

**INTERAGENCY AGREEMENT BETWEEN WASHINGTON STATE UNIVERSITY
EXTENSION AND THE WHATCOM COUNTY PARKS & RECREATION DEPARTMENT
FOR THE WHATCOM COUNTY MASTER GARDENER PROGRAM**

This Interagency Agreement (AGREEMENT) hereby made and executed on this 1st day of October, 2019 by and between **WHATCOM COUNTY** through its Parks & Recreation Department, hereinafter designated the **COUNTY**, and **WASHINGTON STATE UNIVERSITY**, an institution of higher education and agency of the State of Washington, by and through its Extension Office – Whatcom County, hereinafter the **EXTENSION**.

COUNTY and **EXTENSION** agree to work cooperatively to facilitate and promote the Master Gardener Master Composter/Recycler Programs and demonstration gardens on Whatcom County park lands as identified in Exhibits A (Hovander Homestead County Park) and B (Roeder Home). The gardens are intended to:

- a. Demonstrate environmentally sound gardening techniques based on scientific research
- b. Provide hands-on experience for WSU Master Gardener and Composter/Recyclers volunteers
- c. Educate the public including youth in science-based horticulture and related topics
- d. Provide a focal point for public use and enjoyment of Hovander Homestead Park, Roeder Home and other County facilities as may be agreed to in writing.

For purposes of this AGREEMENT, it is understood that **EXTENSION** is working collaboratively with **COUNTY** and may include the **EXTENSION** working in conjunction with and cooperatively with the *Whatcom County Master Gardener Foundation (FOUNDATION)*, a 501c3 non-profit organization registered in the State of Washington. The **COUNTY** has entered into a separate independent agreement with the **FOUNDATION** for the operation and maintenance of its structures, events and garden activities on **COUNTY** property. This agreement is on file with **EXTENSION** and **COUNTY**. This **EXTENSION AGREEMENT** is subject to the **FOUNDATION** and **COUNTY** Agreement which has been entered into prior to this **EXTENSION AGREEMENT**. Included in the **FOUNDATION** Agreement, the **COUNTY** grants the **FOUNDATION** the right to plan, plant and maintain the public educational demonstration gardens and maintain and manage the greenhouse at Hovander Homestead County Park, Tennant Lake Fragrance Garden and to include the gardens at the Roeder Home. Therefore, it is understood that both the **FOUNDATION** and the **EXTENSION** may have similar interests in engaging in activities related to County Parks Gardens, in which, the **EXTENSION** and **FOUNDATION** may work independently, jointly or that projects may potentially overlap. It is the **COUNTY'S** intent to provide both the **EXTENSION** and the **FOUNDATION** use of the County Parks for training and volunteer opportunities while also providing the **COUNTY** the benefit of maintenance and improvement to the County Parks and to serve the public's use and enjoyment of the Parks. The **COUNTY** does not warrant or represent that the **COUNTY** Agreements with the **FOUNDATION** or **EXTENSION** may not result in a conflict of use or activity. Should a dispute or conflict arise, The **EXTENSION** shall work cooperatively with the **FOUNDATION** to resolve any conflict. In

the event a conflict is not resolved between the **EXTENSION** and FOUNDATION, the County Parks Director or his/her assign will provide a final determination regarding the dispute which shall be binding on the **EXTENSION**.

Term: The term of this AGREEMENT is five (5) years, commencing on October 1st, 2019 and terminating on September 30st, 2024, unless terminated earlier under the provisions hereof.

Renewal: **EXTENSION**, provided the performance of this AGREEMENT is satisfactory to the **COUNTY**, shall have a preferential right to apply for a renewal of this AGREEMENT at the expiration and/or extension thereof for another five (5) years. The **COUNTY** shall have the sole right to determine if an extension will be granted.

Extension: The term of this AGREEMENT may be extended for specified terms by mutual written agreement of the **COUNTY** and **EXTENSION**.

Amendments: This AGREEMENT may be amended by mutual written agreement of the parties at any time during the original, extended, or renewal thereof. However, upon thirty (30) days' notice (or a shorter time if due to immediate necessity), if in the best interest of management of the premises, good cause or safety, the **COUNTY** may modify or amend the Agreement.

SECTION II – USE OF PREMISES

Permitted Use: The premises may be used by **EXTENSION** for the promotion, training and hosting of the Master Gardener and Composter/Recycler programs and demonstration gardens, both of which will be available for education and enjoyment by the public. Additional use of the premises shall require the written consent of the **COUNTY**.

Public Facilities: The rights granted under this AGREEMENT shall not subordinate the rights of the **COUNTY** or the public to the use of the premises including roads, parking areas, fields, trails, etc., provided, however, there shall be no unreasonable interference with that granted herein by the **COUNTY** to **EXTENSION**.

SECTION III - RESERVATION AND PERFORMANCE

Reservation: **COUNTY** reserves the right of access to the premises at any time for a **COUNTY** purpose or securing compliance with the terms of this AGREEMENT. Nothing in this AGREEMENT prohibits the **COUNTY** in participating in the funding, maintenance or operations of the premises and facilities.

Performance: In conformance with the use of the premises covered under the terms of this AGREEMENT, **EXTENSION** shall, and does hereby agree to perform each of the following:

- a. Coordinate on-site Master Gardener and Composter/Recycler Program activities with the Whatcom County Parks & Recreation Department.

For Whatcom County Parks & Recreation:

Christ Thomsen, Operations Manager

3373 Mount Baker Highway

Bellingham WA 98226

CThomsen@co.whatcom.wa.us

(360) 778-5850

- b. Recognize Whatcom County Parks & Recreation Department in printed, electronic and other media as a partner in the Master Gardener Program and activities conducted on **COUNTY** properties.
- c. Not discriminate against any employee or volunteer, or applicant for employment or patronage of the premises with regards to: race, color, sex, sexual orientation, religion, national origin, creed, marital status age, Vietnam-Era or disabled veteran status or the presence of any sensory, mental or physical handicap and any other protections as provided for in the law.
- d. That **EXTENSION** employees and its Master Gardener Program volunteers are not considered as officers, employees or agents of the **COUNTY**. Any injuries, claims, liabilities, suits or costs arising from the **EXTENSION** Master Gardener Program or its volunteers' actions relating to the **EXTENSION's** activities shall be the sole responsibility of the **EXTENSION** and volunteers. The **EXTENSION** and volunteers shall not hold the **COUNTY** responsible for any injuries or damages that they may cause or suffer as a result of their participation in the **EXTENSION's** activities.
- e. Coordinate the operation and maintenance of the gardens and grounds subject to this AGREEMENT in a safe, sanitary manner and in keeping with the historic theme of the park(s). Not allow debris or refuse to collect on the premises and properly dispose of all waste.
- f. Allow and encourage public use of the gardens, provided that the greenhouses can be closed to the public. Coordinate hours of operation with the **COUNTY**.
- g. Report to the **COUNTY** on a timely basis any public misuse, abuse, injury or damage to the gardens or related fixtures.
- h. Meet annually with the **COUNTY** and provide a report of the Master Gardener/Composter Recycler Program activities and plans at *Hovander Homestead Park* and other park properties.
- i. Obtain prior approval from the **COUNTY** for any signage, graphics or other printed material to be displayed or offered on **COUNTY** property.
- j. No section of this AGREEMENT shall prohibit **COUNTY** from contributing to the Master Gardener Program or demonstration gardens through mutual agreements with **EXTENSION** or Master Gardener Foundation during the term of this AGREEMENT.

SECTION V - INSURANCE AND INDEMNIFICATION

Insurance Required: **EXTENSION** is self-insured through the Washington State Agency Self-Insurance Liability Program ("SILP"). Coverage applies as respects to tort liability claims against **EXTENSION** as covered by the Tort Claims Act (RCW 4.92 et seq.). Coverage includes limits of \$5,000,000 per occurrence for bodily injury, property damage, and personal injury, which may arise from or in connection with the activities of or performance of the AGREEMENT. The **EXTENSION's** insurance shall be primary, waive subrogation, and the **COUNTY's** insurance shall be non-contributory.

Indemnification: To the fullest extent permitted by law, the limitations of the Washington State Tort Claims Act (RCW 4.92 et. seq.) and the limitations of coverage under the SILP, **EXTENSION** agrees to indemnify and hold the **COUNTY** and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any negligent act or omission of the **EXTENSION**, its employees, agents or registered volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with **EXTENSION's** performance of this AGREEMENT; or 3) are based upon the **EXTENSION's** use of, presence upon or proximity to the property of the **COUNTY**. This indemnification obligation of the **EXTENSION** shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the **COUNTY**. This indemnification obligation of **EXTENSION** shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the **EXTENSION**, solely to the extent necessary to effectuate the indemnification obligation of **EXTENSION** as set forth in this Section, **EXTENSION** hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of **EXTENSION** are a material inducement to **COUNTY** to enter into this AGREEMENT, are reflected in the **EXTENSION's** rights granted in this AGREEMENT and have been mutually negotiated and agreed to by the parties.

Participation by County – No Waiver. The **COUNTY** reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of **EXTENSION's** indemnity obligations under this AGREEMENT.

Survival of Indemnity Obligations. The parties agree all indemnity obligations shall survive the completion, expiration or termination of this AGREEMENT.

Indemnity by Subcontractors. In the event **EXTENSION** enters into subcontracts to the extent allowed under this AGREEMENT, **EXTENSION's** subcontractors shall indemnify the **COUNTY** on a basis equal to or exceeding **EXTENSION's** indemnity obligations to the **COUNTY**.

SECTION VI – TERMINATION AND ARBITRATION

Termination: This AGREEMENT shall terminate, and all right of **EXTENSION** shall cease, except as provided in Section 1 of this Agreement, and **EXTENSION** shall deliver possession of the premises to **COUNTY**:

At the expiration of the term of this AGREEMENT.

Upon 30-day written notice from **COUNTY** to **EXTENSION** for uncorrected violation of any of the terms of this AGREEMENT.

Upon 90 days written notice from **EXTENSION** to **COUNTY**.

Upon 90 days written notice from **COUNTY** to **EXTENSION**.

At any time by mutual written agreement of **COUNTY** and **EXTENSION**.

Any claim, dispute or controversy between the parties under, arising out of, or related to this AGREEMENT or otherwise, including issues of specific performance, that is not resolved between the parties, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this AGREEMENT. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator and be binding on the parties. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, but shall not have the power to award punitive damages. Each party shall pay its own costs of arbitration including attorney's fees. The arbitrator's fee and any administrative expenses imposed by the arbitrator shall be shared equally by the parties.

SECTION VII- GENERAL PROVISIONS

Assignment: No assignment of this AGREEMENT shall be effective without the written consent of the **COUNTY**.

Extent of Agreement: This AGREEMENT contains terms and conditions agreed upon by the parties. The parties agree that there are no other understandings oral or otherwise, regarding the subject matter of this AGREEMENT.

Modifications: No change or additions to this AGREEMENT shall be valid or binding upon either party unless such change or addition is in writing, executed by both parties.

Venue: This AGREEMENT has been and shall be construed as having been made and delivered within the State of Washington and is mutually understood and agreed by each party hereto that this

Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. Venue shall be Whatcom County, Washington unless specified otherwise by law.

Non-Waiver of Breach: The failure of the **COUNTY** to insist upon strict performance of any of the covenants and agreements of this AGREEMENT or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such or any other covenants or agreement, but the same shall be and remain in full force and effect.

Public Records Act: This AGREEMENT and all public records associated with this AGREEMENT are subject to public disclosure pursuant to the Public Records Act, Chapter 46.45 RCW. Each Party may be subject to the Public Records Act and will be liable for any violation caused by that party.

Records Maintenance and Public Records: Both parties shall retain all books, records, documents, and other material relevant to this AGREEMENT 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 or receive copies of any of these materials during this period.

Severability: The invalidity of any provision of this AGREEMENT shall not affect the validity of the remaining provisions.

NOTICE

Except as set forth elsewhere in the AGREEMENT, for all purposes under this AGREEMENT except service of process, notice shall be given by **EXTENSION** to the County's Administrative Officer, Director of Parks & Recreation or Designee, under this AGREEMENT. Notice to **EXTENSION** for all purposes under this AGREEMENT shall be given to the address provided by **EXTENSION**. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

County's Administrative Officer: Director
Whatcom County Parks & Recreation
3373 Mt. Baker Highway
Bellingham WA 98226
(360) 778-5850

Extension: Washington State University
Whatcom County Extension
Attn: Regional Extension Specialist
1000 N. Forest Street, Suite 201
Bellingham, WA 98225-5594

with copy to: Washington State University
CAHNRS Operations

PO Box 646234
Pullman, WA 99164-6234

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

FOR WSU WHATCOM COUNTY EXTENSION:

Approved By:

BY: _____

Ryan H. Goodell
Executive Director, Contracts & Real
Estate Office

Recommended By:

By:  _____

Its: _____

STATE OF WASHINGTON)

) ss

COUNTY OF WHATCOM)

On this _____ day of October, 2019, personally appeared before me Ryan H. Goodell to be known to be the individual described in and who executed the within and foregoing instrument as the Executive Director, Contracts and Real Estate Office of Washington State University, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposed therein mentioned.

Given under my hand and seal this _____ day of _____, 2019

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission expires:

Executed as of the date first written above.

FOR WHATCOM COUNTY:

Jack Louws, County Executive

STATE OF WASHINGTON)

) ss

COUNTY OF WHATCOM)

On this ____ day of _____, 2019, before me personally appeared Jack Louws, to me known to be the County Executive of WHATCOM COUNTY and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Given under my hand and official seal this ____ day of _____, 2019

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission expires:

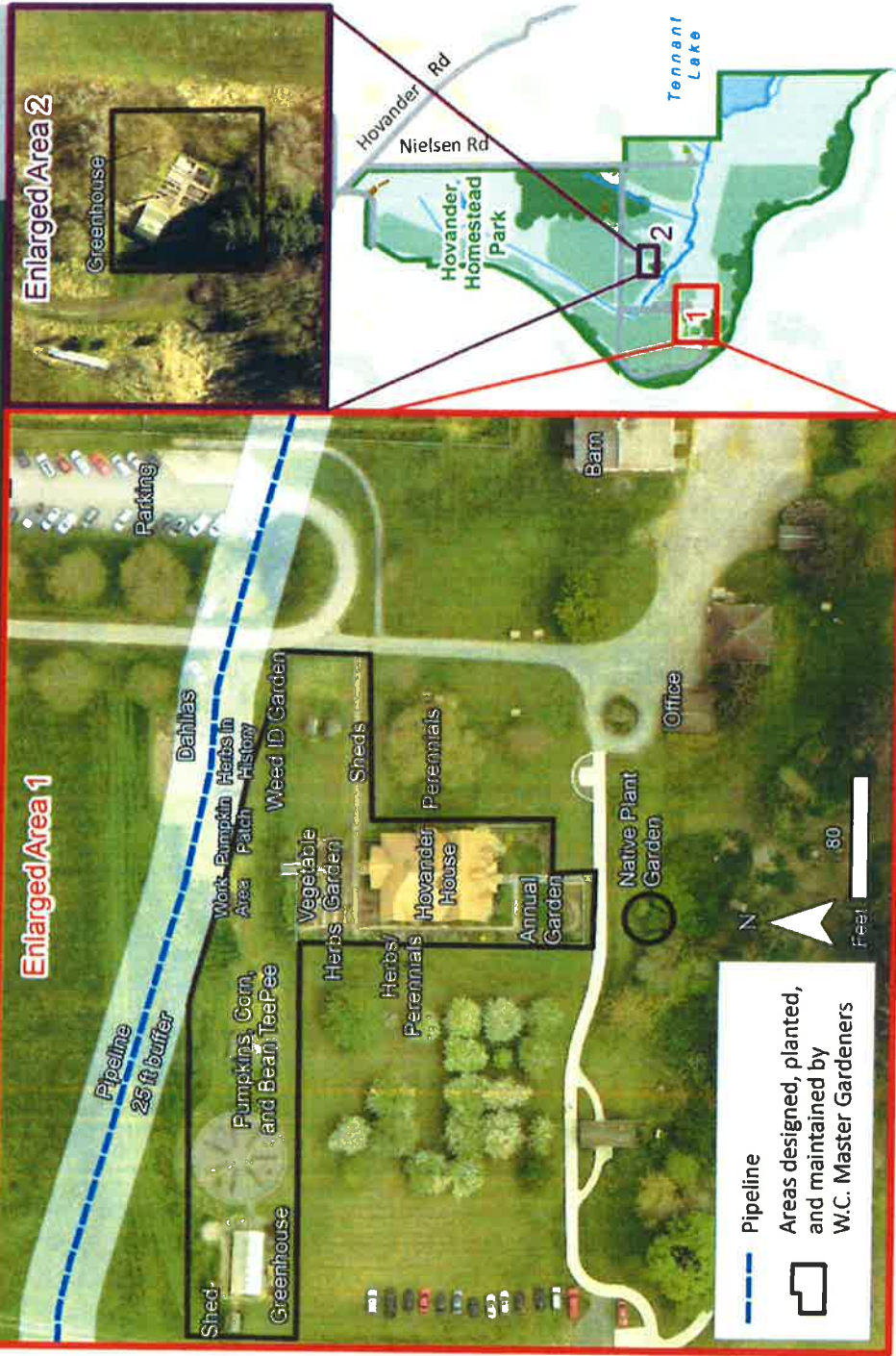
WHATCOM COUNTY PARKS & RECREATION
DEPARTMENT

Michael McFarlane, Director

APPROVED AS TO FORM:

Elizabeth Gallery 10/11/19
Elizabeth Gallery, Civil Deputy Prosecuting Attorney

Hovander Homestead Park - Exhibit A



Document Path: I:\P4D\GIS\2014_GIS\Park\Hovander\MapDocuments\Hovander_MasterGardens_131017.mxd

EXHIBIT A

EXHIBIT B

