



**GARDINER CITY COUNCIL  
AGENDA ITEM INFORMATION SHEET**



<b>Meeting Date</b>	10/28/2020	<b>Department</b>	Finance
<b>Agenda Item</b>	4.c Consideration of First Read for a General Obligation Bond Anticipation Note (BAN) and a General Obligation Bond for the WasteWater Treatment Plant Upgrades		
<b>Est. Cost</b>	Not to exceed \$3,532,000 (Principal Only)		

**Background Information**

The General Obligation Bond Anticipation Note (BAN) will be in the amount of \$3,532,000 and will be used during the construction phase of the project. The final funding will require a General Obligation Bond in the amount of \$3,032,000, issued to the United State Department of Agriculture, acting through its Rural Utilities Service, and will be distributed in conjunction with a \$500,000 grant from USDA.

These bonds will be used to finance the city's 2020 Wastewater Treatment Plant Upgrades and will be for a term of thirty (30) years. The City Council approved this project on June 24, 2020.

Please see attached treasurer's financial statement for the amount of bonds outstanding in the city.

<b>Requested Action</b>	"I move to send the acquisition of the General Obligation Bond Anticipation Note (BAN) and General Obligation Bond - Order number 2020-04 for the Wastewater Treatment Plant Upgrades to a second reading on November 18, 2020."
<b>City Manager and/or Finance Review</b>	City Manager and Finance Director recommend approval to proceed with the bond.
<b>Council Vote/ Action Taken</b>	
<b>Departmental Follow-Up</b>	

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

CITY OF GARDINER, MAINE  
NOTICE OF CITY COUNCIL MEETING  
TO AUTHORIZE ISSUANCE OF A \$3,023,000 GENERAL OBLIGATION BOND

The City Council of the City of Gardiner will meet at 6:00 p.m. on November 18, 2020, to consider, among other matters, the authorization and issuance of a \$3,032,000 general obligation bond and \$3,532,000 general obligation bond anticipation note of the City, both of which would be issued to finance the City's 2020 Waste Water Treatment Facility and Maine Avenue pump station improvements. The Bond would be issued to the United States Department of Agriculture, acting through its Rural Utilities Service, and would be issued in conjunction with a \$500,000 grant from the USDA. Because of the public health emergency, the meeting will be conducted via Zoom. Information on how to log in and an announcement of media broadcasting of the meeting will be announced on the agenda for the November 18 meeting. Written comments received before the meeting will be considered. Comments should be submitted to the City Manager at 6 Church Street, Gardiner, ME 04345, via phone at 207 582 4200 during regular office hours, or via e-mail addressed to [clandes@gardinermaine.com](mailto:clandes@gardinermaine.com). Copies of Order number 2020-04, relating to the issuance, are available at the office of the City Clerk.

# CITY OF GARDINER

ORDER #2020-04

## General Obligation Bond Authorization

BE IT ORDERED, that (1) a sum not to exceed \$3,532,000.00 be and hereby is appropriated for interim financing for permanent public improvements for the City of Gardiner (the "City"), for upgrades to the WasteWater Treatment Facility in the City of Gardiner (the "Project"). The estimated period of utility of the foregoing public improvements is hereby declared to be at least thirty (30) years.

That (2) to meet the aforesaid appropriation, the City Treasurer is hereby authorized and directed under and pursuant to the constitution and laws of the State of Maine, Title 30-A, §5772 of the Maine Revised Statutes, as amended, Section 8 of Article VII of the City Charter and other applicable enabling authority to prepare, issue and sell to the United States Department of Agriculture, acting through its Rural Utilities Service, ("USDA RUS" ) or to one or more other lending institutions as determined by the City Treasurer, general obligation bonds or notes of the City of Gardiner, in the form of a draw loan, in an aggregate principal amount not exceeding \$3,532,000.00 to finance the Project (the "Bonds or Notes"). The dates, denominations, call provisions, interest rate or rates and all other particulars as to form, issue and sale of each issue of said Bonds or Notes shall be determined by the City Treasurer and by the Mayor provided that each issue of said Bonds or Notes shall be signed by the City Treasurer and the Mayor, and shall mature, to the extent possible, in annual, serial and approximately equal installments of principal, the first such installment to be payable not more than (2) years after the date of issuance of said Bonds or Notes and the last installment to be payable not later than the issuance of permanent financing for the project. The Bonds or Notes authorized hereby may be consolidated for purpose of sale and issuance with any other authorized issuance of Bonds or Notes, provided that the Bonds or Notes of each component of the consolidated Bonds or Notes shall mature over a term not longer than the term permitted hereby for such component.

That (3) interest on the Bonds or Notes is expected to be exempt from both Federal and State income tax imposed on individuals, but the City Treasurer is permitted to issue the Bonds or Notes in a manner that makes them subject to taxation, as determined by the City Treasurer to be in the best interests of the City.

That (4) an amount sufficient for the payment of the annual installments of principal and interest on said Bonds or Notes shall be included in the tax levy each year during which any of such Bonds or Notes shall be outstanding until the debt represented by said Bonds or Notes is extinguished.

That (5) the City Treasurer, with the approval of the Mayor, be and hereby is authorized and directed, subject to the provisions of this Order and the applicable provisions of law, to sign and determine the date or dates of such Notes, the interest rate or rates they shall bear and all other details of such Notes or renewal Notes herein provided for and do all things necessary and proper to effectuate the issuance and sale thereof.

That (6) any unused proceeds remaining from Bonds, Notes, or anticipatory obligations issued to fund the capital Project described above shall be applied, after the completion of such Project, to the outstanding principal amount of such Bonds, Notes, or anticipatory obligations.

That (7) The City Treasurer is hereby authorized to execute a Loan Agreement with a lender in such form as may be required by such lenders and approved by the Treasurer.

That (8) all actions heretofore taken by the municipal officers of the City relating to the selling of the City's general obligation Bonds or Notes authorized hereby be and they hereby are ratified, approved and confirmed.

That (9) pursuant to the requirements of the Internal Revenue Code of 1986, as amended, the City designates the Bonds and Notes authorized hereby to be qualified tax exempt obligations of the City, and that the City anticipates that it shall not issue during the current calendar year an aggregate total amount of qualified tax exempt obligations in excess of \$5,000,000.

That (10) the City shall take any and all actions required under the Internal Revenue Code of 1986, as amended, to maintain the tax exempt status of the interest on said Bonds or Notes, and to maintain the status of the Bonds and Notes as qualified tax exempt obligations of the City, and that the Bonds and Notes may be subject to such further terms and conditions as may be agreed to by the Mayor and the Treasurer of the City to carry into effect the full intent of this Order.

That (11) in connection with the issuance of the Bond, and provided that the Bond is issued to USDA RUS, the City agrees to enter into and hereby adopts RUS Loan Resolution 1780-27, a copy of which is attached hereto, governing matters relating to the sale of the Bond, and authorizes the Council Chair to sign such Loan Resolution, and the Clerk to attest to it and attach the City's seal thereto, and further that in connection with the receipt of a \$500,000 grant from USDA RUS, the City agrees to enter into and hereby adopts RUS Bulletin 1780-12, "Water and Waste Systems Grant Agreement", and authorizes its City Clerk, City Manager, and the Chair of the Council to take all steps, sign all documents, certificates and agreements, and otherwise do all things they deem necessary in order to carry out the transactions contemplated by such Water and Waste Systems Grant Agreement."

That (12) the Law Offices of Eaton Peabody is hereby designated as bond counsel for the City to advise the City with respect to the issuance and sale of the Bonds and Notes, and to prepare documents and render opinions as may be necessary or convenient for the purpose.

That (13) the City Council, municipal officers and officials of the City are hereby authorized to execute all documents and certificates, and to take all action, including affixing the seal of the City, as may be necessary or convenient to carry out the full intent of this Order, and to accomplish the Project and issue the Bonds or Notes, including approval and signing of construction contracts and other agreements obligating the City, and to accept federal or state grants for the Project.

That (14) the City of Gardiner may finance, on an interim basis, certain Project expenditures from the General Fund, which expenditures are reasonably expected to be reimbursed with the proceeds of debt to be incurred by the City of Gardiner in the maximum principal amount of \$3,532,000.00 through the issuance of the Bonds or Notes. This resolution is a declaration of official intent and an official action adopted pursuant to the requirements of Treasury Regulation Section 1.150-2.

First Reading: \_\_\_\_\_

Posted: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Advertised: \_\_\_\_\_

City Clerk

Second Reading: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_, City Clerk

## TREASURER'S FINANCIAL STATEMENT

### A. Bonds Outstanding

Total amount of bonds of the City outstanding:	\$9,358,444
Total amount of bonds of the Town authorized but unissued:	\$0
Total amount of bonds to be issued per this Order:	\$3,532,000
Total bonds of the Town authorized upon passage of this Order:	\$12,890,444

### B. Estimate of Costs

Principal amount of bonds under this Order:	\$3,532,000
Estimated interest rate:	1.5%
Estimated term:	30 years
Maximum interest to be paid over term:	\$856,273
Maximum total principal and interest to be repaid over term:	\$4,388,273

### C. Treasurer's Statement regarding validity:

The validity of the bonds and of the electors' ratification of the bonds may not be affected by any errors in the estimates made in paragraph B, above. If the actual amount of the total debt service for the bond issue varies from the estimate, the ratification by the electors is nevertheless conclusive and the validity of the bond issue is not affected by reason of the variance.

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Christine Landes, City Manager/Treasurer

City of Gardiner, Maine

October 19, 2020

Denise M. Brown, Finance Director  
City Gardiner  
6 Church Street  
Gardiner, ME 04345

*Re: 2020 Wastewater Treatment Plant General Obligation Bond and BAN  
Principal Amount: \$3,532,000*

Dear Ms. Brown:

The purpose of this letter is to set forth the role we propose to serve and responsibilities we propose to assume as bond counsel in connection with the issuance of the above-referenced Bond (the "Bond") and Bond Anticipation Note (the "Note") by the City of Gardiner (the "Issuer").

Bond counsel is engaged as a recognized expert whose primary responsibility is to render an objective legal opinion with respect to the authorization and issuance of Bonds.

As bond counsel, we will: examine law; prepare authorizing and operative documents; consult with the parties to the transaction prior to the issuance of the Bond; review applicable certified proceedings; and undertake such additional duties as we deem necessary to render the opinion. We understand this issue will finance permanent public improvements for the City of Gardiner and upgrade to the Waste Water Treatment Facility.

Subject to the completion of proceedings to our satisfaction, upon closing the Note we will render our opinion that:

1. The Note is a valid and binding general obligation of the Issuer;
2. The interest on the Note is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; it should be noted, however, that for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted net book income (adjusted current earnings for taxable years beginning after December 31, 1989).
3. The interest paid on the Note will be exempt from Maine income taxes;
4. The Note is a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code, and, in the case of certain financial institutions (within the meaning of

Section 265(b)(5) of the Code), a deduction is allowed for 80 percent of that portion of such financial institutions' interest expense allocable to interest on the Bonds.

The opinion will be executed and delivered by us in written form on the date the Note is exchanged for their purchase price (the "Closing") and will be based on facts and law existing as of its date.

Upon completion of the Project, we will also assist with closing the Bond with the United States Department of Agriculture, working through its Rural Utilities Service. At that time, subject to the completion of proceedings to our satisfaction, we expect to deliver our opinion that:

- 1) The Loan Resolution has been duly authorized and executed by the Issuer and constitutes a valid and binding obligation of the Issuer to make payments to RD of the amounts and subject to the terms as therein provided,
- 2) The Bond has been duly authorized and executed by the Issuer and constitutes the valid and binding obligation of the Issuer, pursuant to the Resolutions, the Warrants, and all other authority thereto enabling. Unless paid from other sources, the Bond is payable as to both principal and interest from taxes assessed by the Issuer.
- 3) Under existing statutes and court decisions, interest on the Bond is not included in the gross income of the owners thereof for Federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). Pursuant to 7 USCA Section 926(a)(1) and 1929(a)(h), if the Bond is acquired by the Federal Government and sold on an insured basis from the Agricultural Credit Insurance Fund, or the Rural, or Rural Development Insurance Fund, the interest on the Bond will be included in gross income under the Code for federal income tax purposes. In addition, under the Code, an individual who owns obligations such as the Bond may be required to include in gross income a portion of his or her Social Security or Railroad Retirement payments. Ownership of the bond may result in other related Federal income tax consequences, regarding which we express no opinion.
- 4) Under existing statutes, court decisions and regulations, interest on the Bond is exempt from State of Maine income tax imposed on individuals, and
- 5) The Bond is not an "arbitrage bond" or "private activity bond" as such terms are defined in Sections 148 and 141, respectively, of the Code.

Upon delivery of that opinion, our responsibilities as bond counsel will be concluded with respect to this financing; specifically, but without implied limitation, we do not undertake (unless separately engaged) to provide continuing advice to the Issuer or any other party

concerning any actions necessary to assure that interest paid on the Bond will continue to be excluded from gross income for federal income tax purposes. In rendering the opinions, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation.

As bond counsel, we do not advocate the interests of the Issuer or any other party to the transaction. We assume that the Issuer will be represented by its counsel and that other parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction.

As bond counsel, we will not assume or undertake responsibility for the preparation of an Official Statement or any other disclosure document with respect to the Bond, nor are we responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document. However, if a disclosure document will be adopted or approved by the Issuer, our responsibility will include the preparation or review of any description therein of: (i) Maine and federal law pertinent to the validity of the Bond and the tax treatment of interest paid thereon, (ii) the terms of the Bond, and (iii) our opinion.

The basis for billing in this matter is hourly. Our typical billing practice is to use the time involved to generate the fees to be billed. For my immediate services, you have agreed to pay attorney's fees at my current hourly rate of \$305.00 per hour. From time to time, as client needs necessitate, other members of the firm may be asked to provide legal services on your behalf. I do not currently anticipate consulting with other attorneys at Eaton Peabody on this matter, but if I do, you will be billed at their hourly rates, which range from \$180 to \$445 per hour. All hourly rates are subject to annual adjustment. Our bills will be sent monthly, indicating time spent on the matter to date.

Also enclosed is a statement of our standard conditions for representation, which apply, but only to the extent not inconsistent with the terms set out in this letter.

If the foregoing terms of this engagement are acceptable to you, please so indicate by returning the enclosed copy of this letter signed by an appropriate officer.

Thank you for placing your trust in Eaton Peabody. We will do our best to justify and keep that trust. Should you have any other needs for service, we would be happy to talk with you about whether any of our more than 60 consultants and lawyers are available to meet them.

We look forward to working with you.



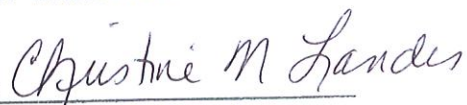
EATON PEABODY

By:   
Dan S. Pittman

ACCEPTED AND APPROVED:

CITY OF GARDINER

Dated: 10/21/2020

By:   
Its CITY MANAGER  
Duly Authorized