

THIS AGREEMENT MADE THIS _____ DAY OF _____, 20XX

BETWEEN:

THE CORPORATION OF THE CITY OF OWEN SOUND,
a municipality within the meaning of the *Municipal Act, 2001*

hereafter called the "City",

-and-

XXX
an individual

hereafter called the "Executive".

COMMUNITY GARDEN LICENSE AGREEMENT

WHEREAS the City's Strategic Plan states that the City should maintain, improve and promote the use of our local parks and trails, and further, encourage and promote active lifestyles and support community safety and inclusion;

AND WHEREAS the City's Official Plan and Recreation, Parks and Facilities Master Plan supports the development of a policy regarding Community Gardens on City lands;

AND WHEREAS the City has an approved Community Gardens Policy that recognizes the benefits and supports the creation of Community Gardens on certain pre-approved City-owned lands;

AND WHEREAS, the Executive represents an unincorporated association known as the XXX Community Garden Collective (the "Collective") that wishes to develop, operate and maintain a Community Garden;

AND WHEREAS the Collective has made an application to the City to use a portion of the XXX park for a Community Garden, which application has been determined to meet the criteria of the policy and approved subject to the execution of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual obligations hereinafter set forth and the sum of ONE (\$1.00) DOLLAR paid by each party to the other, the receipt and sufficiency of which is hereby confirmed, the parties agree as follows:

Approved Location, Site Plan and Term

1. The City approves the use of portions of XXX park (the "Community Garden"), in accordance with the dimensions identified on Schedule 'A' to this Agreement and the design identified on Schedule 'B' to this Agreement.
2. The term of the Agreement is one (1) year commencing January 1, XXX and terminating December 31, XXX. During the term of the Agreement and any renewal, the use of the Community Garden is approved from April 15th to October 31st in each year (the "cultivation period").
3. Notwithstanding the said expiry date, provided this Agreement is in good standing and the Collective has developed, operated and maintained the Community Garden to the City's satisfaction, the Executive will have a first (1st) option of extending this Agreement for a further term of three (3) additional years following the end of the initial term. The Executive must give notice to the City not less than three (3) months prior to the end of the initial term of the Executive's desire to exercise this option to extend, and provided the City is satisfied with the Collective's development, operation and maintenance of the Community Garden, then all terms and conditions of this Agreement, except this option to extend, shall renew and remain in full force and effect throughout the said extension period ending on the 31st day of December XXX.
4. Notwithstanding the cultivation period outlined above, earlier access to the Community Garden in the spring may be requested by submitting a request in writing to the Manager of Parks & Open Space. Approval of the request will be at the sole discretion of the Manager of Parks & Open Space who will consider the request subject to seasonal conditions.
5. Notwithstanding the cultivation period outlined above, the Manager of Parks & Open Space, at their sole discretion may delay access to the Community Garden in the spring due to adverse weather conditions. The Manager of Parks & Open Space shall be required to issue notice to the Community Garden Executive, which includes the reason(s) for the delayed access and an alternative date when the Community Garden Collective may gain access to the Community Garden.

Assignment

6. The rights and privileges granted through this Agreement shall not be assigned, transferred or sublet by the Executive without prior written consent of the City, which consent may be withheld where the City determines in its sole discretion that the potential assignee is not able to meet the responsibilities contained within the Agreement.

Conditions of Use

7. The City agrees to:
 - a. support the Executive and the Collective in accordance with the City's Community Gardens Policy (Policy No. FPR001);
 - b. prepare the footprint of the Community Garden by removing the sod if requested in writing by the Executive;
 - c. deliver one (1) waste receptacle to the Community Garden and undertake waste collection at least once every two (2) weeks during the cultivation period;
 - d. turn on a water source (if applicable) at the beginning of the cultivation period and turn off a water source at the end of the cultivation period where the water source for the Community Garden is connected to City infrastructure;
 - e. inspect the Community Garden at its discretion to ensure compliance with this Agreement and the Community Gardens Policy;
 - f. continue to maintain XXX park outside the Community Garden footprint;
 - g. advise the Executive of any grants the City identifies that may support the Community Garden; and
 - h. respond to complaints respecting the Community Garden and advise the Executive of each complaint.
8. The Executive agrees to:
 - a. begin developing the Community Garden during the first cultivation period of the Agreement;
 - b. ensure structures located on the Community Garden conform to the City's Zoning By-law and that all permits, including but not limited to building permits, are obtained if required;

- c. refrain from making alterations to the Community Garden or the structures thereon except with prior written approval from the City and only after all necessary permits and approvals have been obtained;
- d. install municipal water connections, if required, at the Executive's expense and according to City of Owen Sound Standard Drawing OSS-413A, including obtaining the necessary permits;
- e. develop, operate and maintain the Community Garden in accordance with this Agreement, the Community Gardens Policy (including the Community Garden Principles), and all applicable legislation and City by-laws including but not limited to the Zoning By-law and Property Standards By-law;
- f. remove all plant materials and leave the Community Garden in a clean and tidy condition at the end of the cultivation period;
- g. ensure that any composting activity is done in accordance with the Property Standards By-law, including but not limited to that all compost be kept in closed containers that are designed to compost plant material, minimize the release of odours that negatively impact adjacent private lands, and resist intrusion by common pests;
- h. use only soil suitable for cultivation, ensure that any soil brought into the Community Garden from an outside source is purchased from a garden centre or nursery and provide proof of purchase for soil to the Manager of Parks and Open Space;
- i. install signage at the Community Garden that identifies the Community Garden, the Community Garden Collective and contact information for the Community Garden Executive in a manner and location that is approved by the Manager of Parks & Open Space;
- j. be responsible for annual costs of water provided to the Community Garden whether through the City or by another means;
- k. pursue funding, if necessary, to support the Community Garden;

- l. develop and make publicly available, terms of reference for the Collective that identifies the goals of the association and how the association organizes itself and manages its affairs; and
- m. provide the City with proof of insurance in accordance with section X below at the time of execution of this Agreement and at any time the City so requests during the term of this Agreement and any renewal periods.
- n. Ensure all members submit a completed liability waiver to the City prior to accessing their Community Garden. The liability waiver form will be provided by City staff.

Termination

9. The City may, in its sole discretion, terminate this Agreement for any reason during the initial term or renewal term by providing three (3) weeks' written notice to the Executive.
10. The Executive may terminate this Agreement for any reason during the initial term or renewal term by providing three (3) weeks' written notice to the City.
11. Upon giving or receiving notice of termination, the Executive will remove any and all of the Collective's possessions and supplies from the Community Garden and will leave the Community Garden and surrounding area in a clean and tidy condition. Should the Executive fail to comply, the City has the right not only to remove the Collective's possessions and collect the cost of doing so from the Executive but also has the right to require the Executive to remove such possessions. If the Executive fails to do so, the City is allowed to keep or sell the items and apply the cost towards the removal and any related storage costs, without any claims by the Executive or the Collective.

Liability

12. The City will not be responsible for any loss or damage to any items kept or used at the Community Garden.
13. Notwithstanding the terms of this Agreement, it is hereby agreed that the City will not be liable for any injury, death, or damage, either to persons or property, loss of revenue, costs or expenses sustained by the Executive/Collective, its employees, agents, patrons, servants, volunteers, or any other person associated with the Collective or the

Community Garden where said injury, death or damage results from anything out of repair, or said person or property being damaged or destroyed by fire, accident or caused by the bursting or leaking of any pipes, labour disputes, electrical failures, or from any other cause beyond the control of the City. The City shall not be liable for and the Executive/Collective hereby releases the City for any injury, death or damage to or loss or theft of the property of the Executive/Collective or its employees, servants, agents, patrons or volunteers associated with the Collective or the Community Garden or other persons, and the Executive/Collective releases the City, and its officers, agents, employees, or representatives from all said damages unless caused inadvertently or through negligence by the City, its servants, agents or employees.

14. The Executive will maintain liability insurance in the amount of two million dollars (\$2,000,000), such policy to include the City as a named insured and to include a clause that the insurer will provide notice to the City if the insurance is cancelled for any reason.

Notice

15. Any notice required to be given by the City to the Executive will be in writing and will be sufficiently provided if delivered personally or by email to the Executive at:

XXX

16. Any notice required to be given by the Executive to the City will be in writing and will be sufficiently provided if delivered personally or by email to the City at:

Planning & Heritage Division
planning@owensound.ca

17. Time of Delivery: Any such notice shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day, on the next following Business Day).

Entire Agreement

18. This Agreement constitutes the entire agreement between the parties hereto and supersedes all previous or contemporaneous communications, representations or agreements.

19. No modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto in the same manner as the execution of this Agreement.

Severability

20. In the event that any provision shall be judged or decreed to be invalid by a court of competent jurisdiction, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

Enurement

21. This Agreement, the schedules and all covenants shall enure to the benefit of and be binding upon the City and Executive, and their respective successors, trustees or imposed administrators.

Waiver

22. No waiver, acquiescence or failure to enforce with respect to any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) and shall in no case constitute a continuing waiver or bar to future enforcement unless otherwise expressed or provided.

Governing Law

23. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the parties irrevocably attorn to the jurisdiction of the Ontario courts.

Headings

24. The division of this Agreement into sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year written above. The signatory for the City represents and warrants that they are duly authorized to execute this Agreement on behalf of the City of Owen Sound.

The Corporation of the City of Owen Sound

Pam Coulter, Director of Community Services

Tim Simmonds, City Manager

We have authority to bind the City

**The Executive of the XXX
Community Garden Collective**

Witnessed by:

Name:

Legal Name of Executive