WSU Contract No. 18175
REID # 04-100-001

MEMORANDUM OF AGREEMENT

between
Washington State University's
Chelan County Extension and Tree Fruit Research and Extension Center, and
Master Gardener Foundation of Chelan County

I. PARTIES

This Memorandum of Agreement (AGREEMENT) is entered into by and between Washington State University, through its Chelan County Extension Master Gardener Program (WSUMG), an educational, volunteer led program, and the WSU Tree Fruit Research and Extension Center (WSU-TFREC) (referred to collectively herein as "WSU"); and the Master Gardener Foundation of Chelan County, MGFCC), a Washington nonprofit corporation with tax exempt status. In this Agreement, the above entities may individually be referred to as a PARTY, and jointly referred to as the PARTIES.

II. PURPOSE

This AGREEMENT is being entered into to define the relationship between the PARTIES for construction, use and operation of a COMMUNITY EDUCATION GARDEN on WSU property managed by WSU-TFREC (COMMUNITY EDUCATION GARDEN). This AGREEMENT is intended to replace former WSU contract number 18175, which inadvertently lapsed in 2014. However performance has continued during this lapse. To advance the goals of WSU, the PARTIES agree to the following:

III. MISSION

In furtherance of WSU's education mission, the purpose of the COMMUNITY EDUCATION GARDEN is to provide individuals from Chelan and Douglas counties with the knowledge to develop sustainable environments and practices while strengthening the presence of WSUMG and promoting the public value of WSU Extension and of the WSU-TFREC.

The COMMUNITY EDUCATION GARDEN is intended to demonstrate techniques to:

1. Improve water conservation in Chelan and Douglas Counties.
2. Increase knowledge and use of integrated pest management strategies in Chelan and Douglas Counties.
3. Optimize fertilizer use among homeowners in Chelan and Douglas Counties.
4. Increase the number of homeowners interested in maintaining a sustainable home landscape.

IV. LOCATION

WSU through the WSUMG and MGFCC will construct, maintain and operate a COMMUNITY EDUCATION GARDEN on the campus of the WSU-TFREC. The COMMUNITY EDUCATION GARDEN will be located in an area approximately 0.85 acres in size. The area is south of the main driveway entering the WSU-TFREC facility, west of N. Western Avenue, east of the green houses and north of Springwater Avenue, as outlined on Exhibit A attached hereto and incorporated herein by this reference.

V. 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 property of WSU; provided, however: (a) MGFCC may use plants for propagation and production, or for sale to the public to benefit the WSUMG; (b) MGFCC may remove and dispose of plant material that is diseased, not thriving or is creating a hazard; and (c) MGFCC may move the COMMUNITY EDUCATION GARDEN in its entirety and all structures pertaining to the COMMUNITY EDUCATION GARDEN which can be moved with minimal damage and at a reasonable cost to a new location as agreed by the PARTIES or as set forth in section XI herein.

VI. PERIOD OF PERFORMANCE

Subject to its other provisions, this AGREEMENT shall take effect when all PARTIES have signed this AGREEMENT, and shall continue for a period of five (5) years. The AGREEMENT is renewable upon written consent of the PARTIES.

VII. TERMINATION

Each PARTY to this AGREEMENT may terminate this AGREEMENT upon not less than thirty (30) days prior written notification to the other PARTIES. 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 termination. If WSU or MGFCC elect to terminate the AGREEMENT, WSUMG and MGFCC will restore the site to its original condition or such condition that is agreed to by WSU and MGFCC within sixty (60) days or in a reasonable amount of time as dictated by the season and the weather.

VIII. HOLD HARMLESS

Each PARTY to this AGREEMENT shall be responsible only for its own acts and omissions and those of its own officers, employees and agents. The PARTIES to this AGREEMENT shall not be responsible for the acts and omissions of entities or persons not party to 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.

The PARTIES recognize that many MGFCC members may also serve as WSUMG volunteers. WSU shall be considered the employer of such individuals 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. CRITERIA

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

1. MGFCC and WSUMG promote and advance WSU's educational goals on this site;
2. MGFCC and WSU through the WSUMG maintain the COMMUNITY EDUCATION GARDEN so that it presents a positive public image as agreed upon by all PARTIES;
3. WSU continues to own the land.

XI. SALE OF LAND

If WSU elects to sell or trade, or use in another manner in support of its mission, the land on which the COMMUNITY EDUCATION GARDEN is located, WSU shall give no less than ninety (90) days written notice; MGFCC and WSU through WSUMG may, at their election, move plants and structures to a new location that is mutually agreed upon by the PARTIES. Movement of plants will be done as soon as possible after notice of such sale, trade or change in use without causing undo damage or stress to the plants that may ultimately cause death.

XII. PROVISION OF LAND

In consideration for the services and financial resources that MGFCC will provide in maintaining the COMMUNITY EDUCATION GARDEN, WSU shall provide at no cost to MGFCC the use of the real property described in section IV and Exhibit A for the COMMUNITY EDUCATION GARDEN. So long as the COMMUNITY EDUCATION GARDEN is operated in compliance with this AGREEMENT, WSU through WSUMG shall organize and promote educational use and enjoyment of the COMMUNITY EDUCATION GARDEN in a manner consistent with the missions of WSU.

XIII. PROVISION OF UTILITIES

Irrigation water will be provided to MGFCC at no cost during the same time each year it is available to WSU-TFREC. The expenses associated with the development of any irrigation system for the COMMUNITY EDUCATION GARDEN, including pipes, sprinklers and pumps will be borne by MGFCC. Incidental domestic water and electricity will be supplied by WSU-TFREC. All domestic water lines, irrigation lines and facilities at the COMMUNITY EDUCATION GARDEN, from the point of delivery, will be the responsibility of MGFCC. If any of these supplies must be modified to provide reasonably adequate service to the COMMUNITY EDUCATION GARDEN, the cost for such modification to water or electric lines will be the responsibility of the PARTIES under terms to be negotiated as an amendment to this AGREEMENT. If any of the supplies must be modified to provide adequate service to WSU-TFREC, the cost for such modifications to water or electric lines will be the responsibility of WSU. Any existing utilities within the said location of the

COMMUNITY EDUCATION GARDEN that provide service to WSU-TFREC are the responsibility of WSU-TFREC. All changes to existing utilities within the said location of COMMUNITY EDUCATION GARDEN shall be discussed with the WSU-TFREC Facilities Manager prior to implementation. Prior to any construction or maintenance activities involving underground utilities, appropriate safety measures (Call Before You Dig 1-800-452-5555) must be undertaken. Any damage to underground utilities in construction or maintenance activities shall be the responsibility of the PARTY involved. If access to underground utilities is required, both PARTIES will discuss and plan the least disruptive approach to minimize damage to plantings yet allow reasonable access for repairs.

XIV. PROVISION OF ACCESS TO COMMUNITY EDUCATION GARDEN

ADA and general parking area will be determined by mutual agreement of the PARTIES. WSU will not be responsible for any costs or maintenance associated with the development of parking for the COMMUNITY EDUCATION GARDEN.

XV. RESTROOM FACILITIES

MGFCC shall be responsible for providing and maintaining restroom facilities, such as portable toilet facilities, for routine visitors to the COMMUNITY EDUCATION GARDEN.

XVI. STRUCTURES

Plans for all new structures and for modification of existing structures will be presented for approval to WSU through the Director of WSU-TFREC 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 plant identification signs), fences and gates and entryways. Plant identification signs, descriptive, educational or information displays within the COMMUNITY EDUCATION GARDEN are specifically excluded from this provision. Any structure shall be required to meet all city, county, and /or state regulations and codes.

XVII. MAINTENANCE AND USE OF COMMUNITY EDUCATION GARDEN

MGFCC and WSUMG will maintain the COMMUNITY EDUCATION GARDEN in a manner acceptable to WSU. MGFCC shall pay for all routine maintenance, with the exception of labor for such maintenance, which shall be provided by WSUMG. The COMMUNITY EDUCATION GARDEN shall be maintained, at all times, in a manner that makes it reasonably safe for the public, visitors, volunteers and employees.

XVIII. DISPUTES

In the event that a dispute arises under this AGREEMENT, a Dispute Panel shall determine the matter in the following manner: each PARTY to this Agreement shall appoint one member to the Dispute Panel, and the members so appointed shall jointly appoint an additional unbiased third

party 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. The determination of the Dispute Panel shall be final and binding on the PARTIES. The PARTIES shall share equally the costs, if any, for resolution of the dispute.

XIX. RECORDS OF MAINTENANCE

The PARTIES shall each maintain records of costs expended by either PARTY in the performance of the services described herein. These records shall be subject to inspections, 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 42.56 et.seq.

XX. GOVERNANCE

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

XXI. ASSIGNMENT

The work and services to be provided under this AGREEMENT are not assignable or delegable by either PARTY in whole or in part, without the express prior written consent of the other PARTY.

XXII. 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 the PARTIES and attached to the original document.

XXIII. 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.

XXIV. 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.

XXV. 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.

XXVI. 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 Chelan County Extension:
   Current County Director
   WSU Extension, Chelan County
   400 Washington Street
   Wenatchee, WA 98801

B. If to Master Gardener Foundation of Chelan County
   Current President
   400 Washington Street
   Wenatchee, WA 98801

C. If to WSU Tree Fruit Research and Extension Center
   Current Director
   WSU Wenatchee Tree Fruit Research and Extension Center
   1100 N. Western AVE
   Wenatchee, WA 98801

Either 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.

XVII. 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 PARTIES indicated.

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RECOMMENDATION FOR APPROVAL

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

For WSU WENATCHEE TFREC

James R McFerson

Name: James R McFerson

Title: Director

Date: 1 Sep 2017

For WSU EXTENSION

Michael J. Gaffney

Name: Michael Gaffney

Title: Acting Director

Date: 7 Dec 2017

For WSU CHELAN COUNTY EXTENSION

Name: D Wickham

Title: County Director

Date: 8/29/17

For WSU COLLEGE OF AGRICULTURE HUMAN AND NATURAL RESOURCE SCIENCES

Name: RON MITTELHAMMER

Title: DEAN

Date: 12/7/17

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

Name: Amanda N. Owen
Contracts Manager
Washington State University

Title:

Date: 12.4.17

For MASTER GARDENER FOUNDATION OF CHELAN COUNTY

Name: Susan Copner

Title: President

Date: 8-22-17

Exhibit A:


MGFCC CEG N
MGFCC CEG S
N Western Ave
Springwater Ave
Springwater Ave