

**AGREEMENT
FOR A DEMONSTRATION GARDEN PROJECT**

This agreement, hereinafter referred to as “Agreement”, is made and entered into by and between [redacted] “OWNER”, and the State of Oregon acting by and through the State Board of Higher Education on behalf of Oregon State University for its [redacted] Master Gardener Program, herein referred to as “OSU”.

Comment [n1]: Can replace OWNER with the name of Agency and replace throughout the document.

1. STATUTORY AUTHORITY

- a. In accordance with and pursuant to the provisions of ORS Chapter 190, entitled “INTERGOVERNMENTAL COOPERATION”, OWNER is authorized to jointly provide for the performance of a function or activity in cooperation with a “unit of local government” that includes a commission or other governmental authority in Oregon. By acceptance of this Agreement, OSU certifies that it meets the above criteria for eligibility for such cooperation with OWNER.
- b. As a result of the Agreement and pursuant to ORS 190.030, any unit of local government, consolidated department, intergovernmental entity or administrative officers designated herein to perform specified functions or activities is vested with all powers, rights and duties relating to those functions and activities that are vested by law in each separate party to the Agreement, its officers and agencies.

Comment [n2]: This would need to be changed if it wasn't an intergovernmental agreement.

2. RECTIAL

- a. OWNER owns property located at [redacted]; and,
- b. OSU desires to use the property to create a demonstration garden that will be used for educational purposes.

3. COOPERATIVE SERVICES TO BE SHARED

- a. OWNER agrees as follows:
 - 1) To allow the program to use and modify the specified property.
 - 2) To provide locate services for utilities upon request.
 - 3) To provide water and electricity for gardening activities.
 - 4) To provide assistance to ensure the success of the program.
 - 5) OWNER reserves the right to control access to property.
- b. OSU agrees as follows:
 - 1) Act as lead agency for implementing the program.
 - 2) Carry out tasks. Specifically OSU shall:
 - A) Provide personnel to implement and operate the program.
 - B) Prepare all program materials and supplies.
 - C) Promote the program to the community in the county.
 - D) Keep said property in an aesthetically pleasing and litter free state.
 - E) Identify adequate funding for sustainability of program.
 - F) Provide an annual report on the program to OWNER.
 - G) Should OSU wish to discontinue the program it agrees to return the property to a condition acceptable to OWNER.

4. APPORTIONMENT FOR FUNDING

Master Gardner Program Agreement Template – OWNER/OSU

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Dated: 10/3/2011+2/18/200912/2/2009

- a. OWNER shall not require any payment from OSU for the use of the property or water or electricity.
- b. OSU shall not require any payment from OWNER for the program.

5. INSURANCE

If either Party is not self-insured, then it shall maintain adequate and appropriate types of insurance coverage in amounts no less than state law requires for workers' compensation, comprehensive general liability covering both bodily injury and property damage, and automobile liability covering both bodily injury and property damage.

OWNER, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

6. LIMITATIONS OF LIABILITY

All Parties agree that each Party shall not be subject to claim, action, or liability arising in any manner whatsoever out of any act or omission, interruption or cessation of services by the other Party under this Agreement. Each Party shall not be liable or responsible for any direct, indirect special or consequential damages sustained by the other Party to this Agreement, including, but not limited to, delay, or interruption of business activities that may result in any manner whatsoever from any act or omission, interruption, or cessation of services.

7. INDEMNIFICATION

Subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 030.260 through 030.300, and Article XI, -Section 7 of the Oregon Constitution, each Party to this Agreement shall be solely responsible for its own actions and /or failure to act and shall indemnify and hold the other Party harmless from any liability, cost or damage arising therefrom. Provided, however, that neither Party shall be required to indemnify the others for any claim, loss or liability arising solely out of the wrongful act of the others officers, employees or agents. The provisions of this paragraph shall survive the expiration or sooner termination of this Agreement

8. TERM OF AGREEMENT

The term of this Agreement shall become effective upon the date with this Agreement is fully executed by all Parties and shall continue in full force until [REDACTED] or until earlier terminated as provided herein. The Agreement may be amended in writing to extend the term for [REDACTED] () additional [REDACTED] () year periods upon both parties when agreed to and signed by both parties.

9. TERMINATION

- a. Mutual Consent. This Agreement may be terminated at any time by mutual consent of both Parties.
- b. Parties' Convenience. This Agreement may be terminated at any time by either Party upon 90 days' notice in writing and delivered by certified mail or in person.

- c. For Cause. Either Party may terminate or modify this Agreement, in whole or in part, effective upon delivery or written notice to the other Party, or at such later date as may be established by either Party, under any of the following conditions:
 - 1) If OWNER funding is insufficient to allow for the provision of services required.
 - 2) If federal, state or local laws or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate or eligible for use of OWNER funds.
 - 3) If any license or certificate required by law or regulation to be held by either Party to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.
- d. For Default or Breach.
 - 1) Either OWNER or OSU may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination the Party seeking termination shall give to the other Party written notice of the breach and intent to terminate. If the Party committing the breach has not entirely cured the breach within 30 days of the date of notice, or within such other period as the Party giving the notice may authorize or require, then the Agreement may be terminated at any time thereafter by a written notice of termination by the Party giving notice.
 - 2) Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term shall be waived or deleted except in writing signed in advance by the Parties.

10. CONSTRUCTION, MODIFICATION OF THIS AGREEMENT

- a. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon.
- b. Subcontracts and Assignment; Successors in Interest: Parties shall not enter into any subcontracts for any of the work required by the Agreement, or assign or transfer any of its interest in this Agreement, without prior written consent of the other. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and assigns, if any.
- c. No Third Party Beneficiaries: OWNER and OSU are the only Parties to this Agreement and are the only Parties involved entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- d. OWNER has assigned [REDACTED], OWNER's [REDACTED], as its Contract Manager. OSU has assigned [REDACTED], together with the Office of Business Services, as its Contract Manager. The governing bodies of OSU and OWNER may designate successor Contract Managers, at any time in each of their sole discretion. All notices required or convenient to be given under this Agreement shall be given, in writing, or by e-mail, by the Contract Manager, directed to the other Contract Manager at the addresses indicated, below:

For OSU

Department Contact

with a copy to

Office of Business Services
644 SW 13th Street
Corvallis, Oregon 97333

For OWNER

THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO AND SUPERSEDES ANY AND ALL PRIOR EXPRESS AND/OR IMPLIED STATEMENTS, NEGOTIATIONS AND/OR AGREEMENTS BETWEEN THE PARTIES, EITHER ORAL OR WRITTEN, AND MAY NOT BE AMENDED, CHANGED OR MODIFIED IN ANY WAY, EXCEPT BY WRITTEN AGREEMENT SIGNED BY ALL PARTIES HERETO.

IN WITNESS WHEREOF, the Parties hereby enter into this Agreement.

Each Party, by signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Each person signing this Agreement represents and warrants having authority to execute this Agreement.

THE STATE OF OREGON
ACTING BY AND THROUGH
THE STATE BOARD OF HIGHER
EDUCATION ON BEHALF OF
OREGON STATE UNIVERSITY
AND ITS _____

By: _____ date _____
Its: _____

By: Tamara J. Bronson date _____
Its: Procurement & Contracts Supervisor

