to CMC by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of CMC's designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with CMC's most recent written designation or instructions actually received by the City.

#### **Section 4.3. Further Instruments.**

The City shall, upon the reasonable request of CMC, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City; and provided further that the cost of executing and delivering such further instruments (including the reasonable and related costs of counsel to the City with respect thereto) shall be borne exclusively by CMC.

#### **Section 4.4. No Disposition of CMC Project Cost Subaccount.**

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in CMC Project Cost Subaccount and will promptly pay, cause to be discharged, or make adequate provision to discharge, any lien, charge or encumbrance on any part thereof not permitted hereby.

#### **Section 4.5. Access to Books and Records.**

(a) All non-confidential books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into CMC Project Cost Subaccount shall at all reasonable times and upon reasonable notice be open to inspection by CMC, its agents and employees.

(b) All non-confidential books, records, lease agreements, and documents in the possession of CMC relating to the District, the Development Program, this Agreement and the monies, revenues, and receipts used from the Development Program Fund shall at all reasonable times and upon reasonable notice be open to inspection by the City, its agents, and its employees. In addition, inspections of the CMC Property as well as any appraisals related to the CMC Property shall be made possible by CMC upon the reasonable request of the City for the purpose of assisting the City in the process of creating a Current Assessed Value.

**ARTICLE V  
DEFAULTS AND REMEDIES**

**Section 5.1. Events of Default.**

Each of the following events shall constitute and be referred to in this Agreement as an “Event of Default”:

- (a) Any failure by the City to pay any amounts due to CMC when the same shall become due and payable;
- (b) Any failure by the City to make deposits into CMC Project Cost Subaccount as and when due;
- (c) Any failure by the City or CMC to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or CMC to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof; and
- (d) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the City’s affairs shall have been entered against the City or the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.
- (e) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of CMC’s affairs shall have been entered against CMC or CMC shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to CMC or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by CMC or the failure by CMC to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to CMC.

**Section 5.2. Remedies on Default.**

Subject to the provisions contained in Section 8.13, whenever any Event of Default described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party,



following the expiration of any applicable cure period, shall have all rights and remedies available to it at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may be necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the nondefaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder.

**Section 5.3. Remedies Cumulative.**

Subject to the provisions of Section 8.13 below concerning dispute resolution, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

**Section 5.4 Agreement to Pay Attorneys' Fees and Expenses.**

Subject to the provisions of Section 8.13 below concerning dispute resolution and the Commercial Arbitration Rules of the American Arbitration Association, in the event the City or CMC should default under any of the provisions of this Agreement, and the nondefaulting party shall require and employ attorneys or incur other expenses or costs for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the City or CMC herein contained, the defaulting party shall, on demand therefor, pay to the nondefaulting party the reasonable fees of such attorneys and such other reasonable costs and expenses so incurred by the non-defaulting party.

**ARTICLE VI  
EFFECTIVE DATE, TERM AND TERMINATION**

**Section 6.1. Effective Date and Term.**

Notwithstanding any other provision of this Agreement, this Agreement is effective upon its execution because receipt of the Commissioner's unconditional approval of the Development Program has already been received. Following execution and delivery of this Agreement, the Agreement is binding and enforceable, and shall expire upon the later of the expiration of the CEA Years or the payment of all amounts due to CMC hereunder and the performance of all obligations on the part of the City hereunder unless sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

**Section 6.2. Cancellation and Expiration of Term.**

At the acceleration, termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and CMC shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

**ARTICLE VII  
ASSIGNMENT AND PLEDGE OF CMC'S INTEREST**

**Section 7.1. Consent to Pledge and/or Assignment.**

The City hereby acknowledges that CMC may from time to time pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing improvements by or on behalf of CMC within the District, although no obligation is hereby imposed on CMC to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of all CMC's right, title and interest in, to and under this Agreement and in, and to the payments to be made to CMC hereunder, to third parties as collateral or security for financing such development, on one or more occasions during the term hereof. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by such prospective pledgee or assignee, including without limitation recognition of the pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder. The City agrees to execute and deliver any other documentation as shall confirm to such pledgee or assignee the position of such assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to such pledgee or assignee such rights and/or remedies as CMC or such pledgee or assignee may reasonably deem necessary for the establishment, perfection and protection of its interest herein. CMC shall be responsible for the City's necessary and reasonable costs of counsel with respect to any such pledge or assignment.

**Section 7.3. Pledge, Assignment or Security Interest.**

Except as provided in Sections 7.1 hereof, and except for the purpose of securing financing for improvements by or on behalf of CMC within the District, CMC shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, delayed (within the understanding that municipal government must abide by public meetings laws which often requires more time than private entities require to take action) or conditioned.



## ARTICLE VIII MISCELLANEOUS

### **Section 8.1. Successors.**

In the event of the dissolution, merger or consolidation of the City or CMC, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

### **Section 8.2. Parties-in-Interest.**

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and CMC any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and CMC.

### **Section 8.3. Severability.**

In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

### **Section 8.4. No Personal Liability of Officials of the City and/or Employees or Officers of CMC.**

(a) No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Council nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

(b) No covenant, stipulation, obligation or agreement of CMC contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future officer, agent, servant or employee of CMC in his or her individual capacity, and no official, officer, employee or agent of CMC shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

### **Section 8.5. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

**Section 8.6. Governing Law.**

The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

**Section 8.7. Notices.**

All notices, certificates, requests, requisitions or other communications by the City or CMC pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, addressed as follows:

If to the City:

City of Gardiner  
6 Church Street  
Gardiner, Maine 04345  
Attention: City Manager

With a copy to:

Bernstein Shur  
100 Middle Street  
P.O. Box 9729  
Portland, Maine 04104-5029  
Attention: Shana Cook Mueller, Esq.

If to CMC:

Central Maine Crossing, LLC  
6 Central Maine Crossing  
Gardiner, Maine 04345  
Attention: Kevin Mattson

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

**Section 8.8. Amendments.**

This Agreement may be amended only with the concurring written consent of both of the parties hereto.

**Section 8.9. Reserved.**



**Section 8.10. Benefit of Assignees or Pledges.**

The City agrees that this Agreement is executed in part to induce assignees or pledgees to provide financing for improvements by or on behalf of CMC within the District and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such assignee or pledgee from time to time of CMC's right, title and interest herein.

**Section 8.11. Integration.**

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and CMC relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

**Section 8.12 Indemnification.**

CMC shall at its own expense defend, indemnify, and hold harmless the City, its officers, agents, and employees from and against any and all liability, claims, damages, penalties, losses, expenses, or judgments relating in any manner to, or arising out of the Development Program or this Agreement, except to the extent that such liability, claims, damages, penalties, losses, expenses, or result from any negligent act or omission of the City, its officers, agents, employees or servants. CMC shall, at its own cost and expense, defend any and all suits or actions, just or unjust which may be brought against the City upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. In cases in which the City is a party, the City shall have the right to participate at its own discretion and at its own expense and no such suit or action shall be settled without prior written consent of the City. Notwithstanding any other provision of this Agreement, this section shall survive any termination of this Agreement. Nothing in this Agreement does, nor is intended to, waive any defense, immunity or limitation of liability which may be available to the City or its respective officers, agents and employees, under the Maine Tort Claims Act or any other privileges and/or immunities provided by law.

**Section 8.13. Dispute Resolution.**

In the event of a dispute regarding this Agreement or the transactions contemplated by it, the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, then either party may refer the dispute for resolution by one arbitrator mutually agreed to by the parties, and judgment on the award rendered by the arbitrator may be entered in any Maine state court having jurisdiction. Any such arbitration will take place in Gardiner, Maine or such other location as mutually agreed by the parties. The parties acknowledge that arbitration shall be the sole mechanism for dispute resolution under this Agreement. Provided however, that in the event the parties are unable to agree, within a reasonable period, on the selection of an arbitrator, either party may file suit to resolve the dispute in any court having jurisdiction within the State of Maine. This arbitration clause shall

not bar the City's assessment or collection of property taxes in accord with law, including by judicial proceedings, including tax lien thereof.

**Section 8.14. Tax Laws and Valuation Agreement.**

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by CMC. Without limiting the foregoing, the City and CMC shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on the CMC Property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and CMC hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) prejudice the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to the CMC Property for purposes of ad valorem property taxation or (b) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

*signature page follows*



**IN WITNESS WHEREOF**, the City and CMC have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

CITY OF GARDINER

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: Christine Landis, City Manager  
Authorized by City Council Vote on  
\_\_\_\_\_, 2020

CENTRAL MAINE CROSSING, LLC

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**ATTACHMENT 1**

**REPORTING FORM FOR REPORTING EXPENSES INCURRED RELATED TO THE DEVELOPMENT OF CMC PROPERTY**

\*Copies of documentary proof showing listed expenses must be attached to this form.

	DATE	EXPENSE (description of expense and relation to CMC Property development)	COST
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			