

THIS AGREEMENT made this ____ day of _____, 20XX.

BETWEEN:

Hereinafter called the "Organization"

Of the first part;

and

THE CORPORATION OF THE CITY OF NIAGARA FALLS

Hereinafter called the "City"

Of the second part;

WHEREAS the City's Community Garden Program has been established as a public service program for community groups to be responsible for developing and managing community garden plots in certain defined areas in the City;

AND WHEREAS the City is the owner of certain lands within the City which are pre-approved site locations for community garden plots;

AND WHEREAS the Organization has agreed to participate in the City's Community Garden Program subject to the terms and conditions as set out herein.

NOW THEREFORE IN CONSIDERATION of the premises and the mutual covenants, the parties hereto agree with each other as follows:

1. The City hereby grants the Organization the right to install and maintain a community garden in the approved site location as shown on Schedule "A" attached hereto (the "Garden").
2. The Organization will develop, install and maintain the Garden in accordance with the City's Community Garden Policy, a copy of which is attached hereto as Schedule "B" (the "Policy"), and will follow the site plan and work plan as referred to in the Policy and as approved by the City.
3. The term of this Agreement will be for a period of five (5) years. In accordance with the Policy, an evaluation of the Garden will be completed by City Staff during the 4th year of the term in order to determine if the Organization will be considered for an extension of this Agreement by the City.
4. Subsequent to the evaluation as set out in paragraph 3 above and in the event the City determines the Organization may be considered for an extension of the term, provided the Organization observes and performs every covenant and proviso herein contained and is not in default under any

of the terms contained in the Agreement, the City shall, upon the written request of the Organization given to the City not more than six (6) months and not less than three (3) months prior to the expiration of the original term of this Agreement, grant to the Organization, a renewal of this Agreement for a further term of five (5) years on the same terms and conditions.

5. The Organization is responsible for developing and implementing a plan to bring water to the Garden. A water source will be required for irrigation which can include a regular waterline, rain barrels, soaker hoses, capillary watering and/or drip irrigation systems, as well as active and passive watering elements.
6. All costs associated with installing, managing and maintaining the Garden, including costs of servicing, are the responsibility of the Organization and shall be borne by the Organization.
7. The Organization will not sublet the Garden to a third party unless authorized in writing by the City.
8. The Organization shall at all times obey and abide by the Policy, all applicable laws, by-laws, local rules, building regulations and regulations relating to safety and other such terms and conditions as may be stipulated by the City from time to time, and in good faith abide to all rules and undertake all responsibilities as set out in the Responsibilities and Parameters attached hereto as Schedule "C"(the "Responsibilities and Parameters").
9. The Organization is responsible for recruiting volunteers and gardeners, all of whom shall be chosen in a fair, equitable, open and transparent manner, with the goal of giving all interested volunteers and gardeners an equal opportunity to acquire a plot within the Garden.
10. The Organization is responsible for any and all administrative duties required in relation to the Garden, and shall implement a site specific policy including rules and regulations, as approved by the City. The site specific policy will ensure that the Garden will be open to the general public and/or those who are serviced by the Organization.
11. The Organization, its staff, members and volunteers shall indemnify, save, defend and hold harmless from time to time and at all times, the City of, from and against all actions, causes of action, interest, claims, demands, costs, charges, damages, expenses and loss which the City may at any time bear, incur, be liable for, sustain or be put unto for any reason or on account of or by reason of or in consequence of the City entering into this Agreement.
12. The Organization releases and forever discharges the City, its elected and appointed officials, employees and agents from any and all actions, causes of

actions, claims and demands, for damages, loss, injury, or obligations or liabilities of any kind which heretofore may have been or may hereafter be sustained to any persons or property arising out of or connected with actively participating in the City's Community Garden Program.

13. The City shall monitor the activities of the Organization from time to time to ensure that the objectives of the Community Garden Program are being met and that the Organization is adhering to the terms and conditions of the Policy and the Responsibilities and Parameters.
14. Either party may terminate this Agreement at any time upon sixty (60) days notice given in writing to that effect to the other party and the Organization shall forthwith surrender to the City any and all materials and equipment provided by the City under this Agreement.
15. Where this Agreement requires notice or a document to be delivered by one party to the other, such notice or document shall be in writing and delivered either personally, by e-mail or by prepaid ordinary first class post, by the party wishing to give such notice or document, to the other party at the address noted below:

If to the Organization:

Name:
Address:
Attention:
Telephone:
Email:

If to the City:

The Corporation of the City of Niagara Falls
4310 Queen Street
P.O. Box 1023
Niagara Falls, ON L2E 6X5
Attention: General Manager of Recreation, Culture & Facilities
Telephone: (905) 356-7521 ext. 3330
Email: rc@niagarafalls.ca

Any such notice or document shall be deemed to have been given or received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of e-mail on the date of transmission provided it is received before 4:30 p.m. on a business day, failing which it shall be deemed to

have been received the first business day following the date of delivery;
and

- (c) in the case of registered post, on the third business day following posting.

Either party may change its address for receipt of notices hereunder by giving notice thereof to the other party in accordance with this Paragraph 15. For purposes of this Paragraph 15, "business day" means any day other than a Saturday, Sunday, or statutory holiday as defined in the *Interpretation Act*, in the Province of Ontario.

IN WITNESS WHEREOF the Organization has executed this Agreement the ____ day of _____, 20____.

(Insert Organization name here)

Name:

Title:

I have authority to bind the Organization

IN WITNESS WHEREOF the City has executed this Agreement the ____ day of _____, 20__.

**THE CORPORATION OF THE CITY OF
NIAGARA FALLS**

Per: _____

Name: Kathy Moldenhauer

Title: General Manager of Recreation,
Culture & Facilities

I have authority to bind the Corporation.

SCHEDULE "A"

Map defining location and specifications of Garden

SCHEDULE “B”

Community Garden Program Policy

The City of Niagara Falls supports the creation of community garden plots on municipal property when feasible. It has been established through the City’s Recreation and Culture Ten Year Plan that development of new community garden plots is encouraged.

The City of Niagara Falls Community Garden Program Policy is designed to guide and support community groups to successfully develop community gardens on City-owned property.

Purpose

The purpose of this policy is to outline the process, obligations and protocols for community groups and the City to develop and manage a community garden projects on municipal owned and leased lands.

Scope

This policy is applied to all City-owned land and to all community gardens located on City-owned land. It provides organizations, individuals, and neighbourhood groups the opportunity to operate a community garden on city-owned land.

Community Garden Project Applications

It is the responsibility for the City to make available a community garden project application. The application form will be made available online for community groups to access as long as there is adequate municipal property available to install a community garden. Paper applications will be made available upon request.

1. Applications must include background on the applying organization, a description of the project, budget listing, potential partners, site plan, construction plan, and an on-going management plan.
2. Applications will be accepted all year long only if there is available and suitable municipal property to host a new community garden.
3. Applications will be reviewed and recommended by the Park in the City Committee during the March committee meeting annually for project implementation for the same calendar year.

4. City Staff will give the application a final review once approved by the Park in the City Committee. The City will give the final approval on all projects.

Community Garden Locations

The City will select appropriate municipal property locations where establishing a community garden would be appropriate. There are many factors to take into consideration when determining such a location, including access to parking, water extraction, security, sight lines, soil conditions, existing users or occupants, proximity to dense residential dwellings and future growth plans.

1. The City will post available site locations on the City's website.
2. Existing site locations will be reviewed annually to ensure locations are currently suitable and/or consideration to include additional municipal properties.
3. Other municipal property that are not listed as a suitable site location can be reviewed by the City if requested through the application process.

Agreement & Term

All approved community group applicants must enter into a lease agreement with the City to commence their community garden project. The City will draft an agreement to be signed by both parties prior to any work being completed for the project.

1. Each approved community garden application will be granted for a five year lease agreement term.
2. Each community garden will be inspected and reviewed by City Staff during the 4th year of operation to ensure the garden is being operating effectively.
3. Community gardens can be extended for an additional 5 years, once passed inspection by City Staff.
4. An authorized community group representative will need to sign an agreement with the City.

The Role of the City

1. Provide a listing of available municipal land that is available to develop a community garden.

2. The City Staff Liaison for the Park in the City Committee will act as the primary Community Garden Liaison who will coordinate activities between the City and the participating community groups.
3. Review, approve and comment on Community Garden applications that have been accepted by the Park in the City Committee. The City has the right to deny an application, regardless of the approval from the Park in the City Committee for any reason. Note: the growing of commercial produce, cannabis or illegal substances is not permitted. The raising or housing of animals is also prohibited.
4. Review, approve and comment on any permits that are needed to be completed for the means of establishing a new community garden project.
5. Circulate the application information about the proposed community garden and its location to City departments and any external agencies for review and comment as required.
6. Prepare the lease agreement document to be signed by both the City and the Applicant.
7. Provide in-kind support to community groups establishing a community garden when able and within reasonable means.
8. Provide a letter of support to community groups for external grant applications to support start-up community garden projects.
9. Conduct periodic reviews of existing community garden projects and their operating practices.
10. Approve any lease agreement extensions.
11. Add the organization to the City's insurance policy for the duration of the garden operation.

The Role of the Community Group (Applicant)

1. Completing and Community Garden Program application.
2. Community garden project development, construction and management.
3. All financial obligations associated with the community garden project.
4. Recruitment and management of volunteers associated with the community garden.
5. Create any necessary policies, procedures, or rules that will be associated with the community garden.

6. Develop a maintenance plan and annual budget.
7. Follow all local health regulations accordingly.
8. Keep records of annual costing, maintenance schedules and other documentation associated with the garden for future inspection by City Staff.

Permits

Community groups must follow standard relevant building codes and acquire any necessary permits to erect and install structures on site.

Garden Construction

1. The community group is solely responsible for any costing involved with the development and construction of the new community garden.
2. Construction of the garden must follow in accordance with the lease agreement, submitted site plan and applicable by-laws, legislation, policies and regulations.
3. Obtain utility locates before any digging for soil preparation, fencing, building or any other garden activity.

Community Garden Operation

The community group responsible for managing the new garden will be tasked with various obligations to ensure the garden is well kept and maintained to a reasonable standard.

1. Responsible for recruiting and managing volunteers to plant and maintain the community garden beds and associated grounds/amenities (eg; watering equipment, storage units, grass cutting, etc.)
2. Arrange for regular waste collection from designated containers.
3. Responsible for operating the community garden and developing any desired garden policies such as an allocation policy, waitlist policy, fee structure and garden rules and regulations. Community gardens must be available to the community-at-large or to the community served by the sponsoring organization. Gardeners must be selected using a fair, equitable, open and transparent process with intention for all interested gardeners to be given equal chance to have access to a plot.

4. Administration daily duties and any required health and safety training.
5. Keep records of garden maintenance, costing, volunteer activities and other associated activities with the garden that will be reviewed during the renewal inspection.

Decommissioning a Garden Operation

Written notice must be sent (paper or email) to either party within 60 days of terminating the agreement in place. All costing associated with termination and clean-up of the existing municipal lands associated with the community is the sole responsibility of the managing community group.

SCHEDULE "C"

Responsibilities & Parameters

In addition to the City's Community Garden Policy, Organizations interested in starting up a community garden will be responsible for various activities associated with the Community Garden Program. Below is an overview of these responsibilities and parameters to follow while planning, implementing and managing the community garden.

- The City will allow the following types of vegetation to be grown in the Garden: vegetables, herbs, pollinator flowers, fruit, fruit producing trees, fruit bearing shrubs, and ornamental plants.
- Cannabis is not permitted to be grown in any community garden or on any City owned land.
- In compliance with Provincial policies and regulations, the City will not allow banned activities to occur at community gardens, such as the growing of animals, cattle, poultry, commercial agricultural enterprises, the growing of illicit plants, and/or invasive weeds.
- Free parking should be available in an approximate location for short walks to the Garden. The site must be easily accessible to community members. Bike racks should be placed at the site to encourage active transportation.
- A central sign, with the name of the Organization, should be placed at the main entrance to the Garden. Additional signage including hours of operation, rules/regulations, contact information, and relevant dangers shall be posted at Garden at the expense of the Organization.