

MEMORANDUM OF AGREEMENT

between

Washington State University Yakima County Extension

and

Master Gardener Foundation of Yakima County

I. PARTIES

This Memorandum of Agreement (this “Agreement”) is entered into by and between Washington State University, an institution of higher education and agency of the state of Washington (“WSU”), by and through its extension offices in Yakima County, a department of WSU (“WSU Extension”), and the Master Gardener Foundation of Yakima County (“CMGF”), a Washington nonprofit corporation with the sole purpose of supporting the WSU Extension Yakima County Master Gardener Program. In this Agreement, all the above entities are jointly referred to as the “Parties,” or individually as a “Party.”

II. PURPOSE

WSU has historically entered into collaborative efforts to advance the purposes of WSU Extension and wishes to continue to do so as part of its outreach mission.

WSU also intends this Agreement to further its vision to empower individuals, organizations and communities to find solutions for local issues and to improve their quality of life.

WSU recognizes CMGF as a supporter of WSU Extension Master Gardener Program’s delivery of research-based horticulture and environmental stewardship information to individuals, communities and horticulture professionals with the purpose of promoting human wellbeing, enhancing our environment and encouraging community stewardship.

To enable the Parties to advance those goals, and to enable WSU Extension and CMGF to accomplish the purposes outlined in this Agreement, the Parties agree as follows:

III. DUTIES OF THE PARTIES

- A. Each Party individually agrees to comply with all federal, state and local laws applicable to its actions in performance of this Agreement. Without limiting the generality of the foregoing, each Party agrees, to the extent that each is applicable, to comply with the following laws and/or policies:
 - 1. There will be no discrimination in the performance of this Agreement on the basis of race, religion, creed, color, national origin, families with children, sex, marital status, sexual orientation (including gender identity), age, genetic history, protected veteran or military status, immigration or citizenship status (except as required by state or federal law, regulation, or government contract) or 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, in compliance with (a) Section 503 of the Rehabilitation Act of 1973, as amended, and the

Vietnam Era Veterans Readjustment Act of 1974, as amended, and the Affirmative Action Clauses contained therein; (b) the Americans with Disabilities Act of 1990, as amended; and (c) applicable federal non-discrimination laws and non-discrimination laws of the state of Washington. The parties further agree they will comply with any requirements of state and federal non-discrimination laws as it relates to programs, services, activities, and employment practices.

2. All applicable WSU policies, including the WSU Master Gardener Program Code of Conduct and Program Policies, as stated in WSU's current Master Gardener Program Handbook.

B. In consideration for CMGF's furtherance of WSU's educational mission and support of WSU's activities and program delivery, WSU shall provide *[some may not apply to local situations]*:

1. Reasonable space for CMGF resources and activities when possible, including use of Yakima County Extension office meeting room(s) when available.
2. Storage space for CMGF records, including access to such records during regular office hours when possible.
3. Access to office equipment and supplies.
4. Overall leadership and management of the WSU Extension Master Gardener Program.
5. WSU Master Gardener basic and advanced training, including Program and CMGF relations training and continued support to volunteers in furtherance of the WSU Master Gardener program goals and objectives.
6. Assignment of the local WSU Master Gardener Program Coordinator as an ex-officio member of the CMGF Board of Directors and the executive committee, to serve in accordance with both applicable law and CMGF's Bylaws.
7. Access to WSU Master Gardener Program resources for use in furtherance of WSU Master Gardener Program goals and objectives.
8. Cooperative ventures with other extension programs, and other community-oriented organizations in furtherance of WSU Extension Master Gardener Program mission, goals, and objectives.
9. Approval and oversight of all events, projects or activities where WSU Extension Master Gardeners serve.
10. Support for other services as appropriate, with due regard for the benefits those services will provide to WSU.

C. In consideration for CMGF's furtherance of WSU's educational mission and support of WSU's activities and program delivery, CMGF shall:

1. Provide financial contributions in support of the WSU Master Gardener Program activities in Yakima County which may include but are not limited to:
 - a. Funding for WSU Extension Master Gardener business, hospitality, and volunteer recognition functions.

- b. Funding for WSU Extension Master Gardener educational outreach activities, such as workshops, classes, field days, demonstrations and plant clinic supplies.
 - c. Funding for WSU approved demonstration garden areas in furtherance of WSU's educational outreach mission.
 - d. Funding for communications, public relations and advertising as necessary to support the goals and objectives of the WSU Master Gardener Program and CMGF.
- 2. Undertake fundraising activities that are acceptable to and approved by each Party, which may include, but are not limited to:
 - a. Workshops and classes, field days and demonstrations that are co-sponsored events between WSU Master Gardener Program and CMGF in Yakima County, with WSU Master Gardener Program providing the educational components and CMGF providing the funding and administrative support for the event(s).
 - b. Conducting plant sales, book sales, raffles and garden tours;
 - c. The sale of garden-related items (which may include, but are not limited to, the sale of t-shirts, hats, and garden tools);
 - d. Applying for grants from business entities, and non-profit entities, governmental entities, and other potential grantors; and
 - e. Solicitation of donations and/or endowments from individuals, nonprofit organizations, business entities, and other potential donors.
- 3. Maintain generally accepted financial and operational practices in support of its mission. This includes, but is not limited to:
 - a. Developing and approving an annual budget;
 - b. Maintaining appropriate financial accounts and records;
 - c. Preparing periodic financial reports for internal and external stakeholders;
 - d. Ensuring compliance with applicable federal, state, and local laws and regulations;
 - e. Adopting record retention policies consistent with legal and regulatory requirements.
- 4. Participate in WSU approved cooperative ventures with other Extension programs, nonprofit organizations and/or governmental agencies to promote the WSU Master Gardener programs in Yakima County.
- 5. Support WSU's specific action to reach out in positive ways to persons who are underrepresented in Extension programs and activities, and to increase diversity in volunteer programs. This policy will be demonstrated to persons through all reasonable effort.

6. Support and provide feedback to the WSU Master Gardener Program Coordinator with regard to WSU Extension's delivery of educational events, projects, and activities; and in the development of collaborations in furtherance of the WSU Master Gardener Program goals and objectives.
7. Assign the local WSU Master Gardener Program Coordinator as ex-officio on the CMGF Board of Directors and executive committee, to serve in accordance with both applicable law and CMGF's Bylaws.
8. Evaluate and consider the appropriateness of support to other services, with due regard for the benefits those services will provide to CMGF in furtherance of WSU Extension Master Gardener Program's goals and objectives.

IV. USE OF MARKS

CMGF may use WSU's registered and unregistered trademarks and service marks (collectively the "Marks") that specifically pertain to the WSU Master Gardener Program (including but not limited to the WSU Master Gardener mark) in support of CMGF's activities under this Agreement. If this Agreement is terminated, CMGF agrees to immediately cease using any WSU marks, including those associated with the WSU Master Gardener Program, and to cease using the term "Master Gardener" in the CMGF name or literature.

Except to the extent provided above, CMGF may not use the Marks without the prior written approval of WSU's Office of Trademarks and the Office of the Attorney General.

V. PERIOD OF PERFORMANCE

This Agreement shall take effect when all Parties have signed this Agreement and shall continue for a period of 5 years thereafter. The Agreement is renewable upon the written consent of the Parties.

VI. TERMINATION

Notwithstanding the provisions of Section V above, either CMGF or WSU Extension may terminate this Agreement upon not less than 30 days' prior written notification to the other Party. If this Agreement is so terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of such termination. At the time of such termination, if CMGF holds any monies for the benefit of the WSU Master Gardener Program from fundraising, donations, or any other source, such funds shall be immediately transferred to the WSU Extension Yakima County Master Gardener Program.

VII. RECORDS MAINTENANCE

The Parties shall each maintain books, records, and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either Party in the performance of the services described herein, and shall each maintain records of any funds donated to the Party using the term

Master Gardener in any event to raise the funds, or solicitation for such funds. These records shall be subject to inspection, review or audit by personnel of either Party, other personnel duly authorized by either Party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained and subject to such access and review by the other Party for 6 years after creation of the record.

Records and other documents, in any medium, furnished by one Party to this Agreement to the other Party, will remain the property of the furnishing Party, unless otherwise agreed. To the extent consistent with the law, including the Washington State Public Disclosure Act, the receiving Party will not disclose or make available such records to any third parties without first giving notice to the furnishing Party and giving that Party a reasonable opportunity to respond. Each Party will use reasonable security procedures and protections to ensure that records and documents provided by the other Party are not erroneously disclosed to third parties.

VIII. HOLD HARMLESS

CMGF will indemnify and save WSU and WSU Extension harmless from and against all losses, claims, actions, damages, liabilities, costs, and expenses (including attorneys' fees), in connection with any loss or injury occasioned wholly or in part by any act or omission of CMGF or its directors, officers, members, managers, or other person or entity under its control.

Similarly, WSU and WSU Extension shall jointly and severally indemnify and save CMGF harmless from and against all losses, claims, actions, damages, liabilities, costs, and expenses (excluding attorneys' fees), that may arise as a result of the negligent acts or omission of WSU/WSU Extension, its officers, agents, employees, or registered volunteers acting in the scope of their official duties in connection with this Agreement.

IX. INDEPENDENT CAPACITY

Each Party to this Agreement shall be considered independent contractors, and the employees and agents of each Party shall continue to be employees and agents of that Party and shall not be considered for any purposes to be employees or agents of the other Party.

Registered volunteers participating in any event sponsored or co-sponsored by the Parties shall be treated as WSU and/or WSU Extension registered volunteers, rather than as CMGF volunteers. Registered volunteers meet the definition of volunteer under RCW 4.92.060 and WA SILP program. Volunteers will generally not be considered "employees" of any Party for any purpose, to the extent required by law. WSU Master Gardener registered volunteers who are also CMGF members may serve CMGF purposes only when WSU has sponsored or co-sponsored the event at which the individual is working, and WSU has reasonable control and supervision of the individual volunteer.

X. DISPUTES

In the event that a dispute arises under this Agreement, a dispute panel (the "Dispute Panel") shall determine the matter in the following manner: CMGF and WSU Extension shall each appoint one

member to the Dispute Panel, and the members so appointed shall jointly appoint an additional member to the Dispute Panel. The Dispute Panel shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute by a majority vote. The determination of the Dispute Panel shall be final and binding on the Parties and shall be enforceable in a court of appropriate jurisdiction as an arbitrator's award. CMGF and WSU Extension shall share equally the costs, if any, for these services.

XI. GOVERNANCE

The laws of the State of Washington shall govern this Agreement.

XII. ASSIGNMENT

This Agreement is not assignable or delegable by any Party in whole or in part, without the express prior written consent of the other Parties hereto.

XIII. WAIVER

A failure by any Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of such Party.

XIV. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

XV. COMPLETE AGREEMENT

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties.

XVI. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

XVII. NOTICES

All notices, requests, demands, and other communications required or permitted under this agreement shall be in writing and shall be deemed to have been duly given, made and received

when delivered and acknowledged by receipt or 5 days after deposit in the United States mails registered or certified mail, postage prepaid, addressed as set forth below:

A. If to WSU Yakima County Extension:

Current County Chair
WSU Extension, Yakima County
[address]
[city, state, zip]

B. If to Yakima County Master Gardener Foundation:

Current President
Yakima County Master Gardener Foundation
PO Box 10081
Yakima, WA 98909

C. If to WSU:

Any Party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with this Agreement.

XVIII. AGREEMENT APPROVAL

Each Party represents and warrants that all necessary approvals for this agreement have been obtained, and the persons whose signatures appear below have the authority necessary to execute this Agreement on behalf of the Party indicated.

For WSU _____ County Extension

Master Gardener Program Leader

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED:

WASHINGTON STATE UNIVERSITY

Name: _____

Title: _____
Date: _____

MASTER GARDENER FOUNDATION
OF _____ COUNTY

Name: _____
Title: _____
Date: _____

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