



**GARDINER CITY COUNCIL
AGENDA ITEM INFORMATION SHEET**



Meeting Date	03/20/2024	Department	City Manager
Agenda Item	4I. Lease Renewal with SKCDC		
Est. Cost			

Background Information

Notes from the City Manager:

The City owns a building at 721 River Avenue that has been leased to SKCDC since February of 2009. The original lease was for five years and was subsequently renewed in 2014. In 2014 Council again renewed the lease for five years. In 2019 an amendment was written to the lease to include an extension for five years with an expiration date of February 15, 2024. I have had our legal team at Eaton Peabody review the lease and they have recommended that a second amendment to the lease be written (as included) that automatically renews the lease in 2029 as long as the lessee is in good standing under the original lease. In my short time in the City SKCDC has been a fantastic tenant of the building at 721 River Avenue, the upkeep of the building is fantastic and the service that they provide to the community is well received and utilized. It is my recommendation that you continue with this lease to keep SKCDC in Gardiner and operating for the Community. Cristina Solais from SKCDC will be on hand to answer any questions.

Critical Deadline: This meeting as the lease has expired

Please see the attached lease, and subsequent amendments drawn up by our legal team.

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

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

2/15/2009 - 2/15/2014
paid 1-29-09 \$5.00
59522

LEASE

02/15/09

Southern Kennebec Child Development Corporation

This **AGREEMENT OF LEASE** made as of the 15th day of February, 2009 by and between the City of Gardiner, a municipal corporation located in Gardiner, County of Kennebec, State of Maine, hereinafter called City and Southern Kennebec Child Development Corporation, a corporation organized and existing under the laws of the state of Maine and having its principal office at Farmingdale, said County and State, hereinafter called Lessee.

WITNESSETH:

1. Leased Premises:

City hereby leases to Lessee and Lessee hereby hires from City the land and buildings formerly known as the **South Gardiner School**, being said premises identified on the maps of City as Map 40, Lot 44. City hereby permits Lessee to install playground equipment on approximately 4,000 square feet of space which may be enclosed with fencing and which shall be located on a portion of the land to be designated by the City Manager on the land identified on the maps of City as Map 41, Lot 1.

2. Term:

The term of this lease shall be five (5) years and a renewal option, from the date hereof.

3. Rent:

Lessee shall pay City the sum of One Dollar (\$1.00) per year during the term of this Lease.

4. Occupancy:

Lessee shall use and occupy the demised premises for the following purposed, to wit:

- a. The operation of a pre-school program for children commonly known as the Head Start Program;
- b. For a summer feeding program for children;
- c. For a day care center, and
- d. For no other purposes except such purposes and uses as shall be agreed to in writing by City prior to the commencement of such purposes or uses.

Lessee shall not use or allow the leased property or any part thereof to be used or occupied for any unlawful purpose or in violation of any certificate of occupancy of certificate of compliance covering or affecting the use of the leased property, and will not permit any act to be done or any condition to exist on the leased property or any article to be brought thereon which may be dangerous, unless safe-guarded as required by law, or which may in law constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect to the leased property. The Lessee shall not permit the leased property to be used by the public, as such, without restriction or in such manner as might reasonably tend to impair City's title to the leased property or might reasonably make possible a claim of adverse usage or adverse possession by the public, as such, or of implied dedication of the leased property for any purpose which is the reasonable opinion of City would adversely effect the then value or character of the leased property.

Lessee shall not operate or allow others to operate a for-profit business enterprise of any kind or nature whatsoever upon the leased property. At all times during the term of this Lease, including any renewal terms, Lessee shall maintain its legal status as a charitable, non-profit corporation under Maine law, and all uses of the leased property by the Lessee shall be consistent with its corporate charitable purposes.

5. Repairs:

Lessee shall be responsible for the maintenance of said premises and shall make all repairs on said premises, interior as well as exterior, keeping the premises in as good condition and appearance as the same are on this date, usual wear and tear expected, provided, however, that Lessee shall not make any structural repairs without first obtaining written permission from City.

6. Utilities:

Lessee shall pay all expenses of utilities serving said premises, including but not limited to electric utilities, telephone, water, sewer, and heating oil.

7. Alterations:

The Lessee shall have the right, from time to time, to make all such alterations and improvements to, and decoration of, the interior of the leased property as shall be reasonably necessary or appropriate in the Lessee's judgment for the Lessee's conduct thereon of its business, provided that prior to the commencement of such alterations or improvements, City shall in each case have approved in writing the plans and specifications therefor. If within 30 days after such plans and specifications are submitted by Lessee to City for such approval, City shall not have given the Lessee notice of disapproval thereof, stating the reason for such disapproval, such plans and specifications shall be considered approved by City.

Alterations necessitating changes in the heating, electrical and/or sprinkler system shall be paid for in full by the Lessee, including the said changes to the heating, electrical and/or sprinkler system.

All alterations, decorations, additions, and improvements, including paneling, partitions, railings, mezzanine floors, galleries, and the like, except movable trade fixtures, shall become the property of the City.

8. Quiet Enjoyment:

The Lessee, upon paying the basic rent and all additional rent and other charges herein provided for, and performing all the other terms of this lease, shall quietly have and enjoy the leased property during the term of this Lease without hindrance or molestation by anyone claiming by or through the City, subject, however, to the reservations and conditions of this Lease.

9. City's Right of Access.

The City and its representatives may enter the leased property, at any reasonable time, for the purpose of inspecting the leased property, performing any work which the City elects to undertake make necessary by reason of the Lessee's default under the terms of this lease, exhibiting the leased property for sale, lease or mortgage financing, or posting notices of non-responsibility under any mechanic's lien law, provided, however, City shall give Lessee twenty-four hour notice of its intent to exercise this said right of access.

10. Condemnation:

If the leased property, or any part thereof, is taken by eminent domain, this Lease shall expire on the date when the leased property shall be so taken, and the rent shall be apportioned as of the date. No part of any award shall belong to the Lessee.

11. Surrender.

At the expiration of the Lease term, the Lessee shall surrender the leased property in as good condition as it was in at the beginning of the term, reasonable use and wear and damages by the elements excepted.

12. Default (City's rights).

If the leased property shall be deserted or vacated, or if proceedings are commenced against the Lessee in any court under a bankruptcy act or for the appointment of a trustee or receiver of the Lessee's property either before or after the commencement of the lease term, and said proceedings have not been dismissed within 60 days of the date said proceedings are filed in said court, or if there shall be a default in the payment of rent or any part thereof for more than thirty days after written notice of such default by City or Lessee, or if there shall be default in the performance of any other covenant, agreement, condition, rule, or regulation herein contained or hereafter established on the part of the Lessee for more than 30 days after written notice of such default by the City to Lessee, this lease (if the City so elects) shall thereupon become null and void, and the City shall have the right to re-enter or repossess the leased property, either by force, summary proceedings, surrender, or otherwise, and dispossess and remove therefrom the Lessee, or other occupants thereof, and their effects, without being liable to any prosecution therefor. In such case, the City may, at its option, re-let the leased property or any part thereof, as the agent of the Lessee, and the Lessee

shall pay the City the difference between the rent hereby reserved and agreed to be paid by the Lessee for the portion of the term remaining at the time of re-entry or repossession and the amount, if any, received or to be received under such reletting for such portion of the term. The Lessee hereby expressly waives the services of notice of intention to re-enter or of instituting legal proceedings to that end. The Lessee waives and will waive all right to trial by jury in any summary proceeding hereafter instituted by the City against the Lessee in respect to the leased property. The City shall make reasonable efforts to relet said premises and Lessee may sublet said premises, subject to City's written approval.

13. Fire Loss:

In case of damage by fire or other casualty to the building on which the leased property is located, without the fault of the Lessee, if the damage is so extensive as to prevent or substantially interfere with occupancy or use of the leased property or of such building by the Lessee, either party shall have the right to terminate this Lease by giving a notice of termination in writing to the other party within thirty (30) days after the occurrence of such casualty. In the event such notice is not given by either party, the City shall repair the damage with reasonable dispatch, and this Lease shall remain full force and effect. In determining what constitutes reasonable dispatch, consideration shall be given to delays caused by strikes, adjustment of insurance, and other causes beyond the City's control.

14. Fire and Casualty Insurance:

The Lessee shall at all times during the term of this Lease, including any renewal terms, keep the leased premises insured against loss or damage by fire or other casualty with extended coverage endorsement in a coverage amount as may be reasonably determined by the City, but, in any event, in amount not less than 80% of the full insurable value as determined from time of time by General Adjustment Bureau or the insurance carrier. Lessee shall provide evidence of such coverage to the City, in the form of an insurance coverage certificate from a reputable insurer licenses to issue fire and casualty policies in the State of Maine, with the City named as an additional insured on such certificates.

In the event of damage by fire or other casualty to the leased property, the City shall have the right to receive the proceeds of any insurance policy obtained by the Lessee pursuant to its obligations under this paragraph, for the purpose of applying such proceeds to repair of the damage concerned, whether or not this Lease is terminated in such event as permitted under paragraph 13 above.

In the event Lessee shall fail to maintain in force the insurance required by this paragraph or to provide evidence thereof, the City shall be entitled, in addition to other legal remedies, to immediately terminate this Lease, or to obtain the required insurance coverage, and to be reimbursed for its cost of obtaining such coverage by the Lessee.

15. Indemnification:

Lessee shall indemnify the City against all liabilities, expenses, and losses incurred by City as a result of (a) failure by Lessee to perform any covenant required to be performed by Lessee hereunder; (b) any accident, injury or damage which shall happen in or about the leased property or appurtenances, or on or under the adjoining streets, sidewalks, curbs, or vaults, including claims arising out of accident, damage or injury to Lessee's employees; (c) failure to comply with any requirements of any governmental authority; and (d) any mechanic's lien, or security agreement, filed against the leased property, any equipment therein, or any materials used in the construction or alteration of any building or improvement thereon.

For the purpose of this indemnification provision only, Lessee hereby expressly waives any and all immunity from suit or judgment it may otherwise enjoy under the provision of Maine's Workers' Compensation Act, 39-A MRSA sec. 104, or other provisions of law.

Lessee shall obtain and at all times during the term of this Lease, including any renewal terms, maintain in force comprehensive commercial general liability (CGL) insurance covering personal injury and property damages claims arising out of Lessee's occupancy and use of the leased premises, in a coverage amount of not less than the "per occurrence" limitation on municipal tort damages liability under the Maine Tort Claims Act, 14 MRSA sec 8105, as the same may be from time to time amended. Lessee shall provide evidence of such coverage to the City in the same manner, and with the same remedies in the event of Lessee's default, as is provided with respect to fire and casualty insurance under paragraph 14 above.

16. Exculpatory Clause:

The City shall not be liable for any personal injury to Lessee or to its officers, agents, and employees, or to any other occupant of any part of the leased property, or for any damage to any property of the Lessee or of any other occupant of any part of the leased property, irrespective of how much injury or damage may be caused, whether from action of the elements or acts of negligence of the City or occupants of adjacent properties.

17. Waiver of Subrogation:

Lessee hereby agrees to release the City from any and all liability for any loss or damage caused to Lessee's personal property located on the leased property by fire or any of the extended coverage casualties, even if such fire or other casualty shall be brought about by the fault or negligence of the City or its agents.

18. Assignment and/or Subletting:

Lessee shall not assign this said lease nor sublet said premises without the specific written approval of City.

19. Waiver of Breach:

The City and Lessee hereby agree that waiver of any breach of any of the terms or conditions of this instrument shall not constitute a waiver of the applicable term or condition of this Lease, but this said Lease with all its terms and conditions shall remain in full force and effect.

20. Time of Essence:

The parties hereto hereby agree that time shall be of essence in all of the terms and conditions to be performed by either party of the Lease.

21. Option to Renew:

The Lessee shall have the option to renew this lease and all its terms and conditions for one additional term of five (5) years commencing on February 15, 2014 and ending on February 14 2019. Such option shall be exercised by written notice delivered to the City by Lessee not later than 120 days prior to the expiration of the original term hereof.

22. Successors and Assigns:


This Lease, with all its terms and conditions, shall inure to benefit of and be binding upon the successors and assigns of the parties hereto.

23. Property Taxes:

In the event a court or board of competent jurisdiction shall determine that Lessee's occupancy and use of the leased property are not entitled to exempt status under Maine's real estate or personal property tax laws, Lessee shall pay the City on or in advance of the due date therefor all amounts lawfully assessed as real or personal property taxes with respect to the leased property.


IN WITNESS WHEREOF, the parties hereto hereby fix their hands and seals as of the day and year first above written by their duly authorized officers.

By:



Jeffrey D. Kobrock
City Manager,
City of Gardiner

By:



Michele Pino
Executive Director,
Southern Kennebec Child Development
Corporation

Date:

1/23/09

Date:

1/23/09

AMENDMENT TO LEASE AGREEMENT

Southern Kennebec Child Development Corporation

This **AMENDMENT OF LEASE AGREEMENT** effective as of the 15th day of February, 2019, by and between the **City of Gardiner**, a body corporate and politic located in Kennebec County, Maine (hereinafter called "City") and the **Southern Kennebec Child Development Corporation**, a corporation organized and existing under the laws of the State of Maine and having its principal office at Farmingdale (hereinafter called "Lessee").

WITNESSETH:

WHEREAS, Lessor and Lessee entered into a certain lease agreement dated February 15, 2009 (the "Lease"), relating to the land and buildings formerly known as the South Gardiner School, being said premises identified on the tax maps of the City as Map 40, Lot 44, and a portion of the land identified on the tax maps of the City as Map 41, Lot 1;

WHEREAS, the term of the Lease was for a period from February 15, 2009 to February 15, 2014 and allowed one renewal term; and

WHEREAS, the Lease was renewed on February 7, 2014 to February 15, 2019, and the parties desire to enter into another five (5) year renewal term;

NOW THEREFORE, in consideration of the mutual conditions and covenants contained herein, intending to be legally bound, Lessor and Lessee hereby agree as follows:

1. Each of the foregoing recitals hereby is ratified and confirmed by the parties as being accurate and complete.
2. Section 2 Term shall be revised by increasing the number of renewal options that Lessee may have, provided Lessee is not in default under the Lease at the time of the exercise of the option, from one (1) to two (2).
3. The Lease is renewed again through February 15, 2024 on all of the same terms and conditions in the Lease.
4. Except as modified by this instrument, the Lease shall remain unchanged and in full force and effect and the parties shall be bound by all of its terms and conditions.
5. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. For purposes of this Amendment, a facsimile signature shall be deemed an original.

IN WITNESS WHEREOF, the parties have caused the undersigned officers to hereunto set their hands and seals as of the dates below.

City of Gardiner:

3/6/19
Date

By: Christine M Landes
Christine Landes, City Manager

Southern Kennebec Child Development Corporation:

3/1/19
Date

By: [Signature]
Name: Cristina Salois
Its: Agency Director

SECOND AMENDMENT TO LEASE AGREEMENT

Southern Kennebec Child Development Corporation

This **SECOND AMENDMENT TO LEASE AGREEMENT** effective as of the 15th day of February, 2024, by and between the **City of Gardiner**, a body corporate and politic located in Kennebec County, Maine (hereinafter called "City") and the **Southern Kennebec Child Development Corporation**, a corporation organized and existing under the laws of the State of Maine and having its principal office at Farmingdale (hereinafter called "Lessee").

WITNESSETH:

WHEREAS, Lessor and Lessee entered into a certain lease agreement dated February 15, 2009 (the "Lease"), relating to the land and buildings formerly known as the South Gardiner School, being said premises identified on the tax maps of the City as Map 40, Lot 44, and a portion of the land identified on the tax maps of the City as Map 41, Lot 1;

WHEREAS, the term of the Lease was for a period from February 15, 2009 to February 15, 2014 and allowed one renewal term; and

WHEREAS, the Lease was renewed on February 7, 2014 to February 15, 2019, and the parties desire to enter into another five (5) year renewal term; and

WHEREAS, the Lease was renewed on February 15, 2019, and the parties desire to enter into another five (5) year renewal term;

NOW THEREFORE, in consideration of the mutual conditions and covenants contained herein, intending to be legally bound, Lessor and Lessee hereby agree as follows:

1. Each of the foregoing recitals hereby is ratified and confirmed by the parties as being accurate and complete.
2. Section 2 Term shall be revised by increasing the number of renewal options that Lessee may have, provided Lessee is not in default under the Lease at the time of the exercise of the option, from one (1) to three (3).
3. The Lease is renewed again through February 15, 2029 on all of the same terms and conditions in the Lease.
4. Except as modified by this instrument, the Lease shall remain unchanged and in full force and effect and the parties shall be bound by all of its terms and conditions.
5. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. For purposes of this Amendment, a facsimile signature shall be deemed an original.

IN WITNESS WHEREOF, the parties have caused the undersigned officers to hereunto set their hands and seals as of the dates below.

City of Gardiner:

Date

By: _____
Andrew Carlton, City Manager

Southern Kennebec Child Development
Corporation:

Date

By: _____

Name: _____

Its: _____