

City Council Workshop

Agenda Item #1

August 11, 2014

Community Garden Collective

The Community Garden Collective (CGC) is a nonprofit organization committed to creating and supporting opportunities for all residents, regardless of circumstances, to have access to organic gardens within the city.

In 2011, the group proposed establishing a community garden at the Hamlin School site where gardeners may grow and harvest organic produce and flowers. Funding for this endeavor is through plot rentals, grants, fundraising activities and donations.

The group made presentations to the City Council at the January 24th and March 15, 2011 workshops to discuss its mission, its proposal to the City and proposed Community Garden site plan. The City Council raised a few concerns during the workshops regarding such things as parking, costs, repairs, maintenance, water supply and termination. Staff had worked with the CGC on all of the concerns and felt comfortable moving the item forward to a lease agreement with the Collective.

Now that, in 2014, the Hamlin School garden is well established; the Collective would like the opportunity to expand the garden by up to five plots. These five plots would all be within the existing 100' x 100' fenced in area that is currently under lease by the Collective.

Additionally, the Collective would like to seek approval by the City Council to expand to a second garden site. Back in 2011 some discussion, by the Council, was around providing this type of service to residents in the Redbank/Brick Hill neighborhood. Over the last month, the Collective has reached out to Rick Towle, Parks and Recreation Director and I to begin the conversation around locating a garden within the Redbank Community Center complex (see attached map). Both Rick and I believe this would be a great addition to the neighborhood and a tremendous benefit to the citizens.

As the Redbank Community Center complex makes up land owned by Home Properties and the City, Rick Towle is currently having discussions with Home Properties concerning a user license in hopes of expanding City sponsored programming on the complex. Once the license is obtained by the City, the City Council, if amendable, could provide the Collective a license to operate an organic garden on the site.

Being located in Redbank, this project would be eligible for CDBG funding.

On Monday evening the Collective would like to provide the City Council with an update on how its Hamlin School garden is going as well as provide information concerning its interest in the Redbank Community Center complex.

I have attached a copy of the Hamlin School garden lease for the Council's understanding of the current arrangement.


City Manager

Redbank Community Center Complex

MacArthur Cir W

MacArthur Cir E

Potential Location of the Community Gardens

50-133A
HOME PROPERTIES WMFI, LLC

Colin Kelly Rd

Wainright Cir E



**LEASE AGREEMENT BY AND BETWEEN
CITY OF SOUTH PORTLAND
AND
COMMUNITY GARDEN COLLECTIVE**

THIS LEASE AGREEMENT made this 30th day of JUNE, 2011, by and between the **CITY OF SOUTH PORTLAND**, a municipal corporation located in Cumberland County, State of Maine (hereinafter the "CITY"), and **COMMUNITY GARDEN COLLECTIVE**, a Maine non-profit corporation, having a place of business at ~~63 Parrott Street~~, South Portland, Maine (hereinafter "TENANT").

P.O. Box
2932
MAS

WITNESSETH:

That CITY, for and in consideration of the rent hereinafter to be paid by TENANT, and other consideration, and the covenants and agreements hereinafter contained, to be kept and performed by TENANT, does hereby demise, lease and let unto TENANT, the property located in the vicinity of Sawyer Street, South Portland, Maine as shown on *Exhibit A*, attached hereto and incorporated herein by reference ("PREMISES").

To have and to hold unto said TENANT on the following terms and conditions:

1. TERM

This Agreement shall be in effect from May 1, 2011 to April 30, 2016, unless sooner terminated as provided herein.

2. RENT

TENANT agrees to pay to the CITY as rent, in advance, for use and occupancy of the PREMISES rental in the amount of One Dollar (\$1.00) per year payable on or before May 1 of each year that is included in the term of this Agreement. Otherwise, all costs of installation, maintenance, operation, utilities and removal shall be borne solely by TENANT. Further, TENANT shall allow no lien, claim or other encumbrance on any of the CITY's property at this location or otherwise in connection with this Agreement, and TENANT's failure to remove the same immediately after notice by the CITY shall be cause for immediate termination of this Agreement.

3. USE

TENANT shall use the PREMISES solely for the purpose of non-commercial gardening activities. TENANT may install a shed and storage building on the PREMISES provided that TENANT first obtains written approval from the CITY as to design, including all exterior elements of the structures, as well as specific location of the structures on the PREMISES. Although attached to the CITY's land, any shed and/or storage building will remain the personal property of TENANT, and the CITY will, upon the request of TENANT, execute a certificate to this effect to be recorded in the Cumberland County Registry of Deeds. TENANT shall maintain the PREMISES in a clean and orderly condition. The produce resulting from the gardening activities will be provided without charge to needy or low income persons; provided, however, TENANT may use up to 10% of produce grown on PREMISES to make food products for sale either at cost or to raise funds for TENANT's organization. The TENANT will not use pesticides and/or synthetic herbicides on the PREMISES. Only organic, non-toxic materials will be applied to the soil and the crops and/or flowers.

4. PARKING

From 7 a.m. to 5:30 p.m. Monday through Friday, excluding holidays when City offices are closed, TENANT, its employees, contractors, licensees, invitees, agents and all others doing business with TENANT at the PREMISES, may only park in the parking spaces along the fence abutting Sawyer Street. The CITY shall cause a break in the existing fence along Sawyer Street to be created to provide easier access to the PREMISES from Sawyer Street. Parking in the parking lot adjoining the PREMISES by TENANT, its employees, contractors, licensees, invitees, agents and all others doing business with TENANT at the PREMISES, is prohibited from 7 a.m. to 5:30 p.m. Monday through Friday, excluding holidays when City offices are closed; otherwise, parking is on a first come, first served basis at all other times.

5. REPAIRS AND MAINTENANCE

TENANT may cause, at its sole cost and expense, a separate water line and meter to be installed connecting the PREMISES to the CITY's adjoining former school building so that water is accessible to the gardens; provided, however, that such separate water line shall be installed under vegetative cover only and shall not require any pavement on the PREMISES or any adjoining land owned by the CITY to be cut. TENANT shall pay for its separately-metered water usage when such amounts are due and payable. No permanent improvements may be made without the prior written approval of the CITY. TENANT may bring fill, soil and organic compost to the PREMISES to make it suitable for a garden. TENANT will be responsible for procuring all approvals and permits necessary to install and maintain the fill and garden. TENANT will maintain the garden according to the CITY's applicable standards for community gardens.

6. ASSIGNMENT

This Agreement may not be assigned or sublet in whole or in part.

7. LIABILITY INSURANCE

TENANT shall maintain and keep in full force and effect at all times during the term of this Agreement a policy of general liability insurance with an insurance company licensed to do business in the State of Maine covering the CITY and TENANT against claims for loss or injury to persons or property occurring on the PREMISES. Such insurance coverage will be in at least the amount of \$400,000, and will be increased from time to time, but only if required to meet the provisions of the Maine Tort Claims Act, as it may be amended. TENANT shall provide the CITY with a copy of the certificate evidencing such insurance and naming the CITY as an additional named insured upon the commencement date of this Agreement and upon the anniversary of the commencement date of this Agreement thereafter. TENANT shall maintain TENANT's own insurance against loss or damage to TENANT's property (including, without limitation, any buildings on the PREMISES and the contents of the buildings) at the PREMISES, and TENANT shall insure any buildings on the PREMISES for their replacement value. TENANT shall provide the City with written evidence of such property damage/casualty insurance upon the commencement date of this Agreement and upon the anniversary of the commencement date of this Agreement thereafter.

8. INDEMNIFICATION

To the fullest extent permitted by law, TENANT shall, at its own expense, defend, indemnify, and hold harmless CITY, its officers, agents, and employees from and against any and all liability, claims, damages, penalties, losses, expenses, or judgments, just or unjust, arising from injury or death to any person, property, or environmental damage sustained by anyone in and about the PREMISES or as a result of activities at the PREMISES, including, but not limited to, farming operations conducted by the TENANT on the PREMISES, resulting from any act or omission of TENANT, its officers, agents, servants, employees, or persons in privity with TENANT, except to the extent that such injury, death, or property damage results from any negligent act or omission of the CITY, its officers, agents, employees, or servants. TENANT shall, at its own cost and expense, defend any and all suits or actions, just or unjust, which may be brought against CITY or in which CITY may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to the CITY which would otherwise exist. Nothing in this Agreement is intended, or shall be construed, to constitute a waiver of any defense, immunity or limitation of liability that may be available to

the CITY, or any of its agents, officers, or employees, pursuant the Maine Tort Claims Act (14 M.R.S.A. § 8101 *et seq.*), any state or federal statute, the common law or any privileges or immunities as may be provided by law.

The foregoing provision (Indemnification) will survive either expiration or termination of this Lease.

9. TERMINATION

(a) For Cause. Either party may terminate this Lease for cause at any time upon thirty (30) days' prior written notice to the other party; and, thereafter, the TENANT shall have no further right to use or occupancy of the PREMISES.

(b) For Convenience. Either party may terminate this Lease for convenience upon a ninety (90) day written notice to the other party.

In the event the City provides such notice on or before December 31, 2011, the CITY shall, following TENANT's surrender of possession of the PREMISES, reimburse TENANT for 75% of the cost to TENANT of any improvements made or caused to be made by TENANT to the PREMISES as of the date of such notice.

In the event the City provides such notice after December 31, 2011 but before December 31, 2012, the CITY shall, following TENANT's surrender of possession of the PREMISES, reimburse TENANT for 50% of the cost to TENANT of any improvements made or caused to be made by TENANT to the PREMISES as of the date of such notice; provided, however, that such reimbursement shall not exceed \$10,000.

In the event the City provides such notice on or after December 31, 2012 but before December 31, 2013, the CITY shall, following TENANT's surrender of possession of the PREMISES, reimburse TENANT for 40% of the cost to TENANT of any improvements made or caused to be made by TENANT to the PREMISES as of the date of such notice; provided, however, that such reimbursement shall not exceed \$7,000.

In the event the City provides such notice on or after December 31, 2013 but before December 31, 2014, the CITY shall, following TENANT's surrender of possession of the PREMISES, reimburse TENANT for 30% of the cost to TENANT of any improvements made or caused to be made by TENANT to the PREMISES as of the date of such notice; provided, however, that such reimbursement shall not exceed \$5,000.

In the event the City provides such notice on or after December 31, 2014 but before December 31, 2015, the CITY shall, following TENANT's surrender of possession of the PREMISES, reimburse TENANT for 20% of the cost to

TENANT of any improvements made or caused to be made by TENANT to the PREMISES as of the date of such notice; provided, however, that such reimbursement shall not exceed \$3,000.

Improvements include, but are not limited to, fencing, raised beds, shed, plumbing, irrigation, soil and compost on or at the PREMISES. Notwithstanding any other provision herein, no reimbursement by the CITY is required unless TENANT has first provided the CITY with documentation satisfactory to the CITY regarding the cost to TENANT of the improvements for which reimbursement is sought.

In the event that the CITY provides such notice, the CITY will use its best efforts to assist TENANT in finding an alternative, suitable community garden site and to assist TENANT in the physical relocation of any raised beds, shed and bins located on the PREMISES as of the date of such notice.

(c) Upon Termination. All personal property shall be removed therefrom by the TENANT upon termination of this Lease. Any personal property remaining thereafter shall be deemed abandoned in favor of the CITY. Upon termination this Lease, the PREMISES shall be restored to a condition reasonably matching the natural vegetative condition existing prior to the commencement date of this Agreement (except for any tree or shrub that was removed). Following removal of any buildings from the PREMISES, TENANT shall clean up and remove all rubble and debris and shall surrender the PREMISES in a good, safe, clean and orderly condition.

10. DEFAULT

In the event that TENANT shall be in default in the performance of any of the terms or conditions herein agreed to be kept and performed by TENANT, then, in that event, CITY may terminate and end this Lease upon a thirty (30) day prior written notice; and, thereafter, CITY may enter upon said PREMISES and remove all persons and property therefrom if TENANT has failed to cure said default within said notice period. TENANT shall be liable to CITY for all costs incurred by it as a result of the TENANT's default and TENANT shall pay all costs of collection and cure incurred by CITY, including reasonable attorney's fees.

11. HOLD OVER

In the event that TENANT shall hold over and remain in possession of the PREMISES with the consent of the CITY, such holding over shall be deemed to be from month to month only, and upon all the same rents, terms, covenants and conditions as contained herein.

12. NOTICE

Notices required under this Lease shall be deemed sufficient if mailed to the parties at the following addresses:

TENANT: Community Garden Collective
~~63 Parrott Street~~ PO Box 2932
South Portland, ME 04106

CITY: James Gailey, City Manager
South Portland City Hall
25 Cottage Road
South Portland, ME 04106

cc: Corporation Counsel
Rob Levin, Attorney at Law

13. WAIVER

Waiver by either party of any default in performance by the other of any of the terms, covenants, or conditions contained herein, shall not be deemed a continuing waiver of the same or any subsequent default herein.

14. COMPLIANCE WITH LAWS

Each party agrees to comply with all laws, ordinances, rules and regulations which may pertain or apply to the PREMISES and the use thereof.

15. SUCCESSORS AND INTEREST

All of the terms, covenants and conditions contained herein shall continue, and bind all successors in interest of TENANT and CITY respectively.

16. MISCELLANEOUS

This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof and can be altered, amended or modified only by written instrument executed by all such parties. This Agreement is made and shall be construed under the laws of the State of Maine except any choice of law rule that may direct the application of the laws of any other nation or jurisdiction.

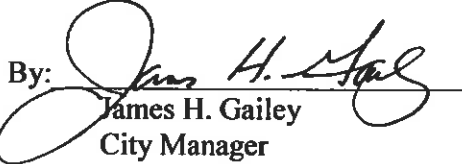
IN WITNESS WHEREOF, the said CITY OF SOUTH PORTLAND has caused this Lease Agreement to be signed in its corporate name and sealed with its corporate seal

by James Gailey, its City Manager, thereunto duly authorized, and COMMUNITY GARDEN COLLECTIVE has caused this Lease Agreement to be signed by Peggy Stewart, its Treasurer, thereunto duly authorized, as of the day and date first set forth above.

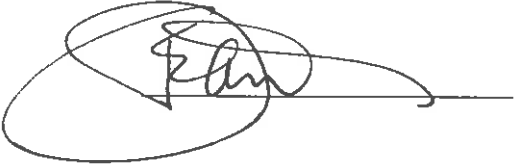
WITNESS:



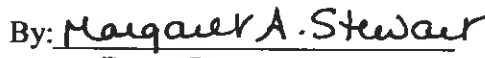
CITY OF SOUTH PORTLAND

By: 
James H. Gailey
City Manager

WITNESS:



COMMUNITY GARDEN COLLECTIVE

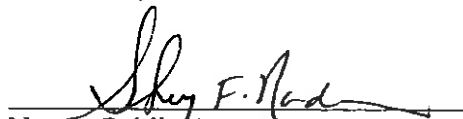
By: 
Peggy Stewart
Treasurer

STATE OF MAINE
CUMBERLAND, ss.

June 30, 2011

Personally appeared the above named James Gailey, City Manager of the CITY OF SOUTH PORTLAND, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of the City of South Portland.

Before me,


Notary Public ~~Attorney At Law~~

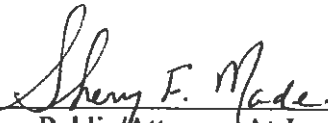
SHERRY F. NADEAU
Notary Public, Maine
My Commission Expires October 5, 2017

STATE OF MAINE
CUMBERLAND, ss.

June 30, 2011

Personally appeared the above named Peggy Stewart, as Treasurer for COMMUNITY GARDEN COLLECTIVE, and made oath that the foregoing is her free act and the free act and deed of Community Garden Collective.

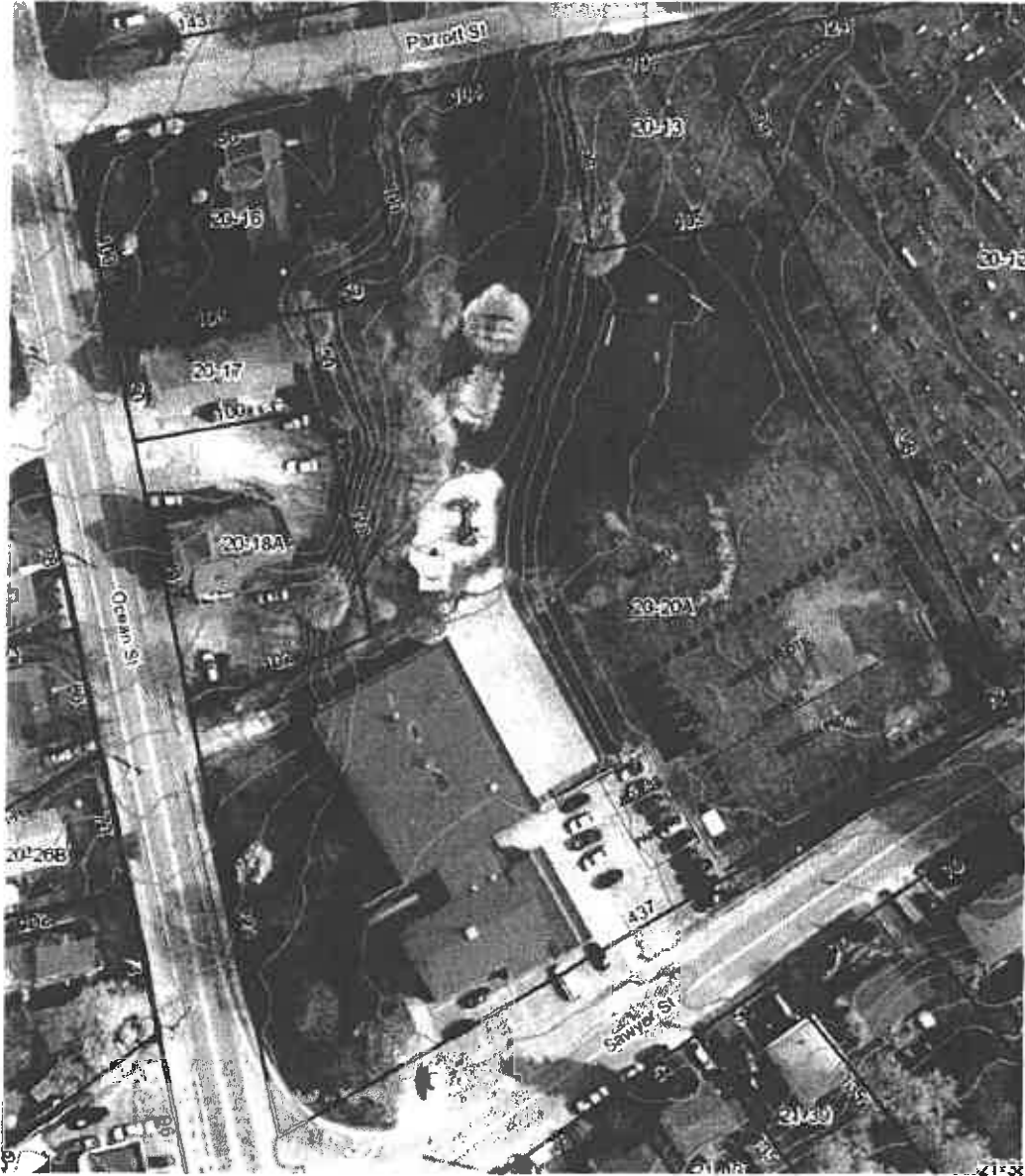
Before me,



Notary Public/~~Attorney At Law~~

SHERRY F. NADEAU
Notary Public, Maine
My Commission Expires October 5, 2017

EXHIBIT A



KEY TO SYMBOLS:

- ▭ COMMUNITY GARDEN
- ┌ ┐ BOUNDARY FENCE
- STORAGE AREA
- SHED
- WATER SPIGOT
- PLANTED BUFFER

COMMUNITY GARDENS
HAMLIN SCHOOL SITE

CONCEPT SKETCH

*South
Portland* CITY OF SOUTH PORTLAND
25 COTTAGE ROAD
SOUTH PORTLAND, MAINE 04106