

**CITY OF UNION GAP, WASHINGTON  
RESOLUTION NO. 628**

A **RESOLUTION** authorizing the Mayor to sign a Facility Use Agreement with the Washington State University of Yakima County Master Gardener Program.

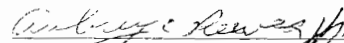
**WHEREAS**, the WSU of Yakima County Master Gardener Program wishes to develop and use a portion of the Ahtanum Youth Activities Park as the public Master Gardener Community Demonstration Garden/Greenhouse;

**WHEREAS**, the City of Union Gap is able to provide a portion of the Youth Park for use as the public Master Gardener Community Demonstration Garden/Greenhouse;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP, WASHINGTON, HEREBY RESOLVES** as follows:

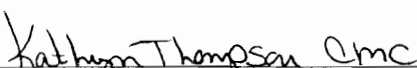
The Mayor is authorized to sign a Facility Use Agreement with the Washington State University of Yakima County Master Gardener Program for its use of a portion of Ahtanum Youth Park for the development and use of the public Master Gardener Community Demonstration Garden/Greenhouse.

**PASSED** this 14<sup>th</sup> day of August, 2006.

  
Aubrey C. Reeves, Jr., Mayor

ATTEST:

APPROVED AS TO FORM:

  
Kathryn Thompson, CMC, City Clerk

  
Robert F. Noe, City Attorney

**FACILITY USE AGREEMENT  
BETWEEN  
THE CITY OF UNION GAP PARKS DEPARTMENT  
AND  
WSU EXTENSION, YAKIMA COUNTY  
MASTER GARDENER PROGRAM  
AND  
THE MASTER GARDENER FOUNDATION OF YAKIMA COUNTY**

THIS AGREEMENT (the "Agreement") is made by and between the CITY OF UNION GAP PARKS DEPARTMENT, hereinafter called the **CITY**, the MASTER GARDENER FOUNDATION OF YAKIMA COUNTY, hereinafter called the **FOUNDATION**, and WASHINGTON STATE UNIVERSITY EXTENSION, YAKIMA COUNTY MASTER GARDENERS, hereinafter called **WSU**, upon the following terms and conditions:

1. DESCRIPTION OF PREMISES:

Upon execution of this Agreement, the FOUNDATION and WSU shall have the right to use an area located in the Southeast portion of the CITY'S Ahtanum Youth Activities Park, as indicated on Attachment "A", appended hereto and incorporated herein by reference, for the purpose of the development and maintenance of a public Master Gardener Community Demonstration Garden/Greenhouse, hereinafter called the GARDEN.

2. CITY'S RESPONSIBILITIES:

- a. The CITY, through negotiations with the FOUNDATION, shall provide other areas for landscaping.
- b. The CITY shall provide the services indicated herein at the current anticipated expense levels. If these expenses increase by more than 5% over the current levels, the parties agree to re-negotiate this term of the Agreement.
- c. The CITY shall provide, at no charge to the FOUNDATION or WSU, connection to the water system (domestic and/or irrigation), and connection to the electrical supply system.
- d. The CITY shall provide, at no charge to the FOUNDATION or WSU, mowing of the area surrounding the GARDEN, as needed.
- e. The CITY shall provide a key to the FOUNDATION'S Director to allow access to the electrical breaker panels at the pump house to allow the Director to reset any tripped breaker if necessary.

3. FOUNDATION'S RESPONSIBILITIES:

- a. The FOUNDATION shall, cooperatively with WSU, deliver the Master Gardener Community Demonstration Garden and shall assist WSU in the development and maintenance of the GARDEN.
- b. The FOUNDATION shall assist in funding and organizing non-commercial home landscaping and gardening activities, educational workshops and clinics.
- c. The FOUNDATION shall report to WSU all activities, maintenance functions and volunteer hours at the GARDEN, which are used to meet the duties of WSU, as set forth in this agreement.
- d. At the FOUNDATION'S expense, the FOUNDATION shall:
  - 1) Provide a conceptual design for the CITY'S approval, showing the layout of all the GARDEN'S features, including garden/greenhouse design, water, electrical, parking, land contours, landscaping and any other improvements associated with the GARDEN.

- 2) Provide a final design for the CITY'S approval, before construction of any phase or component of the GARDEN.
- 3) Provide the labor and materials to fully construct and maintain the GARDEN, including sprinkler system and electrical support, along with other items associated with the GARDEN, as well as the care and maintenance of all proposed landscaping areas of the GARDEN.
- 4) Pay the costs, as stated in Section 2.b. of this Agreement.
- 5) Submit to the CITY all sources of supplies of equipment, operating and maintenance manuals associated with the GARDEN.
- 6) Maintain the GARDEN in accordance with the standards established by the CITY and in accordance with the standards as set forth by the FOUNDATION, to include but not limited to the control of unwanted vegetation growth by pulling weeds, mechanically cutting them or by the application of herbicides approved by the CITY.

4. WSU'S RESPONSIBILITIES:

- a. WSU shall cooperatively, with the FOUNDATION, deliver the Master Gardener Community Demonstration Garden.
- b. WSU shall organize, coordinate and oversee the WSU Master Gardener Program to include, but not limit to, volunteer training and activities, including a demonstration garden such as the GARDEN and other horticulture related programs; provide hands-on experience for volunteers; educate the public in science-based horticulture for home garden purposes; provide educational leadership; provide an annual training program for volunteer members; and demonstrate and promote environmentally sound gardening practices and techniques from WSU research.
- c. To the extent available, Master Gardeners will volunteer time for the care and maintenance of all proposed landscaping areas of the GARDEN in accordance with the standards established by the CITY and in accordance with the standards as set forth by the FOUNDATION, to include but not limit to the control of unwanted vegetation growth by pulling weeds, mechanically cutting them or by the application of herbicides approved by the CITY.
- d. Exhibit A to this Agreement is the Washington State University Business Policy regarding volunteer liability coverage when acting in the course of their employment with Washington State University. The policy, as now existing or hereinafter amended, is hereby incorporated into this Agreement for informational purposes only.

5. THE GARDEN:

- a. The GARDEN shall be open to the public during the daily park hours (9:00 a.m. to dusk).
- b. Within thirty (30) days of written notice from the CITY, the FOUNDATION shall dismantle the GARDEN, including the greenhouse, if interest and/or usage diminish, or the GARDEN becomes cost prohibitive to operate and maintain, or if otherwise instructed to do so in writing by the CITY. The Foundation will restore the Demonstration Garden/Greenhouse area to as close to its original condition as possible.

6. LITTER CONTROL:

- a. The CITY shall supply sufficient litter receptacles for the disposal of all litter and garbage.
- b. The FOUNDATION shall pick up all litter in the designated use area, and place it in a litter receptacle.
- c. If the volunteers fail to pick up the litter, the CITY shall pick up the litter for the FOUNDATION and bill the FOUNDATION at the CITY'S standard rate.

7. SCHEDULING ISSUES:

- a. The FOUNDATION shall be given preference in scheduling, in exchange for its support during development of the GARDEN and for its commitment to the ongoing maintenance of the GARDEN, as outlined in this Agreement.
- b. For the purpose of weekly FOUNDATION training meetings, the CITY shall allow the use of the Youth Barn, if available, or the Activities Building as an alternate location.
- c. The FOUNDATION shall conduct the weekly training meetings on weekdays, excluding Fridays and holidays, during the Park's normal business hours (9:00 a.m. through 4:30 p.m. unless otherwise posted).
- d. The FOUNDATION shall coordinate, through the CITY, the schedule of dates and times planned for construction of and maintenance to the GARDEN, to avoid conflicts with other scheduled Park activities.
- e. The FOUNDATION shall leave the building, used for training meetings, as clean as it was upon arrival, and be willing to move to another building if the Youth Barn and/or the Activities Building are occupied by a paid reservation.
- f. Other organized scheduled events of the FOUNDATION may be permitted, with approval from the CITY; an additional agreement may be required to address the specific needs of a program or special event.
- g. The FOUNDATION shall not have sole, exclusive use of the facilities.

8. RECORDS MAINTENANCE:

- a. The parties to this Agreement shall each maintain books, records, documents and other evidence, which sufficiently and properly reflect all direct and indirect costs expended by the party in the performance of the services described herein.
- b. These records shall be subject to inspection, review or audit by personnel of each party, other personnel duly authorized by each party, the Office of the State Auditor, and Federal Officials so authorized by law.
- c. All books, records, documents and other material relevant to this Agreement shall be retained 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 any of these materials during this period.
- d. Records and other documents, in any medium, furnished by one party of this Agreement to another party, will remain the property of the furnishing party, unless otherwise agreed. To the extent permitted by law, the receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by a party are not erroneously disclosed to third parties.

9. USE OF TRADEMARKS:

The CITY and the FOUNDATION may not use WSU'S trademarks without the prior written consent of WSU. WSU grants to the CITY and the FOUNDATION the limited right and license to use the WSU trademarks that specifically pertain to the WSU Master Gardener Program, for example, the WSU Master Gardener logo, for the sole purposes of carrying out their obligations under this Agreement.

10. DISPUTES:

In the event that a dispute arises under this Agreement which cannot be resolved by the parties, the parties agree to allow the dispute to be resolved by a Dispute Panel in the following manner: each party shall appoint one (1) member to the Dispute Panel, and those members, so appointed, shall jointly appoint an additional member to the Dispute Panel. The Dispute Panel shall review the facts, contract terms, 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 hereto.

11. DAMAGES:

If any repair or restoration work to the Ahtanum Youth Activities Park is needed, as a result of the activities under this Agreement, the work shall be charged at the CITY's standard rates and billed directly to the FOUNDATION as an extra cost.

12. ASSIGNMENT-SUBLETTING:

This Agreement shall be for the exclusive use and benefit of the FOUNDATION and WSU for the development of the GARDEN at the Ahtanum Youth Activities Park. The rights and obligations under this Agreement cannot be transferred, shared or assigned without the express written consent of the CITY.

13. LIABILITY:

- a. WSU is covered by the State of Washington Self-Insurance Program and the Tort Claims Act (RCW 4.92.060 et seq.), and claims against Washington State University and its employees, officers, and agents in the performance of their duties and this Agreement will be paid from the tort claims liability account as provided in RCW 4.92.130. Such claims must be filed with the Division of Risk Management for processing according to statute.
- b. The FOUNDATION shall secure public liability and employee insurance covering bodily injury and property damage in the sum of not less than \$1,000,000 single limit liability coverage. Said policies of insurance shall name the City of Union Gap and their officers and employees as an additional insured. A binder of the original of said policy shall be delivered to the City of Union Gap Public Works Director, or his designee, no later than thirty (30) days before the beginning of the event. If the coverage runs out, or is cancelled, this Agreement is therewith cancelled.
- c. Each party agrees to be responsible for liability resulting from the acts or omissions of its own officers, employees, and agents.

14. INDEMNIFICATION:

The FOUNDATION shall defend, indemnify and hold harmless the CITY, and its agents and employees, from any and all liability, litigation, damage, loss, injury, expense or cost arising out of its acts or omissions in the performance of this Agreement.

15. NOTICES:

All official notices required under this agreement shall be given as follows:

WSU of Yakima County  
Attn: Christine Jackson  
128 North 2<sup>nd</sup> Street, Room 233  
Yakima, WA 98901-2631

City of Union Gap  
Attn: Public Works Department  
102 W. Ahtanum Road  
Union Gap, WA 98903

Master Gardener Foundation of Yakima County  
Attn: Linda Atwood  
71 Jessica Lane  
Yakima, WA 98908

16. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

17. EFFECTIVE DATE/DURATION:

This Agreement shall be effective as of the date of the last signature hereto and shall continue until December 31, 2016, and may be extended upon the mutual written consent of the parties.

18. TERMINATION:

Either party may terminate this Agreement upon at least thirty (30) days prior written notice sent by certified mail to the addresses listed in Section 15 above.

19. AMENDMENTS/ENTIRE AGREEMENT:

No alteration or variation of terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. Oral understandings or agreements, not incorporated herein, shall not be binding, and this writing constitutes the complete and final agreement of the parties with respect to the subject matter hereof.

**WSU of Yakima County**

**City of Union Gap**

\_\_\_\_\_  
Christine B. Jackson, Director                      Date

*Aubrey C. Reeves Jr.*                      8-15-06  
Aubrey C. Reeves Jr., Mayor                      Date

**Master Gardener Foundation of Y.C.**

**Washington State University**

\_\_\_\_\_  
President    Date

\_\_\_\_\_  
Business Affairs                                      Date

**Master Gardener Foundation of Y.C.**

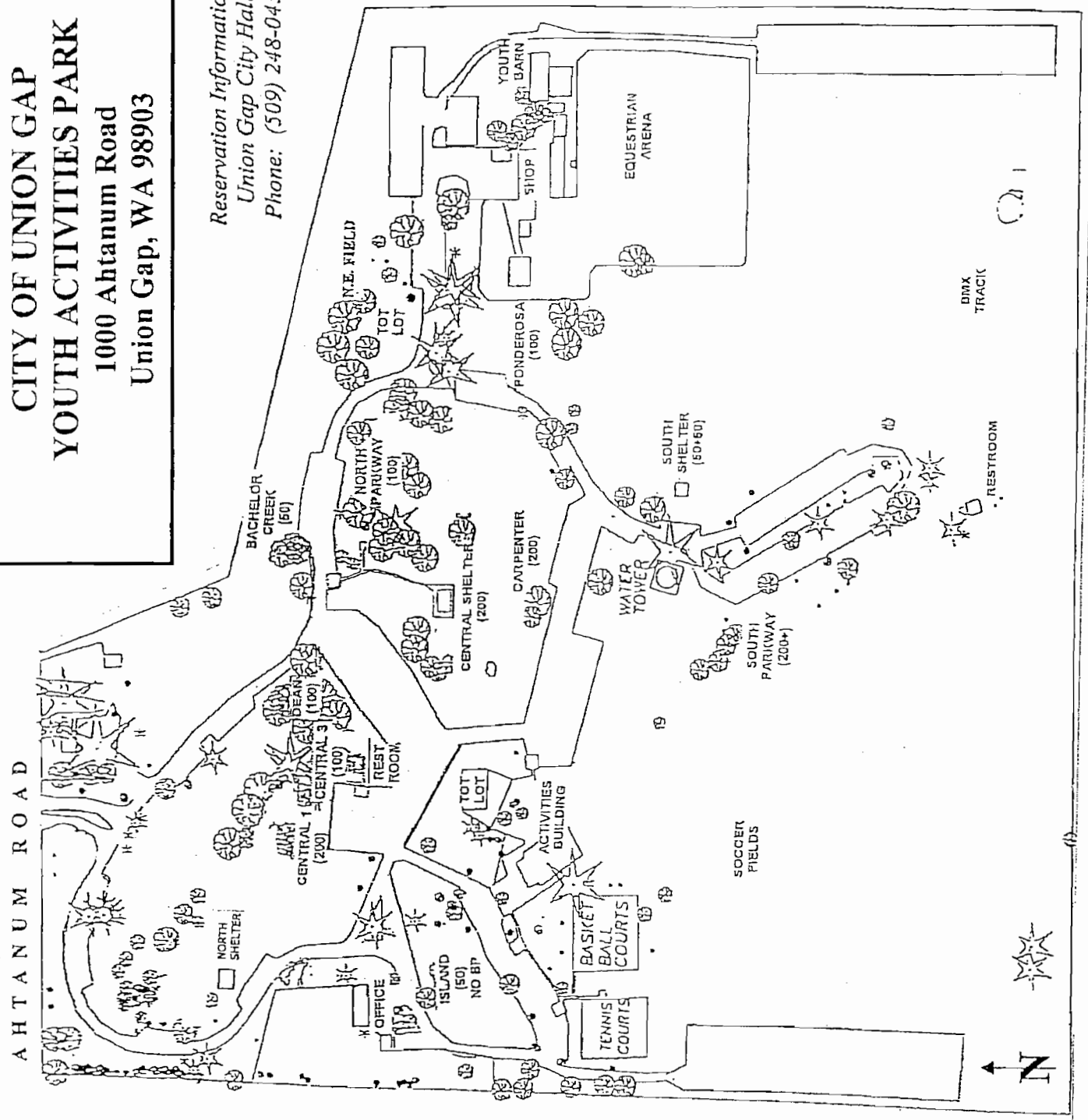
**Washington State University**

\_\_\_\_\_  
Secretary    Date

\_\_\_\_\_  
Assistant Attorney General                      Date

**CITY OF UNION GAP  
YOUTH ACTIVITIES PARK  
1000 Ahtanum Road  
Union Gap, WA 98903**

*Reservation Information:  
Union Gap City Hall  
Phone: (509) 248-0434*



## CITY OF UNION GAP

*Detail of Additional Charges  
(if applicable)*

Labor; Standard Rate:	Per hour fee	\$ 54.00
	<ul style="list-style-type: none"> <li>• Moving of Garbage Receptacles</li> <li>• Additional Mowing</li> <li>• Moving Picnic Tables</li> <li>• Set-Up Volley Ball Poles/Area</li> </ul>	
Barbecue Portable:	Maximum of four (4) units; price each	\$ 5.00
Benches:	Sixteen (16) available; each bench holds four (4)	\$ 1.00
Bleachers:	Per day; one (1) each	\$ 5.00
Camp Sites:	Per site	\$ 10.00
Clean up:	Actual cost of services	\$ TBD
Damage repair(s):	Actual cost of repairs	\$ TBD
Garbage dumpster:	One (1) 4-yard dumpster; weekend	\$ 45.00
Tables; Extra Picnic:	For park use	\$ 2.00
Tables; Extra serving:	For building use; Maximum of four (4)	\$ 2.00

TBD = To Be Determined