

MEMORANDUM OF AGREEMENT

between
The Master Gardener Foundation of Washington State
and
Washington State University

PARTIES

This agreement (Agreement) is entered into between the Master Gardener Foundation of Washington State (Foundation), a Washington nonprofit corporation, and a section 501(c)(3) tax-exempt nonprofit organization, and Washington State University, an institution of higher education and agency of the state of Washington (WSU), by and through WSU Extension, a department of Washington State University. In this Agreement, the above entities are jointly referred to as the Parties.

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 intends this Agreement to further its vision to empower individuals, organizations and communities to find solutions for local issues and improve the quality of life for people of the state of Washington;

The Foundation was formed to support WSU Extension in pursuit of its public education and service mission;

WSU recognizes the Foundation as a partner in the delivery of research-based horticultural programs to individuals, communities and horticulture professionals with the purpose of promoting human wellbeing, enhancing our environment and encouraging community stewardship;

A prior MOA between the two parties expired in November of 2018.

Therefore: to enable both Parties to advance those goals, WSU Extension and the Foundation agree as follows:

DUTIES OF THE PARTIES

A. Each Party, individually agrees:

1. To comply with all federal, state and local laws applicable to its actions in performance of this Agreement.
2. That 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, honorably discharged veteran or military status, 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) Presidential Executive Order 11246, as amended, including the Equal Opportunity Clause contained therein; (b) 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; (c) the Americans with Disabilities Act of 1990, as amended; and (d) applicable non-discrimination laws of the state of Washington. The Parties further agree they will not maintain facilities which are segregated on the basis of race, color, religion, or national origin in compliance with Presidential Executive Order 11246, as amended, and will comply with the Americans Disabilities Act of 1990, as amended, regarding programs, services, activities, and employment practices.

WSU Extension's Duties

- A. In furtherance of the relationship between WSU Extension and the Foundation to enhance the WSU Extension Master Gardener Program, WSU Extension shall:
1. Facilitate communications between WSU Extension and the Foundation by:
 - a. assigning the WSU Extension State Master Gardener Program Leader to serve as an ex-officio non-voting member of the Foundation's Executive Committee, and to participate in Foundation executive committee meetings as possible;
 - b. providing computerized communication services to assist in the delivery of the Foundation newsletters and communications to Master Gardener volunteers and Foundation members, including hosting and assisting in the maintenance of the Foundation Listserv;
 - c. providing the Foundation with computing services in furtherance of the Master Gardener mission, which may include reasonable access to computer equipment, Internet connection, copy machine, and the use of the WSU Master Gardener Books and office supplies, and including Extension Academic Services (AMS) for webinars or meetings;
 - d. hosting the Foundation's web page as a component of the WSU Extension Master Gardener Web site, and providing limited and occasional technical expertise, on an "as available" basis; and
 - e. providing the Foundation with timely information on basic WSU Extension Master Gardener program planning and changes.
 2. Participate in the delivery of advanced training to WSU Extension Master Gardener volunteers by:
 - a. co-sponsoring with the Foundation an annual advanced training conference; the agenda of the conference will be jointly established by the Parties and will include both substantive and managerial training; and
 - b. providing regional and statewide advanced training as needed to the extent funds are available for such training;
 3. Provide recognition for WSU Extension Master Gardener programs through media, reports, local and state events.
 4. As requested by the Foundation, provide instruction to volunteers in fund-raising methods and techniques.
 5. Provide support for other services provided that WSU Extension evaluated and considered the services on a case-by-case basis and has jointly with the Foundation, with due regard, determined the services will benefit WSU Extension's Master Gardener Program sufficiently to justify the cost of the services.

Foundation Duties

- B. In furtherance of the relationship between WSU Extension and the Foundation to enhance

the WSU Extension Master Gardener Program, the Foundation shall:

1. Facilitate communications between WSU Extension and the Foundation by:
 - a. recognizing the WSU Extension State Master Gardener Program Leader serves as an ex-officio non-voting member of the Foundation's Executive Committee;
 - b. administering a Listserv which is hosted by WSU Extension;
 - c. actively supporting and maintaining the Foundation web page hosted on the WSU Extension Master Gardener Web site; and
 - d. holding not less than quarterly meetings, at locations alternating on the east and west sides of the state whenever possible.
2. Assist in providing advanced training to WSU Extension Master Gardener volunteers by:
 - a. co-sponsoring with WSU Extension an annual advanced training conference; the agenda of the conference will be jointly established by the Parties and will include both substantive and managerial training and
 - b. assisting in planning, presenting and financially contributing to regional advanced training programs as agreed upon by the Foundation.
3. Provide awards, as determined by the Foundation, to promote the WSU Extension Master Gardener Program.
4. Expend its best efforts to fund-raise as determined by the Foundation for the benefit of the WSU Extension Master Gardener Program in accordance with accepted processes approved by WSU for charitable solicitations.
5. Publicly advocate to promote the work of the WSU Extension Master Gardener Program through distribution of literature and/or speaking about the programs before various groups or at public events, or in some other fashion in order to increase awareness of Master Gardener Programs.
6. Use all assets and earnings of the Foundation for the benefit of the WSU Extension Master Gardener Program.

USE OF MARKS

The Foundation may not use WSU's marks without the prior written approval of WSU's Office of Trademarks and the Office of the Attorney General.

Notwithstanding the foregoing, this Agreement establishes the right of the Foundation to use the WSU marks that specifically pertain to the WSU Master Gardener Program, e.g. the WSU Master Gardener logo, in support of its activities under this Agreement. If this Agreement is terminated, the Foundation 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 Foundation name or literature.

The Foundation is not responsible for use and association with the marks which have been published or broadcast prior to such termination.

PERIOD OF PERFORMANCE

This Agreement shall take effect on the date the Agreement is fully executed, which shall mean Memorandum of Agreement between WSU and Foundation- Page 3 of 7

the Agreement has been signed by an authorized representative of each Party. This Agreement once fully executed shall be in effect for 5 years and may be extended or renewed by mutual written agreement of the Parties.

TERMINATION

Either Party may terminate this Agreement upon thirty (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 termination. Performance rendered shall include acceptance of donations using the term Master Gardener in the event to raise the funds, or the solicitation for such funds. If this Agreement is terminated or the Foundation dissolves, the assets of the corporation will be used solely for the benefit of the WSU Extension Master Gardener Program.

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 the event to raise the funds, or solicitation for such funds. Prior notification of funds solicitation shall be given to the other Party. 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 six (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.

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.

The Parties recognize that many Foundation members may also serve as WSU Master Gardener 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.

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 purpose employees or agents of the other Party.

RESOLUTION OF 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. 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. The determination of the Dispute Panel shall be final and binding on the Parties. Each Party shall bear its own costs, if any, of such process of dispute resolution.

GOVERNANCE

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

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, which consent shall not be unreasonably withheld.

WAIVER

A failure by either 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 writing and signed by an authorized representative of the Party and attached to the original Agreement.

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.

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 either of the Parties.

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.

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 two days after deposit in the United States mail, registered or certified mail, postage prepaid, addressed as set forth below:

A. If to the Foundation

Don Enstrom (or Successor), President
Master Gardener Foundation of Washington State
PO Box 10533
Yakima, WA 98909

B. If to WSU Extension:

Michael J Gaffney (or Successor), Acting Director
Washington State University Extension
Hulbert Hall 411
P.O. Box 646248
Pullman, WA 99164-6248

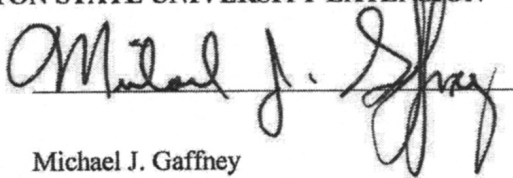
Either Party may alter the address to which communications are to be sent by giving notice of such change of address in conformity with this Agreement.

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.

WASHINGTON STATE UNIVERSITY EXTENSION

Signature:



Name:

Michael J. Gaffney

Title:

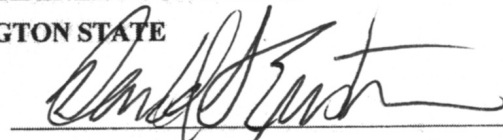
Acting Director of Washington State University Extension

Date:

7 October 2019

**MASTER GARDENER FOUNDATION
OF WASHINGTON STATE**

Signature:



Name:

Donald G. Enstrom

Title:

President, Master Gardener Foundation of Washington State

Date:

Nov. 13, 2019

**WASHINGTON STATE UNIVERSITY
OFFICE OF FINANCE AND ADMINISTRATION**

Signature: 

Name: Heather Davison

Title: Contracts and Real Estate Associate Manager

Date: 10/6/2019

Don Enstrom

From: Gaffney, Michael John <mjgaffney@wsu.edu>
Sent: Friday, November 08, 2019 3:38 PM
To: Don Enstrom
Cc: Murray, Todd Aaron; Marquis, Jennifer G
Subject: Master Gardener Foundation MOA

Good afternoon, Don;

Thank you for a productive conversation today about the relationship between the Master Gardener Foundation of Washington State and Washington State University (both Extension and the Foundation). I appreciate you clarifying the issues of concern *and* the strength of the support for the WSU Extension Master Gardener mission of education.

I agree that the cross-concerns about use of the WSU Marks (especially the Master Gardener label) in the event of termination are remote. Termination is highly unlikely, and would predictably involve events which would most probably render the concerns on either side moot. Nor do I see a strong potential for either the Foundation or WSU to assume an adversarial posture if that situation came to pass. Rather, I would expect that we would work together to achieve the most reasonable outcome for all concerned.

I appreciate also the concern about the language limiting the distribution of Foundation funds in the unlikely event of termination. Our principle concern is to make sure the process of distribution of any net balances remaining after (unlikely) dissolution honors the original intent of the donors to support the educational mission of the WSU Extension Master Gardeners program and the Foundation purpose as stated in Article 1, Section 2 of the Foundation By-laws. In my opinion, the current language ("... used solely for the benefit of the WSU Extension Master Gardener Program.") would be honored by a distribution to other (county level) qualified WSU Master Gardener Foundations.

I really appreciate having had a chance to talk with you about this, and look forward to a continuing strong partnership between the WSU Extension Master Gardener program and the Master Gardener Foundation of Washington State.

Mike
Michael J. Gaffney
Assistant and Acting Director, WSU Extension
Extension Community and Economic Development Program Unit Director
Chief, Law Enforcement Mountain Operations School
Washington State University
509-335-4611