



**GARDINER CITY COUNCIL  
AGENDA ITEM INFORMATION SHEET**



<b>Meeting Date</b>	04/06/2022	<b>Department</b>	City Council
<b>Agenda Item</b>	5.m) Consideration of closing out the Gardiner Growth Initiative account		
<b>Est. Cost</b>			

**Background Information**

Since the inception of this program, the City of Gardiner has acted as the fiscal agent for this program that was a program initiated by Gardiner Main Street.

All loans and grants have been closed out and per the attached agreement, all money should be given to GMS.

Acting City Manager Davis will have the final balance in that account at this Council meeting.

<b>Requested Action</b>	"I move to end the Gardiner Growth Initiative program and return all remaining funds to Gardiner Main Street."
<b>City Manager and/or Finance Review</b>	Acting Manager Davis approves 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 _____	<b>EFFECTIVE DATE</b> _____
	2 <sup>nd</sup> Reading _____	Advertised _____ w/in 15 Days	
	Final to Dept _____	Updated Book _____	Online _____

**AMENDED AND RESTATED  
MANAGEMENT AGREEMENT**

THIS AMENDED AND RESTATED MANAGEMENT AGREEMENT ("Agreement"), made effective this 27<sup>th</sup> day of May, 2014 (the "Effective Date"), between the CITY OF GARDINER, a Maine municipality ("City"), and GARDINER MAIN STREET, a Maine nonprofit corporation ("GMS"),

**WITNESSETH:**

**WHEREAS**, City is a political subdivision of the State of Maine, exempt from income taxation under section 115 of the Internal Revenue Code of 1986, as amended (the "Code" ), charitable contributions to which are deductible under section 170 of the Code; and

**WHEREAS**, GMS is a nonprofit corporation organized and operated for the charitable, educational purposes, and for the purpose of lessening the burden of Government, combating community deterioration, and historic preservation; and

**WHEREAS**, GMS is recognized by the Internal Revenue Service as an organization exempt from taxation under section 501(c)(3) of the Code; and

**WHEREAS**, GMS and the City have cooperated to create the Gardiner Growth Initiative ("GGI"), which includes an Interest-Deferred Forgivable Loan program ("Program"), with the goal of attracting quality development to the downtown Gardiner area; and

**WHEREAS**, City is willing to receive grants and donations related to the GGI Program, and is willing to administer such funds for the sole benefit of the Program; and

**WHEREAS**, City and GMS desire to set forth in this Agreement their respective duties and responsibilities with respect to such grants, donations and administration;

**NOW, THEREFORE**, in consideration of the mutual promises, conditions and covenants contained herein, the parties agree as follows:

**I. Management**

1.1 GMS and the City hereby agree that the Program shall be administered during the term of this Agreement, in accordance with the terms hereof.

1.2 GMS is a separate legal entity from City. This Agreement shall not be deemed to create any relationship of, partnership or joint venture between GMS and City, and GMS shall not make any contrary representation to any individual or entity.

1.3 During the term of this Agreement, GMS shall be operated in a manner consistent with GMS's tax-exempt status; shall not make any material changes in its purposes or activities without the prior written approval of City; shall not carry on activities or use funds administered

by City hereunder in any way that jeopardizes its eligibility for tax-exempt status; and shall not attempt to influence legislation or participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office or otherwise engage in the carrying on of propaganda (within the meaning of section 501(c)(3) of the Code) without the prior written consent of City.

## II. GGI Program

2.1. During the term of this Agreement, the GGI Program will receive a \$125,000 grant from the Bank of Maine to be used as seed money for the Program, and may receive other funds from other sources for use of the Program, all of which shall be provided to the City for disbursement consistent with this Agreement. Disbursement of these funds by the City will follow this protocol:

- a. GMS shall provide assistance to the City in administrative tasks such as (i) setting the Program description, fee schedule, forgiveness criteria, default process, collections procedures, and underwriting standards, (ii) inviting applications, (iii) scanning proposals and (iv) compiling documents for underwriting, closing, and perfecting security interests.
- b. The City shall accept application fees from applicants, and deposit them into a special, segregated account. The fee, which shall be developed in consultation with GMS, shall cover the underwriting costs invoiced to the City by a third party vendor. If the application fee exceeds the actual cost, the City shall retain the difference for use to cover cost overruns for subsequent applications. At the conclusion of the Program, the City shall transfer any remaining balance to its general fund as it deems appropriate.
- c. A third party underwriter shall judge loan applications and send invoices for its services to the City.
- d. The underwriter will present its recommendations to GMS and the City. GMS shall provide recommendations of appropriate loan recipients and interest rates to the City, for the City's approval or disapproval, according to the terms of this Agreement and other relevant Program materials. City Council will exercise discretion in disapproval of loan applications; decisions contrary to GMS recommendations will cite specific significant deviations from official program materials as its basis for denial.
- e. The underwriter shall prepare loan documents and a bill for closing. The Applicant, rather than the City, shall be responsible for paying these closing costs. The Applicant shall also provide payment to the City at the time of closing in an amount equal to the interest on the loan that will become due during the first year of the loan. These funds shall be held in escrow by the City, and shall be returned to the applicant within 60 days of the fifth anniversary of the closing of the loan. However, in the case of default, these funds shall be used by the City to cover expenses related to collection from the Applicant in question. If the expenses of the collection are greater than the amount held in escrow, GMS shall reimburse the City for the difference. If the amount in escrow exceeds the cost of collection, the City shall credit that difference to the account of the defaulting Applicant.
- f. Interest payments shall be deferred as long as the Applicant remains in good standing. They shall be deferred for up to five years at which they, along with the principal amount of the loan outstanding, will be forgiven.

- g. The City shall cut all checks relating to loans to Applicants out of a special account and arrange details of the closing with Applicants.
- h. If a loan comes into default, the City shall retain a third party vendor, working on commission, to attempt to collect amounts due on the loan.

### **III. Hold Harmless**

3.1 City shall be held harmless by GMS and its heirs and successors for any liability as a result of acting in accordance with the terms hereof. This includes but is not limited to financial liability. In no instance shall the City be held liable for the loan principal and/or interest awarded to any of the applicants.

### **IV. Representations and Warranties**

4.1 City represents, warrants and agrees that: (a) City's execution of this Agreement and performance hereunder are within its lawful municipal powers and have been duly authorized by all necessary actions, and (b) no filings are required to be made by City with, and no consents or approvals are required to be obtained by City from, any court, governmental agency or other person or entity in order to enter into or perform under this Agreement. City agrees to deliver satisfactory certifications or assurances by its legal counsel confirming the validity of such representations and warranties if reasonably requested by the GMS.

4.2 GMS represents, warrants and agrees that: (a) GMS's execution of this Agreement and performance hereunder are within its lawful corporate powers and have been duly authorized by all necessary actions; (b) no filings are required to be made by GMS with, and no consents or approvals are required to be obtained by GMS from, any court, governmental agency or other person or entity in order to enter into or perform under this Agreement; and (c) GMS is not, and will not hereafter become, a party to any agreement inconsistent with GMS's obligations hereunder. GMS agrees to deliver satisfactory certifications or assurances by its legal counsel confirming the validity of such representations and warranties if reasonably requested by City.

4.3 GMS shall specify in all marketing and application material relating to the Program that Program funds may not be disbursed to any person who is an officer, director, substantial contributor or key employee of GMS or who is related to such a person, or to any corporation, LLC, partnership, trust or other legal entity of which more than 10% of the entity is beneficially owned or allocable to such a person. GMS shall at all times ensure that no Program funds are in fact distributed to any such person or entity.

4.4 GMS shall inform all recipients of awards under the Program that they should consult their own tax advisors regarding the potential income tax characterization of the awards, and that neither GMS nor the City bear any responsibility for any liability of the taxpayer related to the taxpayer's mischaracterization of the awards for tax purposes or failure to consult a tax advisor.

**V. Miscellaneous**

5.1 Arbitration. No action, suit or other proceeding shall be maintained in any court, whether at law or in equity, by reason of any dispute or controversy relating in any manner to the matters covered by this Agreement. Any dispute or controversy with respect to the rights and obligations of the parties hereto, or any matter or thing of whatsoever nature arising out of or under or relating to this Agreement, shall be settled by arbitration in Gardiner, Maine, at which the determination of the arbitrator shall be made under the rules of the American Arbitration Association. The determination of such arbitrator shall be final, conclusive and binding upon the parties hereto. In connection with any proceeding to enter judgment on the award of such arbitrator, the parties hereto consent to personal jurisdiction, service of process, and venue in any Federal or State court within the State of Maine. In connection with any action brought to enforce such award, each of the parties hereto agrees that service of process may be made upon such party at the address set forth in (or specified in accordance with) subsection 5.4 of this Agreement by registered or certified mail, return receipt requested. The arbitrator shall have no power to modify or vary any provisions of this Agreement. The arbitrator shall have the power to award the costs of arbitration, including reasonable attorney's fees, to the prevailing party.

5.2 Waiver. Any waiver of any provision of this Agreement or of any right or rights hereunder (a) shall be binding only if it is in writing and executed by the waiving party, (b) shall not be deemed to be a continuing waiver, and (c) shall not prevent or estop any party from thereafter enforcing such rights or provisions as to the future. The failure of any party to insist in any one or more instances upon the strict performance of one or more of the terms and provisions of this Agreement by the other party shall not be construed as a waiver or relinquishment for the future of any such terms or provisions, but the same shall continue in full force and effect.

5.3 Entire Agreement; Supersedes Any Prior Agreement. This Agreement contains the entire understanding of the parties, contains the essential terms of the agreement, and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, by or between any of the parties hereto, including the Management Agreement executed between the parties dated April 9, 2014.

5.4 Modification. This Agreement contains all of the representations and agreements between the parties with respect to the subject matter hereof. This Agreement may not be modified, changed, altered or terminated other than by an instrument in writing duly executed and acknowledged by the parties.

5.5 Notice. Notice hereunder to any party shall be sent by hand delivery, subject to receipt, or by registered or certified mail, postage prepaid, or by email, to the following addresses (or to such other address as may be specified by the respective party from time to time):

If to City, to the following:

City of Gardiner  
6 Church Street

Gardiner, Maine 04345  
Attn: Scott Morelli

If to GMS, to the following:

Gardiner Main Street  
PO Box 194  
Gardiner, Maine 04345  
Attn: Patrick Wright, Director

Any notice shall be considered as given on the date on which it is delivered by registered or certified mail, return receipt requested, with postage prepaid.

5.6 Implementation. Each party agrees that it will execute any and all instruments and perform any and all acts that may be deemed necessary or advisable to carry out any of the terms hereof.

5.7 Severability. If any provision of this Agreement is held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, and, to this end, the provisions of this Agreement are intended to be and shall be deemed severable.

5.8 Applicable Law. The validity, construction and performance of this Agreement shall be governed by the laws of the State of Maine.

5.9 Binding Agreement. This Agreement shall be binding upon and inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns.


5.10 Term. This Agreement shall become effective as of the Effective Date, and shall continue for five years (the "initial term").


5.11 Termination. Each party will have the right to terminate this Agreement immediately in the event of voluntary or involuntary bankruptcy or similar insolvency actions or in the event of the suspension or termination of any license, permit or approval required for the completion of duties herein assigned. Either party may terminate this agreement in the event that the other party has committed a material breach of its obligations hereunder, and such breach has not been cured to the reasonable satisfaction of the non-breaching party within a period of thirty (30) days following written notice to the breaching party. Upon termination of this agreement the City shall promptly disburse to GMS any outstanding amounts held by City in an account or accounts for the benefit of GMS hereunder, net of any deductions due to City as set forth herein.

**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized undersigned representatives, have executed this Agreement, effective as of the Effective Date first written above.

**CITY OF GARDINER**

**GARDINER MAIN STREET**

By:   
Scott Morell, City Manager 5/29/14

By:  5/29/14  
Patrick Wright, Director