



GARDINER CITY COUNCIL AGENDA ITEM INFORMATION SHEET



Meeting Date		Department	
Agenda Item			
Est. Cost			

Background Information

Requested Action	
City Manager and/or Finance Review	
Council Vote/ Action Taken	
Departmental Follow-Up	

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

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is hereby made and entered into as of the _____ day of March, 2025, by and between the CITY OF GARDINER, a Maine body corporate and politic with a place of business and mailing address of 6 Church Street, Gardiner, ME 04345 (“the City” or “Licensor”), MASTWAY DEVELOPMENT LLC, a Maine limited liability company with a place of business and mailing address of 2 Beech Street, Suite 1B, Hallowell, Maine 04347 (“Mastway”), and [EXCAVATION CONTRACTOR], a _____ with a place of business and mailing address of _____ (the “Contractor”); (Mastway and Contractor collectively being the “Licensee”).

WITNESSETH:

WHEREAS, the City owns property on Summer and Bridge Streets and Highland Avenue in Gardiner, Maine, appearing on Assessor’s Map 37 as Lot 19 & 19A, more particularly described in a Consent Judgment dated March 24, 2017, and recorded in the Kennebec County Registry of Deeds in Book 12609, Page 74 (the “Property”), and the parties entered into an option agreement dated January 16, 2024, and extended on January 15, 2025, governing Mastway’s acquisition of the Property; and

WHEREAS, Mastway, acting through an affiliated limited partnership, intends to build a 32 unit affordable rental housing project with related amenities on the Property (collectively the “Project”); and

WHEREAS, Mastway and Contractor wish to have access to the Property before Mastway acquires the Property via a closing in order to allow Mastway and Contractor to remove soil from the Property preliminary to construction of the Project, and the City is willing to grant such access according to the terms and conditions of this Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of License. Subject to the terms and conditions of this Agreement, the City grants to Mastway and Contractor a revocable license to enter the Property with persons, vehicles, machinery and equipment in order for Mastway and Contractor to remove and transport soil to an authorized offsite location for disposal in preparation for construction of the Project. For clarity, this revocable license permits Mastway and Contractor to allow their respective representatives, subcontractors, and agents access for the aforescribed purpose subject to all terms and conditions of this Agreement.

2. Compliance with All Applicable Laws, Including Environmental Law. Mastway and Contractor, as well as their respective representatives, subcontractors, and agents, shall at all times comply with all applicable local, state, and federal ordinances, laws, and regulations.

Without limiting the generality of the foregoing, Mastway and Contractor, as well as their respective representatives, subcontractors, and agents, shall comply with all Environmental

Laws¹ as defined in footnote 1 below. Mastway and Contractor further acknowledge and agree to abide by all terms and conditions of the Property's enrollment under Maine's Voluntary Response Action Program ("VRAP"), including all environmental covenants and requirements therein such as the Environmental Media Management Plan applicable to the Property for the excavation, transport, and removal of any soils from the Property. Mastway and Contractor acknowledge they have received copies of all relevant documents associated with the aforescribed VRAP enrollment.

3. Liens. Mastway and Contractor shall keep the Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Mastway or Contractor in connection with this Agreement. Mastway and Contractor, either jointly or individually, shall remove, or cause the removal of, any such lien or bond; otherwise within sixty (60) days after Mastway or Contractor become aware of the existence of such lien, the City at its option may pay the amount necessary to remove such lien, without being responsible for investigating the validity thereof, and Mastway and Contractor shall reimburse the City for the same, which shall be a joint obligation of Mastway and Contractor. The provision of this paragraph shall survive termination of this Agreement.

4. Insurance. For the purposes of this License Agreement, Mastway and Contractor shall have and maintain insurance policies and coverage, naming the City as additional insured², as set forth below:

- General liability in the amount of no less than \$1,000,000 per occurrence; and
- Business Auto Liability in the amount no less than \$1,000,000 per occurrence; and
- Workers Compensation in the amount no less than \$1,000,000 per occurrence; and
- Pollution liability in the amount no less than \$2,000,000 per occurrence, with coverage to include transport and non-owned disposal; and
- Excess liability coverage over the general liability and auto of at least \$1,000,000.

¹ "Environmental Laws" means, collectively, any federal, state or local law, rule or regulation (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations, contamination, clean-up or disclosures of Hazardous Materials (as hereafter defined), and any legally binding and enforceable judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Appx. § 1801 *et seq.*; the Maine Uncontrolled Hazardous Substance Sites Act, 38 M.R.S.A. § 1361, *et seq.*, the Maine Hazardous Matter Law, 38 M.R.S.A. § 1317, *et seq.*; or any other applicable federal or state statute regulation or ordinance regulating the generation, storage, containment or disposal of any oil and hazardous wastes, substances and materials (as defined in the Environmental Laws and collectively referred to herein as "Hazardous Materials") or providing for the protection, preservation or enhancement of the natural environment, any rules or regulations promulgated pursuant to any of the foregoing statutes or ordinances, including but not limited to laws relating to groundwater and surface water pollution, air pollution, transportation, storage and disposal of Hazardous Materials, storm water drainage, and underground and above ground storage tanks; and any amendments, modifications or supplements of any such statutes, ordinances, rules and regulations.

² Additional insured status to be confirmed on forms CG 20 10 04 13 and form CG 20 37 04 13, or such other forms the City may reasonably designate.

All aforescribed insurance policies for Mastway and Contractor shall be primary and noncontributory, both Mastway and Contractor agree to indemnify, defend, and hold the City harmless from any liability, claim, or loss, and Mastway and Contractor agree to a waiver of subrogation in favor of the City.

Mastway and Contractor shall furnish copies of said policies and associated forms to the City prior to commencing any work on the Property.

5. Release and Indemnification. Mastway and Contractor agree to discharge and release, as well as agree to indemnify, defend and hold harmless, the City from and against all liability regarding any actions, causes of action, damages, judgments, claims and expenses, including but not limited to attorney's fees and costs and damages, that Mastway or Contractor, their duly authorized representatives, agents, and contractors or subcontractors may have against the City and property damage caused by, related to, or arising out of any act or omission by Mastway or Contractor related to or arising out of any act or omission associated with this Agreement, whether said injury or property damage is caused in whole or in part by the negligent or willful action of Mastway or Contractor, their authorized representatives, agents, or contractors or subcontractors.

Without limiting the generality of the foregoing release and indemnification, Mastway and Contractor further agree to discharge and release, as well as indemnify, defend, and hold harmless, the City from and against any and all liabilities, claims, damages, penalties, fines, suits, proceedings, judgments, expenditures, losses, charges, expenses and costs (including but not limited to, all reasonable costs of investigation, monitoring, legal fees, remedial response, removal, restoration, or permit acquisition) that may now or in the future be undertaken, suffered, paid, awarded, assessed, or otherwise incurred by the City as a result of Mastway's or Contractor's violation(s) of any Environmental Law, aforescribed VRAP requirements, or any term or condition of this Agreement.

The provisions of this paragraph regarding release and indemnification shall survive termination of this Agreement.

6. Termination. The City may revoke and terminate this Agreement at any time on one hundred twenty (120) days' prior written notice to Mastway and the Contractor. Notwithstanding the foregoing, the City may immediately provide written notice of revocation and termination of this Agreement upon violation of any Environmental Law or aforescribed VRAP requirements. This Agreement shall automatically terminate upon completion of the work contemplated herein or, if earlier, conveyance of the property to Mastway or an affiliated limited partnership.

7. Governing Law. This Agreement is made pursuant to and shall be construed and enforced in accordance with the laws of the State of Maine without regard to conflicts of law principles.

8. Amendments; Entire Agreement. This Agreement contains the entire agreement between the parties and is intended by the parties to set forth their entire agreement with respect to the subject matter herein, and any agreement hereafter made shall be ineffective to change, modify, or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by party against whom enforcement of the change, modification, or discharge is sought. The parties agree all prior or contemporaneous oral or written agreements between or amongst themselves or their agents are merged in or revoked by this Agreement.

9. No Assignment. This Agreement may not be assigned by Mastway or Contractor without the written consent of the City provided at its sole discretion.

10. Headings. The headings herein are inserted only for convenience and shall have no effect in interpreting the meaning of any provision.

11. No Waiver. The failure of a party to require strict performance by another party of any provision of this Agreement will not be considered a waiver of any other provision, nor prevent any party from enforcing that or any other performance at any time thereafter.

12. Counterparts. This Agreement may be executed in multiple counterparts. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The parties hereby agree signatures transmitted by facsimile or email shall be legal and binding and shall have the same full force and effect as if an original of this Agreement had been delivered and hereby waive any defenses to the enforcement of this Agreement based on the foregoing forms of signature.

IN WITNESS WHEREOF, the parties have caused this License Agreement to be executed by their duly authorized representatives as of the day and year first written above.

[Signatures Appear on Next Page]

CITY OF GARDINER

MASTWAY DEVELOPMENT LLC

By: _____
Name:
Title:

By: _____
Matt Morrill, its sole Member

[ENTER EXCAVATION CONTRACTOR]

By: _____
Name:
Title: