

MEMORANDUM OF AGREEMENT

BETWEEN

THE CITY OF UNION GAP PARKS DEPARTMENT
WASHINGTON STATE UNIVERSITY EXTENSION, YAKIMA COUNTY, AND
THE MASTER GARDENER FOUNDATION OF YAKIMA COUNTY

FOR A DEMONSTRATION GARDEN

I. INTRODUCTION

This Memorandum of Agreement ("MOA") is entered between the CITY OF UNION GAP PARKS DEPARTMENT, hereinafter called the "LANDOWNER" or "CITY," the MASTER GARDENER FOUNDATION OF YAKIMA COUNTY, hereinafter called the "FOUNDATION", and WASHINGTON STATE UNIVERSITY, an institution of higher education and agency of the state of Washington, by and through its Extension Program ("WSU EXTENSION"). The above entities are individually referred to as a "PARTY" and collectively referred to as the "PARTIES".

II. PURPOSE

This MOA sets forth the guidelines for the PARTIES' operation of the demonstration garden at the Ahtanum Youth Park (the "DEMONSTRATION GARDEN") on property owned by LANDOWNER, as further described in Section V herein.

III. GUIDING PRINCIPLES

All PARTIES agree to follow the concepts and principles set forth in this MOA, which was jointly prepared by the WSU EXTENSION and the LANDOWNER.

IV. MISSION

In furtherance of WSU EXTENSION's educational mission, the DEMONSTRATION GARDEN is intended to:

- a. Demonstrate environmentally sound gardening techniques based on WSU EXTENSION research;
- b. Provide hands-on experience for WSU EXTENSION Master Gardener volunteers;
- c. Educate the public, including youth, in science-based horticulture and related topics; and
- d. Provide a focal point for public use and enjoyment of the LANDOWNER's facility.

V. LOCATION

Upon execution of this MOA, the FOUNDATION and WSU EXTENSION shall have the right to use an area located in the Southeast portion of the CITY'S Ahtanum Youth Activities Park at 1000 Ahtanum Rd; Yakima, Washington 98903, as indicated in **Exhibit A**, appended hereto and incorporated herein by reference, for the purpose of the development and maintenance of a

DEMONSTRATION GARDEN for the park visitors, local community, the WSU Master Gardener training program, and Master Gardener volunteers.

VI. CITY'S RESPONSIBILITIES:

- a. The CITY, through negotiations with the FOUNDATION, may provide other areas for landscaping. The details of such other areas and any agreement for the joint creation or maintenance thereof shall be captured via modification or addendum to this MOA, and binding only when signed by the duly authorized representatives of the PARTIES.
- b. The CITY shall provide the services indicated herein at the current anticipated expense levels. If, during the term of this MOA, these expenses increase by more than 5% over the current levels, the parties agree to re-negotiate in good faith this provision of the MOA.
- c. The CITY shall provide at no charge to FOUNDATION or WSU EXTENSION connection to the water system (domestic and/or irrigation), and connection to the electrical supply system, and the ongoing supply of water and electricity necessary to maintain the DEMONSTRATION GARDEN.
- d. The CITY shall provide at no charge to FOUNDATION or WSU EXTENSION mowing of the area surrounding the DEMONSTRATION GARDEN, as needed.
- e. The CITY shall provide a key to the FOUNDATION's President (or designated Master Gardener Team Leader) to allow access to the electrical breaker panels at the pump house to allow the President to reset any tripped breaker if necessary.
- f. Any pesticide applications must first be approved by the City of Union Gap and applied by a licensed commercial applicator.

VII. FOUNDATION'S RESPONSIBILITIES:

- a. The FOUNDATION shall, cooperatively with WSU EXTENSION, promote and deliver the Master Gardener DEMONSTRATION GARDEN and shall assist WSU EXTENSION in the development and maintenance of the DEMONSTRATION GARDEN.
- b. The FOUNDATION shall assist in funding and organizing non-commercial home landscaping and DEMONSTRATION GARDEN activities, and educational workshops.
- c. The FOUNDATION shall report to WSU EXTENSION all activities, maintenance functions and volunteer hours at the DEMONSTRATION GARDEN, which are used to meet the duties of WSU EXTENSION, as set forth in this MOA.
- d. At the FOUNDATION's expense, the FOUNDATION shall:
 - 1) Provide any future conceptual design for the CITY's approval, showing the layout of all the DEMONSTRATION GARDEN's features including the DEMONSTRATION GARDEN areas, storage facilities, water, electrical, parking, land contours, landscaping and any other improvements associated with the DEMONSTRATION GARDEN.
 - 2) Provide a final design for the CITY's approval, before construction of any phase or component of the DEMONSTRATION GARDEN.
 - 3) Provide the labor and materials to fully construct and maintain the DEMONSTRATION GARDEN, including sprinkler system and electrical support, along with other items associated with the DEMONSTRATION GARDEN, as well as the care and maintenance of all proposed landscaping areas of the DEMONSTRATION GARDEN.

- 4) Submit to the CITY all sources of supplies of equipment, operating and maintenance manuals associated with the DEMONSTRATION GARDEN.
- 5) Maintain the DEMONSTRATION GARDEN in accordance with the standards established by the CITY as incorporated herein, and in accordance with the standards as set forth by the FOUNDATION, to include, but not limited to, the control of unwanted vegetation growth by pulling and/or mechanically cutting weeds. Any pesticide applications must first be approved by the City of Union Gap and applied by a licensed commercial applicator.
- 6) While promoting any public events at the Ahtanum Park, the Foundation will notify the Landowner in advance and, upon approval, acknowledge the City as event collaborator through use of the appropriate logo.

VIII. WSU EXTENSION'S RESPONSIBILITIES:

- a. WSU EXTENSION shall oversee, co-organize, and coordinate the WSU EXTENSION Master Gardener Program to include, but not limited to, volunteer training and activities in the DEMONSTRATION GARDEN including other horticulture related programs and displays; provide hands-on experience for volunteers; educate the public in science-based horticulture for home DEMONSTRATION GARDEN purposes; provide educational leadership; provide an annual training program for volunteer members; and demonstrate and promote environmentally sound gardening practices and techniques from WSU EXTENSION research.
- b. To the extent available, Master Gardeners will volunteer time for the care and maintenance of all proposed landscaping areas of the DEMONSTRATION GARDEN in accordance with the standards established by the CITY and in accordance with the standards as set forth by the FOUNDATION in agreement with WSU EXTENSION, to include, but not limited to, the control of unwanted vegetation growth by pulling or mechanically cutting weeds. Any pesticide applications must first be approved by the City of Union Gap and applied by a licensed commercial applicator.
- c. **Exhibit B** to this MOA is the Washington State University Business Policies and Procedures Manual regarding volunteer liability coverage when acting in the course of their official volunteer duties and as a current certified WSU EXTENSION Master Gardener with Washington State University. The policy, as now existing or hereinafter amended, is hereby incorporated into this MOA for informational purposes only. WSU EXTENSION will not provide liability insurance for FOUNDATION members under this MOA unless, and only to the extent that, such FOUNDATION members are acting as authorized, registered volunteers of, and under the direction and control of, WSU EXTENSION Master Gardener Program employees.

IX. THE DEMONSTRATION GARDEN:

- a. The DEMONSTRATION GARDEN shall be open to the public during the daily park hours (9:00 a.m. to dusk, or as may be posted on site).
- b. Within thirty (30) days of written notice from the CITY, the FOUNDATION shall dismantle the DEMONSTRATION GARDEN, if interest and/or usage diminish, or the DEMONSTRATION GARDEN becomes cost prohibitive to operate and maintain, or if otherwise instructed to do so in writing by the CITY. The Foundation will restore the DEMONSTRATION GARDEN area to as close to its original condition as possible.

X. LITTER CONTROL:

- a. The CITY shall supply sufficient litter receptacles for the disposal of all litter and garbage.
- b. The FOUNDATION shall pick up all litter in the designated use area, and place it in a litter receptacle, as may be reasonably required.
- c. If the FOUNDATION volunteers fail to pick up the litter, the CITY shall notify the FOUNDATION of the breach and provide the FOUNDATION with a period of three (3) calendar days to cure such breach. If FOUNDATION fails to cure, the CITY may pick up the litter for the FOUNDATION and bill the reasonable costs of such service to the FOUNDATION at the CITY's standard rate.

XI. SCHEDULING ISSUES:

- a. WSU EXTENSION and the FOUNDATION shall be given preference in scheduling the Ahtanum Youth Park's Red Barn, in exchange for its support during development of the DEMONSTRATION GARDEN and for its commitment to the ongoing maintenance of the DEMONSTRATION GARDEN, as outlined in this MOA.
- b. For the purpose of weekly WSU EXTENSION training meetings, the CITY shall allow the use of the Ahtanum Youth Park's Red Barn, if available, or the Activities Building as an alternate location.
- c. WSU EXTENSION shall conduct the weekly training meetings on weekdays, excluding Fridays and holidays, during the Park's normal business hours (9:00 a.m. through 4:30 p.m. unless otherwise posted).
- d. The FOUNDATION shall coordinate, through the CITY, the schedule of dates and times planned for construction of and maintenance to the DEMONSTRATION GARDEN, to avoid conflicts with other scheduled Park activities.
- e. WSU EXTENSION and the FOUNDATION shall leave the building used for training meetings as clean as it was upon arrival, and endeavor to remain willing to move to another building if the Ahtanum Youth Barn and/or the Activities Building are occupied by a paid reservation.
- f. Other organized scheduled events of WSU EXTENSION and the FOUNDATION may be permitted, with approval from the CITY; an additional agreement may be required to address the specific needs of a program or special event. If such is the case, said agreement shall be executed separately from this MOA, and shall only be binding when signed by the duly authorized representatives of the PARTIES.
- g. WSU EXTENSION and the FOUNDATION shall not have sole, exclusive use of the facilities.

XII. RECORDS MAINTENANCE:

- a. The parties to this MOA shall each maintain books, records, documents and other evidence, which sufficiently and properly reflect all direct and indirect costs expended by the party in the performance of the services described herein.
- b. These records shall be subject to inspection, review or audit by personnel of each party, other personnel duly authorized by each party, the Office of the State Auditor, and Federal Officials so authorized by law.

- c. All books, records, documents and other material relevant to this MOA shall be retained for six (6) years after expiration and the Office of the State Auditor, Federal Auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.
- d. Records and other documents, in any medium, furnished by one party of this MOA to another party, will remain the property of the furnishing party, unless otherwise agreed. To the extent permitted by law, the receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by a party are not erroneously disclosed to third parties. To that end, the PARTIES acknowledge that WSU EXTENSION is a state agency and subject to the Public Records Act (RCW 42.56 et seq.). Should a valid request be made upon content of this MOA, WSU EXTENSION is bound by law to release such records unless a lawful injunction is filed in a court of competent jurisdiction. This shall not relieve WSU EXTENSION of its duty to notify the PARTIES of its intent to release the record(s) as described above.

XIII. USE OF TRADEMARKS

The CITY and the FOUNDATION may not use WSU EXTENSION's trademarks without the prior written consent of WSU EXTENSION. WSU EXTENSION grants the CITY and the FOUNDATION limited rights and license to use the WSU EXTENSION trademarks that specifically pertain to the WSU EXTENSION Master Gardener Program under the terms of this MOA for non-commercial purposes, and only as approved on a case-by-case basis; for example, the WSU EXTENSION Master Gardener logo for the sole purposes of carrying out their obligations under this MOA.

XIV. INDEPENDENT CAPACITY

The employees or agents of each PARTY who are engaged in the performance of this MOA shall continue to be employees or agents of the PARTY and shall not be considered for any purpose to be employees or agents of any other PARTY.

XV. DISPUTES

Disputes regarding the development and/or maintenance of the DEMONSTRATION GARDEN under this MOA shall be brought to the attention of the LANDOWNER, the FOUNDATION President, the WSU Extension Director and/or Master Gardener Coordinator, and WSU EXTENSION's representative designated for this purpose for resolution. Failure to reach a resolution within thirty (30) days shall require the PARTIES to seek mediation. Failure of mediation within sixty (60) days thereafter shall automatically terminate this MOA. In the event this MOA is terminated pursuant to this section, the Parties shall in good faith determine the most appropriate, mutually beneficial way ahead.

XVI. DAMAGES

If any repair or restoration work to the Ahtanum Youth Activities Park is needed as a result of the activities under this MOA, the reasonably required work shall be charged at the CITY's standard rates and billed directly to the FOUNDATION as an extra cost.

XVII. ASSIGNMENT-SUBLETTING

This MOA shall be for the exclusive use and benefit of the CITY, FOUNDATION and WSU EXTENSION for the development of the DEMONSTRATION GARDEN at the Ahtanum Youth Activities Park. The rights and obligations under this MOA cannot be transferred, shared or assigned without the express written consent of the CITY.

XVIII. COMPLIANCE WITH LAWS

All PARTIES shall comply with all federal, state and local laws, as well as rules and regulations as provided herein and not inconsistent with applicable law or local policy in carrying out this MOA. All PARTIES agree that there will be no discrimination in the performance of this MOA on the basis of race, religion, creed, color, national origin, families with children, sex, marital status, sexual orientation (including gender identity), age, genetic history, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or other legally protected characteristic.

XIX. LIABILITY:

- a. WSU EXTENSION is covered by the State of Washington Self-Insurance Liability Program and the Tort Claims Act (RCW 4.92.060 et seq.), and claims against Washington State University and its employees, officers, agents, and registered volunteers in the good faith performance of their duties and this MOA will be paid from the tort claims liability account as provided in RCW 4.92.130. Such claims must be filed with the Division of Risk Management for processing according to statute.
- b. Each party agrees to be responsible for liability resulting from the negligent acts or omissions of its own officers, employees, and agents.

XX. DURATION AND TERMINATION

This MOA shall take effect when authorized representatives of all PARTIES have signed, and it shall remain in effect for a period of five (5) years, or until terminated sooner by either PARTY as provided herein. Either PARTY may terminate this MOA upon not less than ninety (90) days prior written notice to the other PARTIES. The PARTIES agree that the DEMONSTRATION GARDEN shall continue to be operated under the terms of this MOA so long as the following basic criteria are met:

XXI. INDEMNIFICATION

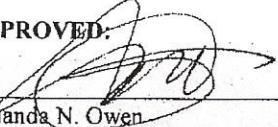
The FOUNDATION shall defend, indemnify and hold harmless the CITY, and its agents and employees, from any and all liability, damage, loss, injury, expense or cost arising out of its acts or omissions in the performance of this MOA.

XXII. AGREEMENT APPROVAL

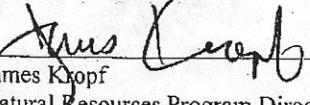
Each PARTY represents and warrants that all necessary approvals for this MOA have been obtained and the persons whose signatures appear below have the authority necessary to execute this MOA on behalf of the PARTIES indicated.

FOR WASHINGTON STATE UNIVERSITY

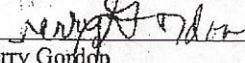
APPROVED:

 9.29.17
Amanda N. Owen Date
Contracts Manager, Office of Finance and Administration

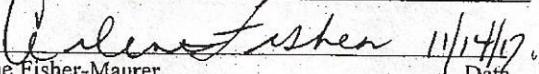
RECOMMENDED:

 10/12/17
James Kropf Date
Natural Resources Program Director

APPROVED AS TO FORM:

 10-11-17
Sherry Gordon Date
Assistant Attorney General

FOR CITY OF UNION GAP PARKS DEPARTMENT

 11/14/17
Arlene Fisher-Maurer Date
Manager, City of Union Gap

FOR MASTER GARDENER FOUNDATION OF YAKIMA COUNTY

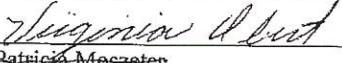
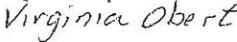
 11/14/17
Patricia Moszeter Date
President of Master Gardener Foundation of Yakima County


EXHIBIT A

Map showing the area of DEMONSTRATION GARDEN at the Ahtanum Youth Activities Park at
1000 Ahtanum Rd; Yakima, Washington 98903

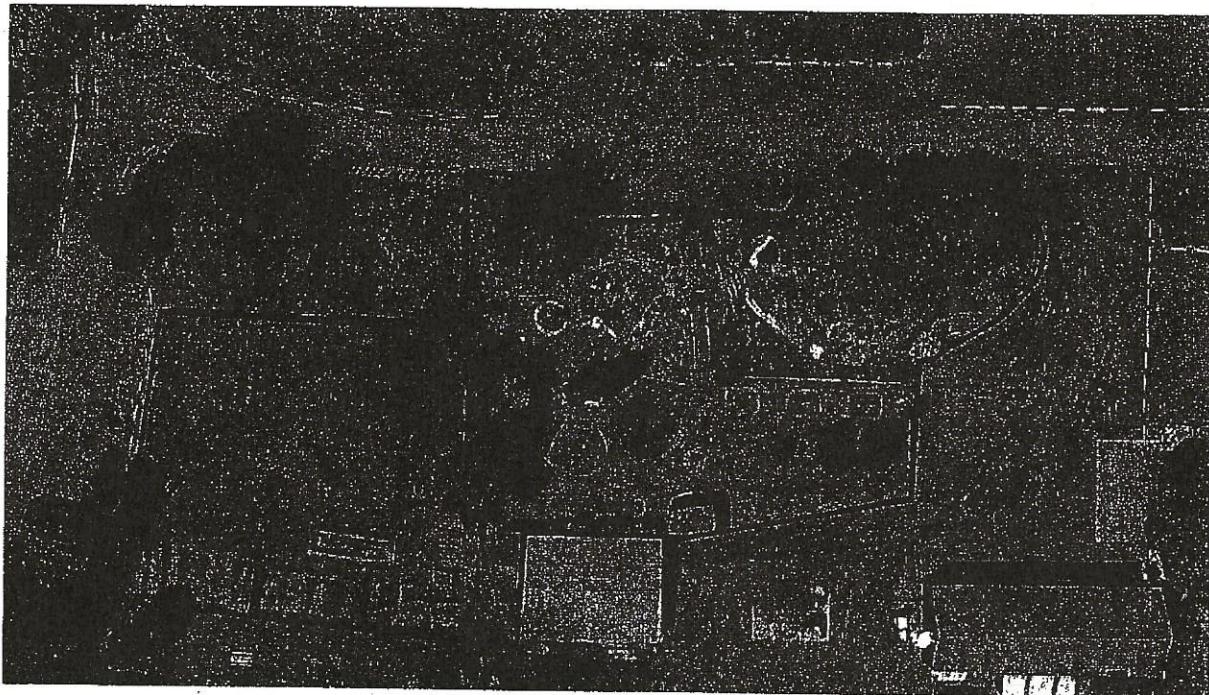


EXHIBIT B

Washington State University Business Policies and Procedures Manual regarding registered volunteer liability coverage when acting in the course of their official volunteer duties and as a current certified WSU EXTENSION Master Gardener with Washington State University

Policy as posted at http://public.wsu.edu/~forms/HTML/BPPM/60_Personnel/60.81_Volunteers.htm on April 6, 2017

**Washington State University
BUSINESS POLICIES AND PROCEDURES MANUAL**

PERSONNEL

60.81

Revised 10-04

Human Resource Services

335-4521

Volunteers

[PDF link](#)

POLICY

Many individuals volunteer their time to assist WSU departments in the conduct of official University activities. In order to assure that volunteers are covered for liability and workers' compensation, departments are to comply with provisions of this section. NOTE: Workers' compensation for volunteers covers medical loss but not wage loss.

University employee policies apply to volunteers, including policies in the Business Policies and Procedures Manual (BPPM), Safety Policies and Procedures Manual (SPPM), Executive Policy Manual (EPM), and other University policy manuals.

See SPPM Chapter S25 for procedures for injury reporting and filing workers' compensation claims. Section S25.20 provides procedures for reporting accidents, occupational illnesses, and workplace incidents.

Departments may direct questions to Human Resource Services (HRS); telephone 335-4521.

DEFINITION

The responsible department ensures that the following criteria are met:

- A volunteer performs assigned and authorized duties for WSU without receiving wages.
- The volunteer freely chooses to perform his or her assigned WSU duties.
- The volunteer duties directly benefit WSU and are supervised by WSU personnel.
- WSU understands and accepts that the volunteer is acting on WSU's behalf.
- A volunteer is designated as such by a WSU department and is registered. See designation procedure below.
- WSU may reimburse a volunteer for actual expenses incurred in the performance of assigned and authorized duties without the volunteer losing the volunteer designation.

Examples/Explanations

The following examples/explanations are not meant to be exhaustive. There are many scenarios for volunteer service to the University.

Interns receiving class credit may be considered volunteers if the assigned duties benefit WSU and the interns do not receive payment for services rendered.

Students performing duties for student clubs are not volunteers.

4-H volunteers are considered to be University volunteers because the University is required to provide 4-H programs.

An employee performing the duties he or she is normally paid to perform is not a volunteer, however, an employee may volunteer for activities unrelated to normal job duties.

DESIGNATION/REGISTRATION

Applying the above criteria, the supervising department designates each volunteer as such. In order to ensure coverage under workers' compensation and to ensure that the University is covered for liability purposes, volunteer designation must occur before any duties are performed.

The department is to maintain records for each volunteer which include the following information:

- Name of volunteer;
- Name of department;
- Month of activity;
- Dates, times, and hours of activity performed by the volunteer;
- Description of volunteer services provided;
- Name of department employee who supervised the volunteer;
- University account number that supports workers' compensation premium charges (see 30.07);
- Expenditure authority name, telephone, and e-mail address.

The department submits this information to HRS each month on a Volunteer Monthly Report. See below for form instructions. NOTE: The department may also use the Volunteer Monthly Report form for designation reporting purposes.

Payroll Services uses this information to charge the workers' compensation quarterly premium to the supervising department. HRS uses this information to provide documentation of volunteer activity in the event a volunteer files a workers' compensation or other liability claim. See also below.

Safety Orientation

Volunteers are subject to the same University requirements for safety procedures orientation and training as employees. See SPPM S20.30. Departments are to include documentation of safety orientation and training in the volunteer files.

Records Retention

The department is to maintain each volunteer file for six years after termination of service. See 90.01 for more about records retention.

MINORS

Authorization Form

In order for a minor under the age of 18 to volunteer for University duties, a parent or legal guardian must complete and sign a Minor Volunteer Consent and Release form. The form provides permission for the minor to perform the volunteer work and provides authorization for the supervising adult to seek any necessary medical attention in the event of an injury or illness. To obtain copies of the form, print or complete and print the PDF master on 60.81.6.

The supervising department is to retain the Minor Volunteer Consent and Release form in accordance with applicable records retention requirements. See 90.01.

Supervision

A minor volunteer under the age of 14 must be constantly supervised by an adult.

Background Checks

If an adult supervises minors without other adults present, the department is to screen the individual for criminal history before the volunteer activity occurs. Refer to the Washington State Patrol web site for information about criminal history screening.

<http://www.wsp.wa.gov/>

The supervising department is to retain copies of criminal history background checks of volunteers in accordance with applicable records retention requirements. See 90.01.

MONTHLY REPORT

The department submits a completed Volunteer Monthly Report to HRS by the 15th of the month following each month of activity to report volunteer hours. See "Form Templates" below.

The department is assessed a premium per volunteer hour for workers' compensation coverage. The premium rate is subject to change. For current rate, go to the Payroll Services website at:

<http://www.wsu.edu/payroll/>

Select Taxes, then
Select Industrial Insurance/Medical Aid Rate History.

or contact HRS; telephone 335-4521; or Payroll Services; telephone 335-9575.

NOTE: If the department does not report or under reports hours, volunteers may not be covered in the event of an accident or work-related illness.

The Volunteer Monthly Report includes the coding of the departmental account supporting premium charges. The form is signed by an employee holding expenditure authority for the indicated account. See 70.02 for an explanation of expenditure authority.

Payroll Services bills each department for premium charges on a quarterly basis.

Form Templates

To obtain copies of the form, the department may complete and print the PDF master form on 60.81.7 or may obtain an automated form template from the Procedures, Records, and Forms FileMaker Pro website at:

<http://www.wsu.edu/~forms/fm.html>

Automated Template (Preferred Reporting Format)

HRS recommends the use of the automated template for any department that reports volunteers. The department submits the automated monthly report as an e-mail attachment sent to HRS.

For audit purposes, the departmental expenditure authority must send the e-mail message and attachment from her or his own e-mail account. The e-mail password authorization indicates approval to accept the premium charges.

HRS retains the e-mail message from the departmental expenditure authority for six years after the end of the fiscal year. See 90.01 for records retention information.

Contact Procedures, Records, and Forms for assistance with using the automated form templates; telephone 335-2005.

LIABILITY CLAIMS

If a volunteer is acting in good faith, within the scope of his or her volunteer assignment, he or she is covered under the Self-Insured Liability Program for claims made against him or her or WSU. Refer to the following website for more information regarding this program:

<http://riskmanagement.wsu.edu/>

ADDITIONAL RESOURCES

Additional University volunteer information resources include, but are not limited to, the following websites:

Cooperative Extension

<http://ext.wsu.edu/admin/volunteer.html>

4-H Volunteer Programs

<http://4h.wsu.edu/volntr/index.htm>

Master Gardner Volunteers

<http://mastergardener.wsu.edu/>

Volunteer Management Certificate Program

<http://capps.wsu.edu/certificates/vmcp/>

See PDF master forms:

60.81.6: Minor Volunteer Consent and Release

60.81.7: Volunteer Monthly Report

Complete and/or print as needed

Return to: Public.wsu.edu » [Manuals Home](#) » [Business Policies & Procedures Manual](#) » [60 Personnel : 60.81](#)
Volunteers
