



**Terms of Reference** – means a document created by the Community Garden operator that identifies how the Community Garden will be operated.

#### **ARTICLE 1 – RELEASE, WAIVER AND INDEMNITY**

- a. The Licensee voluntarily assumes any risk of injury, damage or legal action and shall indemnify and save harmless The Corporation of the City of Peterborough and its officers, employees, agents, and representatives (the “City”), from and against all liability, actions, claims, losses, costs and damages which may be brought against or suffered by the Licensee or the City and which the Licensee or the City may incur, sustain or pay arising out of or in connection with the Licensee’s use of and the City’s provision of or termination of any City services or facilities associated with this Agreement. The Licensee releases and forever discharges the City, from any claim or demand whatsoever in respect of injury, death, loss or damage to property caused by or arising from the Licensee’s or the Plot Holder’s use of the Community Garden. The Licensee also agrees to hold and save harmless the City from any and all causes of action brought by third parties, including Plot Holders, against the City arising out of the Licensee’s or the Plot Holder’s presence on or use of the Community Garden and/or arising out of any cause of action associated with the Licensee’s or the City’s deposit of material on the Community Garden.

#### **ARTICLE 2 – OBLIGATIONS AND RIGHTS OF THE CITY**

- a. The City shall support the Community Garden in accordance with its approved Community Gardens policy.
- b. In its sole discretion, the City may alter or terminate this agreement without giving cause or reason at any time. While the City will use its best efforts to provide the Licensee with notice in excess of five (5) days prior to altering or terminating this agreement, the parties agree that the provision of five (5) days written notice prior to any alteration to, or termination of, this agreement is satisfactory. Notwithstanding the foregoing, in the event the City desires to terminate this agreement during any Season, it shall provide the Licensee with ninety (90) days notice of such termination.
- c. The City shall:
  - i. Roto-till, or otherwise aerate, the land to be used for the Community Garden on or before 1 June in each Season;
  - ii. Use reasonable efforts to maintain the Licensee’s physical access to the Lands during the Season.
  - iii. Provide the Licensee with a photocopy of the License Agreement upon receiving the Licensee Fee, if any, and a duly executed copy of the License Agreement from the Licensee.

#### **ARTICLE 3 – OBLIGATIONS AND RIGHTS OF THE LICENSEE**

- a. The Licensee shall only permit a Plot Holder to plant or grow plants that are permitted within the definition of Community Garden.
- b. In the event of a disagreement concerning the suitability of all or some of the plants a Plot Holder desires to plant or grow on the Lands, the Licensee in first instance shall resolve such dispute in consultation with the City’s Community Services Department, in the event the City and the Licensee do not agree on what constitutes a suitable plant, the Licensee acknowledges and agrees that the City shall be the sole final arbiter of what constitutes an acceptable plant and may, in the City’s sole discretion, require the Licensee to:
  - i. Remove such plant or plants from the Lands; or
  - ii. Refuse permission to the Plot Holder to plant such plants on the Lands.
- c. The Licensee shall:

- i. Ensure that each Plot Holder, prior to commencing occupation of a plot within the Community Garden, executes a Plot Holder Agreement with the Licensee;
  - ii. Ensure that each Plot Holder, prior to commencing occupation of a plot within the Community Garden, executes a Release and Waiver;
  - iii. Develop Terms of Reference that identify how their Community Garden will be operated;
  - iv. Ensure that the City's Community Services Department always has a current version of the Community Garden's Terms of Reference;
  - v. Operate their Community Garden in accordance with their Terms of Reference;
  - vi. Report any significant vandalism to the City's Community Services Department as soon as practicable after becoming aware of such vandalism.
- d. Without limiting the generality of Article 3(c)(iii), the Terms of Reference shall address:
- i. Governance
  - ii. Communication
  - iii. Membership
  - iv. Membership Fees
  - v. Financial Management and Fundraising
  - vi. Plot Holder Responsibilities
  - vii. Community Garden Rules
  - viii. Garden Facilities, Tools and Equipment
  - ix. Risk Management and Site Security

The Licensee acknowledges that a template for developing its Terms of Reference is attached as Schedule "C" to this license agreement

- e. The Licensee shall maintain at their sole risk and expense such gating, fencing, locks, and supervision of the Lands as they consider reasonably necessary to ensure that:
- i. Only Plot Holders are permitted to enter into the Community Garden for the purpose of growing plants that are permitted within the definition of Community Garden;
  - ii. That any improvement made to the Community Garden by the City or by the Licensee, including the installation of running water, is kept reasonably secure;
- f. The Licensee shall not permit any of the following:
- i. The deposit of construction or demolition debris (including drywall or lumber) or any such other items such as, but not limited to, metal, plastic, porcelain;
  - ii. The use of non-horticultural oils, detergents, pesticides, fungicides or insecticides;
- g. The Licensee shall upon any demand from the City made in accordance with Article 2(b) forthwith surrender the Lands to the City in accordance with Article 4(a).

- h. The Licensee acknowledges and agrees that its right to occupy the Lands exists at the pleasure of the City and that such right may be revoked by the City, in accordance with Article 2(b), in the event the City:
  - i. Requires use of the Lands and the continued operation of the Community Garden is, in the sole and unfettered discretion of the City's Community Services Department, incompatible with the City's use of the Lands;
  - ii. Is satisfied that the operation of the Community Garden has become a nuisance and the Licensee has not rectified the nuisance within 10 calendar days or such other reasonable period of time as the City may permit;
  - iii. The Licensee is in breach of its obligations hereunder and has not rectified the breach within 10 business days or such other reasonable period of time as the City may permit.
- j. The Licensee shall make no claim against, nor make any kind of demand of, the City arising out the City's decision to terminate this agreement.

#### **ARTICLE 4 – RELATIONSHIP OF THE PARTIES**

- a. The relationship between the City and the Licensee is solely that of proprietor and a party licensed for the non-full-time use and occupation of the Lands and is not a relationship of Landlord and Tenant.
- b. The Licensee acknowledges and agrees that nothing contained herein, an no action taken by the Licensee or any Plot Holder shall confer on or vest in the Licensee or any Plot Holder any title, any interest of any kind including an ownership interest, or estate in the Lands.

#### **ARTICLE 5 – OTHER TERMS AND CONDITIONS:**

- a. The City and Licensee agree that the recitals form part of this agreement and may be relied upon by either party.
- b. The Term of this agreement shall commence on 1 May, or on such later date as it is signed by the City, and continue until 31 October of that same year. The agreement may, in the sole discretion of the City, acting reasonably, be extended for additional Seasons.
- c. This agreement is a public document and may be released to anyone who makes a lawful inquiry.
- d. This agreement constitutes the whole agreement between the parties and not prior or subsequent representation or warranty, given orally or in writing shall bind the parties unless it is executed in writing and signed by both parties.
- e. Except as provided in this agreement, the agreement shall operate to the benefit of the parties and shall bind the parties and their prospective heirs, executors, administrators, successors and assigns.
- f. This Agreement will be governed by the Laws of Ontario.

**THE NEXT ARTICLE IS ARTICLE 5(g)**

g. In the event any portion of this agreement is found to be unenforceable, the offending portion shall be severed and the remainder of the agreement shall remain in effect and bind the Parties.

**IN WITNESS WHEREOF THE PARTIES** hereto have set their hands as duly attested to by the hands of their duly authorized signing officers.

<b>SIGNED AND DELIVERED</b>	)	<b>THE CORPORATION OF THE</b>
	)	<b>CITY OF PETERBOROUGH</b>
	)	
	)	_____
	)	Alex McLeod,
	)	Property Asset Manager
	)	
<b>SIGNED AND DELIVERED</b>	)	<b>INSERT NAME OF LICENSEE</b>
<b>IN PRESENCE OF</b>	)	
	)	
	)	_____
_____	)	(Signature of Person Signing for Licensee)
Witness's Signature and Date	)	
(day/month/year):	)	I have the Authority to Bind the Licensee
	)	
	)	
_____	)	
Printed Name of Witness	)	
	)	
	)	_____
	)	Date of Signature:
	)	(day/month/year)

**Schedule "A"**  
Description/Map of the Lands  
be Used as a Community Garden

**Schedule “B-1”  
Plot Holder Agreement**

**THIS PLOT HOLDER AGREEMENT** made in triplicate this      day of      , 20\_\_ ,  
(date to be filled in by City)

**BETWEEN**

\_\_\_\_\_  
(the “Operator”)

and

\_\_\_\_\_  
(the “Plot Holder”)

**LICENCE AND USE AGREEMENT**

**WHEREAS** the Operator and the Plot Holder desire to enter into an agreement to permit the Plot Holder to enter onto City-owned land for the purpose of participating in a Community Garden;

**AND WHEREAS** the Parties recognize that encouraging and promoting the operation of Community Gardens is a valuable recreational activity that contributes to the health, well-being of the residents of the City;

**AND WHEREAS** the Operator desires to encourage individuals to participate community gardening;

**AND WHEREAS** the Plot Holder acknowledges and agrees that his/her right to occupy City-owned land only exists in accordance with the terms and conditions of this agreement;

**AND WHEREAS** the Plot Holder has executed the Release and Waiver, attached hereto as **Schedule “B”**;

**AND WHEREAS** the parties agree that the mutual exchange of obligations constitute satisfactory consideration to bind the parties to this agreement;

**NOW THE PARTIES AGREE AS FOLLOWS:**

**DEFINITIONS**

**City** – means the Corporation of the City of Peterborough, its employees, elected officials, officers, directors, volunteers, agents and assigns.

**Community Garden** – means a site that is operated by an individual or group on a non-profit basis for one or more of the following purposes:

- a. Production of produce for:
  - i. Personal use
  - ii. Donation to a local food cause; or
  - iii. Generating revenue to reinvest in the Community Garden.
- b. Production of a floral or landscape display; or
- c. Demonstration gardening or other related instructional programming.

**Lands (the)** – means the lands upon which the Licensee is permitted by the City to operate a Community Garden as described in Schedule “A” [Schedule “A” to be (1) a legal description, or (2) municipal address (if known) and/or map/sketch showing location and approximate extent of the Lands]

**Plot Holder** – means a member of a Community Garden who has:

- a. The responsibility, solely or in conjunction with another Plot Holder, for gardening at least one garden plot within the Community Garden; and

- b. Executed a Plot Holder Agreement and a Liability Waiver.

**Release and Waiver** – means a release and waiver signed by each Plot Holder in favour of the Licensee and The Corporation of the City of Peterborough;

**Season** – means the period between 1 May and 31 October in each year of the Term;

**Terms of Reference** – means a document created by the Community Garden operator that identifies how the Community Garden will be operated.

## **ARTICLE 1 – OBLIGATIONS AND RIGHTS OF THE OPERATOR**

- a. The Operator shall only permit a Plot Holder to plant or grow plants that are permitted within the definition of Community Garden.
- b. In the event of a disagreement concerning the suitability of all or some of the plants a Plot Holder desires to plant or grow on the Lands, the Operator, in first instance, shall resolve such dispute in consultation with the City's Community Services Department, in the event the City and the Operator do not agree on what constitutes a suitable plant, the Operator acknowledges and agrees that the City shall be the sole final arbiter of what constitutes an acceptable plant and may, in the City's sole discretion, require the Operator to:
  - i. Remove such plant or plants from the Lands; or
  - ii. Refuse permission to the Plot Holder to plant such plants on the Lands.
- c. The Operator shall:
  - i. Ensure that each Plot Holder, prior to commencing occupation of a plot within the Community Garden, executes a Plot Holder Agreement with the Licensee;
  - ii. Ensure that each Plot Holder, prior to commencing occupation of a plot within the Community Garden, executes a Release and Waiver;
  - iii. Assign garden plots to each Plot Holder in a fair and transparent manner;
  - iv. Maintain the Community Garden in accordance with all applicable City by-laws;
  - v. Maintain such bank accounts, financial records and books of accounting as would a prudent business owner;
  - vi. Account on an annual basis to all Plot Holders concerning the financial condition of the Community Garden;
  - vii. Develop Terms of Reference that identify how their Community Garden will be operated;
  - viii. Ensure that the City's Community Services Department always has a current version of the Community Garden's Terms of Reference;
  - ix. Operate their Community Garden in accordance with their Terms of Reference;
  - x. Report any significant vandalism to the City's Community Services Department as soon as practicable after becoming aware of such vandalism.
- d. Without limiting the generality of Article 1(c)(vii), the Terms of Reference shall address:
  - i. Governance
  - ii. Communication
  - iii. Membership
  - iv. Membership Fees

- v. Financial Management and Fundraising
  - vi. Plot Holder Responsibilities
  - vii. Community Garden Rules
  - viii. Garden Facilities, Tools and Equipment
  - ix. Risk Management and Site Security
- e. The Operator shall maintain at their sole risk and expense such gating, fencing, locks, and supervision of the Lands as it considers reasonably necessary to ensure that:
    - i. Only Plot Holders are permitted to enter into the Community Garden for the purpose of growing plants that are permitted within the definition of Community Garden;
    - ii. That any improvement made to the Community Garden by the City or by the Operator, including the installation of running water, is kept reasonably secure;
  - f. Neither the Plot Holder nor the Operator shall permit any of the following:
    - i. The deposit of construction or demolition debris (including drywall or lumber) or any such other items such as, but not limited to, metal, plastic, porcelain;
    - ii. The use of non-horticultural oils, detergents, pesticides, fungicides or insecticides;
  - g. The Plot Holder shall upon any demand from the Operator made in accordance with Article 2(e) forthwith surrender the Lands to the Operator in accordance with Article 4(a).
  - h. The Plot Holder acknowledges and agrees that its right to occupy the Lands exists at the pleasure of the Operator and that such right may be revoked by the Operator, in accordance with Article 2(e), in the event the Operator, is informed by the City that:
    - i. The City requires use of the subject land;
    - ii. The City is satisfied that the operation of the Community Garden has become a nuisance and the Operator has not rectified the nuisance within 10 calendar days or such other reasonable period of time as the City may permit;
    - iii. The Operator is in breach of its obligations under its License Agreement with the City and that it has not rectified the breach within 10 business days or such other reasonable period of time as the City may permit.
  - i. The Plot Holder shall make no claim against, nor make any kind of demand of, the Operator or the City arising out the City's decision to terminate this agreement.

**ARTICLE 2 – OBLIGATIONS RIGHTS AND ACKNOWLEDGEMENTS OF THE PLOT HOLDER**

- a. The Plot Holder acknowledges that it is being provided with a community garden plot on “an as is where is basis” and that neither the Operator or the City has given any kind of warranty or representation concerning the suitability of the community garden plot for purpose of growing any kind of plants.
- b. The Plot Holder shall at the time directed by the Operator, pay to the Operator the annual fee, if any, in full prior to being permitted to access the Community Garden and prior to commencing use of his/her community garden plot.
- c. The Plot Holder shall follow all reasonable direction received from the Operator concerning:
  - i. Which plants may or shall not be planted within the Community Garden;

- ii. Any improvements, beyond the planting of permitted plants, may be made by the Plot Holder within the Community Garden;
- iii. His or her conduct while within the Community Garden;
- d. The Plot Holder is solely responsible for the security and safe-keeping of his/her community garden plot. The Plot Holder acknowledges and agrees that neither the Operator nor the City of Peterborough is in any way responsible for, or giving any representation or warranty concerning:
  - i. The security of the community garden plot;
  - ii. The advisability of planting any plants in the community garden;
  - iii. The tenure of the Plot Holder's license agreement with the Operator;
  - iv. The security of any plants or implements, tools or other property of the Plot Holder brought into the Community Garden; or
  - v. Maintaining or permitting any improvements made to the Community Garden or to the Plot Holder's plot to remain on the City's land.
- e. The Plot Holder acknowledges and agrees that he/she is aware that the City, in its sole and unfettered discretion, may alter or terminate its License Agreement with the Operator without giving cause or reason at any time and that such termination would end the Plot Holder's access to the Community Garden. While the City will use its best efforts to provide the Operator with notice in excess of five (5) days prior to altering or terminating the Operator's License Agreement, the parties hereto agree that the City's provision of five (5) days written notice to the Operator prior to any alteration to, or termination of, this agreement is satisfactory. Notwithstanding the foregoing, in the event the City desires to terminate its License Agreement with the Operator during any Season, it shall provide the Operator with ninety (90) days prior written notice of such termination.

**ARTICLE 4 – RELATIONSHIP OF THE PARTIES**

- a. The relationship between the Operator and the Plot Holder is solely that of proprietor and a party licensed for the non-full-time use and occupation of the Lands and is not a relationship of Landlord and Tenant.
- b. Plot Holder acknowledges and agrees that nothing contained herein, and no action taken by the Operator or any Plot Holder shall confer on or vest in the Plot Holder any title, any interest of any kind including an ownership interest, or estate in the Lands.

**ARTICLE 5 – OTHER TERMS AND CONDITIONS:**

- a. The Licensee and the Plot Holder agree that the recitals form part of this agreement and may be relied upon by either party.
- b. The Term of this agreement shall commence on 1 May, or on such later date as it is signed by the Licensee, and continue until 31 October of that same year. Provided that the City has extended its agreement with the Operator, this agreement may, in the sole discretion of the Operator, acting reasonably, be extended for additional Seasons.
- c. This agreement constitutes the whole agreement between the parties and no prior or subsequent representation or warranty, given orally or in writing shall bind the parties unless it is executed in writing and signed by both parties.
- d. Except as provided in this agreement, the agreement shall operate to the benefit of the parties and shall bind the parties and their prospective heirs, executors, administrators, successors and assigns.
- e. This Agreement will be governed by the Laws of Ontario.
- f. In the event any portion of this agreement is found to be unenforceable, the offending portion shall be severed and the remainder of the agreement shall remain in effect and bind the Parties.



**Schedule "B-2"**  
Plot Holder Release and Waiver

**RELEASE AND WAIVER**

The Plot Holder voluntarily assumes any risk of injury, damage or legal action and releases and forever discharges The Licensee and The Corporation of the City of Peterborough and their officers, employees, agents, and representatives (the "Licensee and the City"), from and against all liability, actions, claims, losses, costs and damages which may be brought against the Licensee and the City and which the Licensee or the City may incur, sustain or pay arising out of or in connection with the Plot Holder's use of and the Licensee's and/or the City's provision of or termination of land and/or a plot of land for community gardening and the City's provision of services, materials or facilities associated with community gardening.

The Plot Holder releases and forever discharges the Licensee and the City, from any claim or demand whatsoever in respect of injury, death, loss or damage to property caused by or arising from the Licensee's or the Plot Holder's use of the Community Garden. The Plot Holder also agrees to hold and save harmless the Licensee and the City from any and all causes of action brought by third parties, including other Plot Holders, against the Licensee and the City arising out of the Licensee's or the Plot Holder's presence on or use of land for purposes associated with community gardening and/or arising out of any cause of action associated with the Licensee's or the City's provision of services, materials or facilities associated with community gardening.

The relationship between the Plot Holder and the City and the Licensee is solely that of proprietor and a party licensed for the non-full-time use and occupation of City-owned land. The Plot Holder, in consideration of being granted permission to use and occupy a plot within the community garden, for the purpose of engaging only in permitted forms of community gardening, forever releases and waives any argument or claim the Plot Holder may have or may wish to make that a relationship of Landlord and Tenant exists between the Plot Holder and the Licensee or between the Plot Holder and the City.

The Plot Holder acknowledges and agrees that nothing contained herein, and no action taken by the City, the Licensee or the Plot Holder shall confer on or vest in the Plot Holder any title or any interest of any kind including an ownership interest, or estate in the City-owned lands and the Plot Holder specifically releases and waives any argument or claim the Plot Holder may have or may wish to make that the Plot Holder has any interest of any kind including any kind of ownership interest, or estate in the City-owned land being used as a community garden.

SIGNED SEALED & DELIVERED	)	
	)	
	)	_____
	)	Signature of Plot Holder
	)	
	)	Printed Name: _____
_____	)	
Witness	)	
Signed in the Presence of the Plot Holder	)	_____
	)	Date of Signature

**Schedule “C”  
Template for Terms of Reference**

**COMMUNITY GARDENS**

**TERMS OF REFERENCE TEMPLATE**

This Template provides suggestions on topics that should be included in a Community Garden’s Terms of Reference document. The Terms of Reference is a document created by a Community Garden that sets out the guidelines for the operation of the Community Garden. The Terms of Reference should let its members know how the garden will be managed, what the garden rules are, and the rights and responsibilities of the Community Garden members.

This Template is separated into different Sections as a potential model for Community Gardens to follow. It’s possible that not all Sections will be applicable for each Community Garden. Within each Section are a number of questions to serve as prompts for Community Gardens when drafting their Terms of Reference.

**1.0 GOVERNANCE STRUCTURE**

This Section should outline how a Community Garden will be managed. Possible topics include:

- How the garden will be managed (i.e. a Garden Coordinator/Leader or by Committee).
- How the garden leadership will be selected, their roles and responsibilities, and their length of term.
- What will be the roles of other members of the Community Garden.
- How decisions will be made and communicated to Garden Members.
- How issues/conflicts within the Community Garden will be addressed and resolved.
- How policies and procedures are developed and enforced.

**2.0 COMMUNICATION**

This Section should outline how information is to be communicated within the Community Garden. Possible topics include:

- How members will be communicated with and how often (i.e. meetings, newsletters, bulletin boards etc.).
- What is appropriate for posting within the Community Garden.
- How members will forward their questions or concerns.
- How new policies, procedures and/or rules will be disseminated.

**3.0 MEMBERSHIP**

This Section should outline the various aspects of membership within a Community Garden. Possible topics include:

- How new members (plot holders) are selected (i.e. waiting list, lottery system, needs assessment etc.) and/or how plots get assigned.
- How long membership is for and what it includes.
- How prospective members can apply for a space in the Community Garden.
- What documentation new members must provide.
- What agreements members are required to sign.
- How agreements will be retained and who will have access to them.

**4.0 MEMBERSHIP FEES**

This Section should provide details relating to the establishment and collection of fees for membership in a Community Garden. Possible topics include:

- How much a plot costs and how fees may be paid.
- How often fees are reviewed and revised.
- Whether there is any mechanism for waiving fees.
- Whether fees may be refunded.

- Whether there are penalties for late payments etc.

## **5.0 FINANCIAL MANAGEMENT & FUNDRAISING**

- How funds raised by the Community Garden will be managed and how they may be utilized.
- How decisions will be made regarding the expenditure of funds.
- Whether there is any financial reporting to the members and how often.
- How and whether the Community Garden will do fundraising and whether members are required to participate.

## **6.0 GARDNER RESPONSIBILITIES**

This Section should provide details regarding the individual and shared responsibilities of members of the Community Garden. Possible topics include:

- What the expectations are of members in maintaining their own plots.
- What the expectations are of members in maintaining common areas.
- Whether members are required to assist in harvesting shared plots dedicated to food security issues.
- What agreements, waivers etc. members are required to sign.
- What arrangements members are required to make in the event of an extended absence from the Community Garden.
- What the expectations are of members to assist in fundraising activities.
- What the expectations are of members in caring for and helping to maintain shared tools and facilities.

## **7.0 GARDEN RULES**

This Section should provide a summary of the rules that members of the Community Garden must follow to continue their membership in the Garden. Possible topics include:

- Whether visitors are allowed to the garden.
- Whether pets are allowed in the garden.
- What can and cannot be done with individual garden plots.
- What upkeep is required to maintain the garden in an appropriate state.
- What produce is acceptable to be grown in the garden.
- What is not allowed to be grown in the garden.
- How the produce may or may not be distributed.
- What materials may be used in the gardening process.
- What materials may be used in constructing the garden and what approvals may be necessary.
- What tools and equipment may or may not be used.
- How the tools, equipment, and facilities may be used.

## **8.0 GARDEN FACILITIES, TOOLS AND EQUIPMENT**

- What facilities and tools will be available to members of the garden (e.g. garden shed, shaded communal area, water, fences, compost etc.).
- What equipment is shared and how such equipment is to be maintained and stored.
- What equipment members are required to provide.
- What are permissible uses of the equipment, tools, and facilities.

## **9.0 RISK MANAGEMENT AND SITE SECURITY**

Explain how you will manage foreseeable risks and maintain the security of the community garden and any structures and tools which may, or may not, be stored on site.