



**GARDINER CITY COUNCIL  
AGENDA ITEM INFORMATION SHEET**



<b>Meeting Date</b>	05/18/2022	<b>Department</b>	City Council
<b>Agenda Item</b>	4.i) Consideration of extending the Johnson Hall, Inc Pledge Agreement to August 31, 2022		
<b>Est. Cost</b>			

**Background Information**

On March 6, 2019, this pledge agreement was extended until December 31, 2020. Due to COVID restrictions and other delays to the project, the construction is finally under way. This agreement should now be updated to reflect the current timeline.

<b>Requested Action</b>	"I move to instruct the Acting City Manager to work with legal counsel to update this agreement and extend it until August 31, 2023."
<b>City Manager and/or Finance Review</b>	
<b>Council Vote/ Action Taken</b>	
<b>Departmental Follow-Up</b>	

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

**AMENDED AND RESTATED**  
**PLEDGE AGREEMENT**

This Amended and Restated Pledge Agreement (hereinafter the “Amended Agreement”) effective as of December 30, 2018, is made and entered into by and between the **CITY OF GARDINER**, with a principal address of 6 Church Street, Gardiner, Maine 04345, (hereinafter referred to as the “City” or “Gardiner”), and **JOHNSON HALL, INC.**, with a place of business at 280 Water Street, Gardiner, Maine 04345 (hereinafter referred to as “Johnson Hall”), for the use and benefit of Johnson Hall. Based upon the recitals below, and in consideration of the mutual promises and benefits hereunder, the parties hereby agree as follows:

**WHEREAS**, Johnson Hall is a non-profit organization formed under the laws of the State of Maine; and

**WHEREAS**, Johnson Hall received a ruling from the Internal Revenue Service determining that it is exempt from United States Federal Income Tax under section 509(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Johnson Hall’s Federal Tax I.D. number is: 01-0430677; and

**WHEREAS**, Gardiner has an interest in the mission of Johnson Hall and wishes to pledge its financial support for the Agreed Purpose described herein; and

**WHEREAS**, Johnson Hall desires to accept such gift, subject to the terms and conditions set forth in this Amended Agreement; and

**WHEREAS**, on April 19, 2017, the City and Johnson Hall entered into a Pledge Agreement for the above purpose; and

**WHEREAS**, the Pledge Agreement entered into on April 19, 2017 included a pledge effective date of December 31, 2018; and

**WHEREAS**, in December 2018 the City Council of Gardiner voted to extend the effective date of the pledge to December 31, 2020; and

**WHEREAS**, the parties desire to amend and restate the Pledge Agreement to reflect the new effective date of December 31, 2020, as stated herein.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions set forth in this Amended Agreement and of other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree upon the following terms and conditions:

1. Incorporation of Recitals. The aforescribed recitals are incorporated herein.



2. Donor Pledge.

- a. *Amount.* Gardiner hereby pledges to Johnson Hall the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) (the "Pledge").
- b. *Agreed Purpose.* Johnson Hall agrees that all donations from Gardiner and all amounts earned by investing such donations including any amounts received with respect to or as a result of the Pledge shall be used by Johnson Hall only for the Agreed Purpose. "Agreed Purpose" shall mean the construction project (the "Project") planned by Johnson Hall as detailed in the Scope of Renovation Improvements attached hereto as Exhibit A and incorporated herein.
- c. *Contingency.* Notwithstanding the foregoing, Pledge funds shall only be made available to Johnson Hall upon the financial close of construction financing for the aforescribed Scope of Renovation Improvements consistent with any lender commitment letter and the execution of a construction contract for said Project. Evidence of financial close and execution of a construction contract shall be provided in a written notice from Johnson Hall to Gardiner.
- d. *Time.* The Pledge shall be effective until December 31, 2020. If Johnson Hall has not completed the aforescribed financial close and execution of a construction contract and not delivered the aforescribed notice to Gardiner, the City shall have no obligations to provide the Pledge to Johnson Hall and this Amended Agreement shall automatically terminate. The parties may extend this termination date upon mutual agreement in writing.

3. Payment Method. The parties agree that Gardiner may, at its discretion, satisfy the Pledge via check, electronic funds transfer, stocks or other securities, or other methods acceptable to the City of Gardiner.

4. Charitable Purpose. Johnson Hall agrees to use the Pledge and all proceeds therefrom as described herein and only for charitable purposes as defined by Section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("IRC"), and as specifically outlined by Johnson Hall in its Form 1023, Application for Exemption under Section 501(c)(3) of the Internal Revenue Code, submitted to the Internal Revenue Service upon its formation.

5. Consideration. Gardiner acknowledges that Johnson Hall's promise to use the amount pledged and/or Johnson Hall's actual use of the money pledged by Gardiner for the Agreed Purpose specified in this Amended Agreement will each constitute full and adequate consideration for the Pledge.

6. Assignment. This Amended Agreement and the rights and benefits hereunder may not be assigned by either party without the prior written consent of the other party, which consent shall be in the sole and absolute discretion of the non-assigning party.

7. Entire Agreement. This Amended Agreement constitutes the entire agreement of the parties with regard to the matters referred to herein, and supersedes all prior oral and written agreement, if any, of the parties in respect hereto. This Amended Agreement may not be modified or amended except by written agreement executed by both parties hereto.

8. Notices. All written notices shall be deemed to have been properly given if personally delivered or sent by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the party for whom it is intended at its address herein set forth:

*If to Johnson Hall*

Johnson Hall, Inc.  
c/o Michael Miclon, Executive Director  
280 Water Street  
Gardiner, Maine 04345

*If to City of Gardiner:*

City of Gardiner  
c/o Christine Landes, City Manager  
6 Church Street  
Gardiner, Maine 04345

9. Severability. If any term, covenant, or condition of this Amended Agreement, or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Amended Agreement, or the application of such term, covenant or condition to other persons or circumstances, shall not be affected thereby, and each term, covenant or condition of this Amended Agreement shall be valid and enforceable to the fullest extent permitted by law.

10. Choice of Law. This Amended Agreement shall be construed and governed under the laws of the State of Maine.

11. No Third Party Rights. This Amended Agreement does not create any third-party rights, and nothing in this Amended Agreement shall be construed to create any third-party rights.

12. Captions. The captions of the paragraphs of this Amended Agreement are for convenience only, and shall not be considered or referred to in resolving questions of construction and/or interpretation.

13. Further Actions. Each of the parties hereto agrees to take any and all actions reasonably necessary in order to effectuate the intent, and to carry out the provisions, of this Amended Agreement.

14. Counterparts. This Amended Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF GARDINER**

**JOHNSON HALL, INC.**

By Christine M Landes

By [Signature]

Christine Landes, City Manager

Michael Miclon, Executive Director

Date 3/6/19

Date 3/6/19

**EXHIBIT A**

**SCOPE OF RENOVATION IMPROVEMENTS**