

AGREEMENT

Establishing and Maintaining the Washington State University Skagit County Extension Master Gardener Discovery Garden

1.1 PARTIES

This Agreement (AGREEMENT) for Establishing and Maintaining the WSU Skagit County Extension Master Gardener Discovery Garden (DISCOVERY GARDEN) is entered into between

- Skagit County Master Gardener Foundation (FOUNDATION), a non-profit corporation, and
- Washington State University (WSU)—including two specific units of WSU:
 - the Northwestern Washington Research and Extension Center of Washington State University (“WSU-NWREC”), and
 - Washington State University Skagit County Extension Master Gardener Volunteer Education Program (EXTENSION).

FOUNDATION and WSU are collectively referred to as the PARTIES. All reference to a specific unit of WSU are for clarity only and shall not imply that this AGREEMENT is made between more than two PARTIES or that the named unit of WSU has status as an independent organization.

1.2 BACKGROUND and RELATIONSHIPS

On November 24, 2003, WSU and FOUNDATION entered into a Memorandum of Agreement (MOA) to govern the delivery of Master Gardener programs and services (Attachment ‘A’). The MOA is still in full force and effect. This AGREEMENT further defines and supports the delivery of programs and services related to the DISCOVERY GARDEN.

This AGREEMENT supersedes the April 25, 1996 Memorandum of Understanding (MOU) entered into by the PARTIES. No other written agreements or understandings exist between the PARTIES to govern the programs and services related to the DISCOVERY GARDEN.

1.3 PURPOSE

This AGREEMENT defines the relationship between the PARTIES for use and operation of the existing DISCOVERY GARDEN on WSU property managed by WSU-NWREC. Although FOUNDATION is a separate legal and financial organization, its members are all WSU Master Gardener volunteers in Skagit County. Other non-profit groups have been authorized by WSU to use and maintain a plot in the public display garden area at WSU-NWREC. This AGREEMENT is intended to govern only the FOUNDATION’s use of that portion of land denominated as the DISCOVERY GARDEN, and described in the “Master Gardener Discovery Garden” brochure, printed 1996, amended/updated in 2004, and further described in the Skagit County Display Garden brochure, and as each may be revised or amended from time to time.

1.4 MISSION

In furtherance of WSU’s educational mission, the DISCOVERY GARDEN is intended to:

- a. Demonstrate environmentally and scientifically sound gardening practices;

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- b. Provide hands-on experience for WSU Skagit County Extension Master Gardener volunteers; and
- c. Interest, inspire and educate the public, including youth, in science-based horticulture and related topics.

1.5 LOCATION

The DISCOVERY GARDEN is located on approximately 1 to 2 acres of the land located on the southwest corner of WSU-NWREC's Block A, parallel to Memorial Highway (State Route 536). Notwithstanding the above description, this provision is not intended to convey to FOUNDATION any property or other ownership interest in the DISCOVERY GARDEN. The land is owned by WSU and managed by WSU-NWREC.

1.6 RIGHT OF OWNERSHIP

In order to establish proper gift credit / recognition and comply with IRS guidelines, plant materials placed in the ground plus all permanent structures that are constructed become the property of WSU. Provided, however, FOUNDATION through the WSU Skagit County Extension Master Gardener volunteers may use plants for propagation and production, or for sale to the public to benefit the WSU Master Gardener program; FOUNDATION through the WSU Skagit County Extension Master Gardener volunteers may remove and dispose of plant material that is diseased, not thriving or is creating a hazard; and FOUNDATION through the WSU Skagit County Extension Master Gardener volunteers may move plants and structures to a new location as agreed by the PARTIES or as set forth in section 1.9.

1.7 DURATION AND TERMINATION

This AGREEMENT shall take effect when authorized representatives of the PARTIES have signed and shall remain in effect until terminated by one or both of the PARTIES.

Either PARTY may terminate this AGREEMENT without cause upon six (6) months written notice to the other PARTY. Either PARTY may terminate this AGREEMENT for cause upon thirty (30) days written notice to the other PARTY.

Nothing herein shall be construed to compel FOUNDATION to continue to operate and maintain the DISCOVERY GARDEN if the resources (funding and volunteers) available for operating the garden become inadequate to do so.

If this AGREEMENT is terminated, with or without cause, 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 termination.

1.8 CRITERIA

The PARTIES intend that the DISCOVERY GARDEN continue to be operated under this AGREEMENT so long as the PARTIES agree the following criteria are met:

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- a. FOUNDATION and WSU, through the WSU Skagit County Extension Master Gardener volunteers, promotes and enacts WSU's educational goals on this site;
- b. FOUNDATION maintains the DISCOVERY GARDEN so that it presents a positive public image;
- c. WSU continues to own the land.

1.9 SALE OF LAND

If WSU elects to sell or trade the land on which the DISCOVERY GARDEN is currently located, WSU shall give no less than ninety (90) days written notice; FOUNDATION may, at its election, move plants and structures to a new location in Skagit County to establish a demonstration garden authorized by WSU through Extension.

2.0 AMENDMENTS

This AGREEMENT may be amended or supplemented by mutual consent of the PARTIES. Such amendment or supplement shall not be binding unless in writing and signed by persons authorized to bind each of the PARTIES.

2.1 PROVISION OF LAND

In consideration for the services and financial resources FOUNDATION will provide to maintain the DISCOVERY GARDEN, WSU shall provide FOUNDATION use of the real property described in Paragraph 1.5 for the DISCOVERY GARDEN, at no cost. So long as the DISCOVERY GARDEN is operated under this AGREEMENT, WSU through Skagit County Extension's Master Gardener Volunteer Education Program shall organize and promote educational use and enjoyment of the DISCOVERY GARDEN in a manner consistent with the missions of WSU.

2.2 PROVISION OF UTILITIES AND ACCESS TO DISCOVERY GARDEN

2.2.A. Provision of Utilities. FOUNDATION shall pay the actual metered cost of water and electricity for the DISCOVERY GARDEN up to an annual cap of \$1,250. Water and electricity costs beyond this amount will be the responsibility of WSU. FOUNDATION shall not pay any utilities costs incurred by other WSU-authorized groups using WSU property managed by WSU-NWREC. Water and electricity were previously installed at FOUNDATION'S expense, and connected to existing WSU water and power supplies. If one or both of those connections must be modified to provide reasonably adequate service to the DISCOVERY GARDEN, the cost for such modifications to water or electric lines will be the responsibility of the PARTIES under terms to be negotiated as an amendment to this AGREEMENT. If one or both of those connections must be modified to provide adequate service to WSU-NWREC or to any other WSU-authorized groups using WSU property managed by WSU-NWREC, the cost for such modifications to water or electric lines will be the responsibility of WSU. Any modifications to existing utilities within the DISCOVERY GARDEN are the responsibility of FOUNDATION and must be in accordance with County code requirements; provided, however, if a modification to existing utilities requires trenching or digging, the Foundation must obtain prior approval from WSU-NWREC. All

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changes to existing utilities within the DISCOVERY GARDEN shall be reported on a regular basis at WSU-NWREC Display Garden Umbrella Group meetings.

2.2.B Access to DISCOVERY GARDEN. WSU shall maintain and pay the cost of adequate access to the existing road and handicap and bus parking area by which visitors and volunteers may access the DISCOVERY GARDEN. Presently, access is through the northeast quadrant, and is being re-configured in the current construction project. FOUNDATION will have opportunity to review details of this aspect of the construction project design. Any significant changes to the existing access design or parking location after completion of the current construction will be by agreement of the parties.

2.3 RESTROOM FACILITIES AND EVENT PARKING

All WSU Skagit County Extension Master Gardener volunteers will have access to restrooms in the lobby of WSU-NWREC during business hours. FOUNDATION shall be responsible for providing additional restroom facilities, such as portable toilet facilities, for routine visitors to the DISCOVERY GARDEN and during FOUNDATION-sponsored events that host the public in the DISCOVERY GARDEN. FOUNDATION may levy a charge for use of this restroom facility to other WSU-authorized groups using the DISCOVERY GARDEN or the Display Gardens. EXTENSION shall coordinate with the Director of WSU-NWREC to arrange for event parking; FOUNDATION shall provide personnel to supervise event parking for Foundation-sponsored events.

2.4 STRUCTURES

Plans for all new structures and for modification of existing structures must be presented for approval to WSU through the Director of WSU-NWREC in advance of planned construction. WSU must approve the plan before modification or construction of the structure can commence; WSU shall respond in writing within sixty (60) days of receipt of a plan proposal, indicating its approval, conditional approval, or denial of the proposal and the reasons therefor. Structures shall include buildings, major signage (which shall mean all signs other than those plant identification signs placed in the DISCOVERY GARDEN), fences and gates, and entryways. Plant identification signs, descriptive, educational or information displays within the DISCOVERY GARDEN are specifically excluded from this provision.

2.5 MAINTENANCE AND USE OF DISCOVERY GARDEN

FOUNDATION through the WSU Skagit County Extension Master Gardener volunteers will maintain the DISCOVERY GARDEN in a manner acceptable to WSU-NWREC. FOUNDATION shall manage and pay for all routine maintenance. The DISCOVERY GARDEN shall be maintained, at all times, in a manner that makes it reasonably safe for the public, visitors, volunteers, and employees.

2.6 FUTURE ADDITIONS TO THE DISPLAY GARDENS; NO ASSIGNMENT BY FOUNDATION

2.6.A. Before other public service or educational groups may establish garden demonstration sites on WSU properties dedicated to display gardens at WSU-NWREC, proposals shall be reviewed and approved by WSU through the Director of WSU-NWREC who shall receive input from a designated group of individuals representing the interests of the volunteer groups using the display garden areas at WSU-NWREC.

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2.6.B. FOUNDATION may not assign any of its rights and obligations under this AGREEMENT or assign any of its designated spaces in the DISCOVERY GARDEN to any other public service or educational group without the prior consent of WSU through the Director of WSU-NWREC. There are two existing demonstration sites within the designated space of the DISCOVERY GARDEN: one is maintained by the Fuchsia Society and one by the Skagit County Master Composter / Recycler Volunteers. This use has been approved by WSU-NWREC, and is conditioned on the satisfactory maintenance of these demonstration sites and their consistency with the WSU mission.

2.7 DISPUTES

Any disputes arising under the AGREEMENT will be brought to the attention of the FOUNDATION President, the WSU Skagit County Extension agent and the Director, WSU-NWREC. In the event that the dispute cannot be informally resolved between the PARTIES within a reasonable time, not to exceed sixty (60) days, the dispute will be resolved through a binding dispute resolution process as follows: if the dispute concerns maintenance and operation of the DISCOVERY GARDEN, the mediator shall be the CAHNRS Dean; if the dispute concerns personnel, volunteers and/or educational programming, the mediator shall be the Dean of Extension.

Notwithstanding the above, when disputes are between FOUNDATION and other WSU-authorized non-profit groups using WSU-NWREC properties for volunteer gardening, the dispute may be brought for resolution before the group of individuals representing the interests of the volunteer groups. In the event that these entities are unable to resolve a problem, WSU, through the Director, WSU-NWREC, will be the final arbiter.

2.8 RECORDS MAINTENANCE

The PARTIES shall each maintain records, including books, documents or other evidence of costs expended by either PARTY in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of the parties, other personnel duly authorized by a party, the Office of the State Auditor, and federal officials so authorized by the parties shall have full access and the right to examine these records. The PARTIES shall retain records for six (6) years; the custodial PARTY may destroy records more than six years old.

Financial records maintained pursuant to this section shall remain confidential and shall not be disseminated by a receiving or examining PARTY without express consent of the PARTY providing the records, unless otherwise required by law or administrative process, including a public records request pursuant to the Washington Public Records Act, RCW 42.17.260 et seq.

2.9 COMPLIANCE WITH LAWS

The PARTIES shall comply with all federal, state, and local laws, rules, and regulations in carrying out this AGREEMENT.

3.0 HOLD HARMLESS

Each PARTY to this AGREEMENT shall be responsible for its own acts or omissions and those of its officers, employees and agents in the performance of this Agreement. No PARTY to this AGREEMENT shall be responsible for the acts and omissions of those not a party to this AGREEMENT.

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RECOMMENDATION FOR APPROVAL

The following, by signing, recommend approval for this Agreement.

For WSU-MOUNT VERNON NWREC

[Signature]
Name: Debra Ann Inglis
Title: Interim Director/Assistant Dean
Date: April 27, 2006

For WSU EXTENSION

[Signature]
Name: Linda Kirk Fox
Title: Dean + Director
Date: 5/2/06

For WSU SKAGIT COUNTY EXTENSION

[Signature]
Name: Ned L. Zangg
Title: Skagit County Director
Date: April 28, 2006

For WSU COLLEGE OF AGRICULTURE,
HUMAN AND NATURAL RESOURCE
SCIENCES

[Signature]
Name: PETE W. JACOBY
Title: Associate Dean
Date: 5/2/06

APPROVED

Each party represents and warrants that all necessary approvals for this Agreement have been obtained and the persons whose signatures appear below are duly authorized to execute this Agreement on behalf of the parties indicated.

For WASHINGTON STATE
UNIVERSITY

[Signature]
Name: Richard A. Heath
Sr. Associate Vice President
Washington State University
Title: _____
Date: 5/9/06

For WSU SKAGIT COUNTY MASTER
GARDENER FOUNDATION

[Signature]
Name: Clifford J. Sells
Title: President
Date: 5/1/06

APPROVED AS TO FORM

[Signature]
Sheryl W. Gordon
Assistant Attorney General
Date: 5/2/06