

**AGREEMENT
BETWEEN THE CITY OF MAPLE VALLEY
AND THE SOUTH KING COUNTY ARBORETUM FOUNDATION
FOR USE OF LAKE WILDERNESS PARK**

This Agreement, for the use of Lake Wilderness Park, is made this 5th day of November, 2003, (hereinafter referred to as "Effective Date") by and between the City of Maple Valley (hereinafter referred to as "City") and the South King County Arboretum Foundation (hereinafter referred to as "Foundation"), P. O. Box 72, Maple Valley, Washington 98038, a private non-profit foundation organized under the laws of the State of Washington.

RECITALS

WHEREAS, the City has become the owner of Lake Wilderness Park, a park formerly owned and operated by King County; and

WHEREAS, during the County's ownership of Lake Wilderness Park, the Foundation developed, operated, and maintained the northern portion of the park (hereafter referred to as the "Arboretum"), located north of and adjacent to the existing Lake Wilderness Lodge, 22520 SE 248th St. Maple Valley, Washington 98038, as described and shown on Exhibit A; and

WHEREAS the Foundation developed the Arboretum for the propagation and display of native and cultivated plants, shrubs and trees, assembly of exhibits and production of instructional materials for the enjoyment of its members and the general public; and

WHEREAS, the Foundation has successfully operated the Arboretum with community volunteers since 1965; and

WHEREAS, the City has determined that the public interest would be best served with the least expenditure of public funds by a two-party agreement permitting the City and the Foundation to continue to jointly develop, operate, maintain and cooperatively use the Arboretum for the public's enjoyment; and

WHEREAS, the City desires to enhance the public's knowledge and appreciation of the natural vegetation and culture of the area;

NOW, THEREFORE, the City and the Foundation enter into this three-part agreement; including Part I: General Terms, Part II: Execution of Improvements, and Part III: Use of the Arboretum.

I. GENERAL TERMS

1. TIME PERIOD: The term of this Agreement is five (5) years from the Effective Date. The Parties intend succeeding renewal for an additional five (5) years, subject to mutual agreement.

2. OWNERSHIP: The real property, improvements, restoration, and all permanent fixtures shall become and remain the sole property of the City except as noted in this Agreement. Personal property stored at the Arboretum (e.g., tools, equipment and supplies) will remain the property of the Party that supplied it.
3. REPRESENTATIVES: Each Party will designate one person to be its representative for this Agreement. All designations shall state the name of the representative, his/her title, mailing address, and phone number(s). A current list of Foundation Executive Board members shall be attached to this agreement as Exhibit D.
4. COLLABORATION AND INFORMATION SHARING: The City agrees to consult with and provide information to the Foundation on master planning efforts for Lake Wilderness Park.
5. GUIDELINES FOR EXHIBIT, PROGRAMMING AND INTERPRETIVE PLAN: The Foundation shall present guidelines for exhibits and program content as well as an interpretive plan for the Arboretum. The guidelines and interpretive plan shall also address standards for interior and exterior signs, placards, and labeling.
6. ANNUAL MEETINGS: Foundation representatives shall meet annually with the City's Parks Director and/or designee for the purpose of planning, coordinating, and scheduling improvements, exhibits, program activities, and public meetings to occur in the buildings or on the grounds. The City's Parks administration liaison to the Foundation regarding on-going routine matters will retain records of scheduled public exhibits/Arboretum viewing hours, as submitted by the Foundation.
7. BREACH OF AGREEMENT: If either party believes the other is in violation of the Agreement notice of such alleged breach or violation should be put in writing and delivered to the other. The City Manager shall within 10 working days schedule a meeting to review and discuss the alleged breach or violation and shall within 5 working days following the meeting notify the Foundation of his/her findings and conclusions from such a review.
8. DEFAULT: Following the City Manager review and concurrence by the City Council, if, in the reasonable judgment of the City, the Foundation violates any of the conditions of this Agreement, the City shall notify the Foundation of the violation in writing. If the Foundation fails to commence a cure of such default within thirty (30) calendar days following written notification, the City may, at its option, cure any default.
 - 8.1 Termination for Default: In the event the Foundation is in default of any provision of this Agreement, and fails to cure the default within sixty (60) calendar days following a written notice, the City shall also be entitled to terminate this Agreement in writing for default, and thereby prohibit the Foundation's use of and rights to the Arboretum under this Agreement.
9. ACCEPTANCE OF PREMISES: The Foundation has examined the premises and accepts them in their present condition. It is agreed that the Foundation and the City, through their employees, officers, and agents, will consult with one another on the furnishings, design, and display layout of the building(s) and keep one another apprised of changes from jointly planned and agreed to scheduled public viewing

hours, programs, and public meetings held in the building, offices, or on the grounds.

10. KEY CONTROL: The Foundation shall provide the City with keys and/or combinations for emergency access to the Arboretum buildings and office spaces provided by the City.
11. UTILITIES: The Foundation shall provide all power and telephone utility services at no expense to the City, except as otherwise agreed to in writing. The City shall pay for water service to mutually agreed areas.
12. MAINTENANCE AND UPKEEP: The Foundation will provide a standard level of maintenance services to the grounds and outbuildings that is appropriate to the operation of a safe and usable Arboretum. The Foundation shall be responsible for all maintenance of the Arboretum, all minor and major repairs, and shall promptly correct and/or remove all hazards and potentially dangerous conditions to fully safeguard and protect the public, and City and Foundation employees, agents, and officials. The Foundation shall also promptly report to the City's Parks Director and/or designee all hazardous or potentially dangerous conditions.

12.1 The Foundation shall develop guidelines for addressing emergencies and natural disasters. When beyond its resources, the Foundation may request City assistance to address potentially dangerous situations, emergencies, and natural disasters. The City shall review such requests and provide support as it deems reasonable and within allocated resources.

13. HAZARDOUS SUBSTANCES: As used herein, the term "Hazardous Substance" means any hazardous, toxic, or dangerous substance, waste, or material, which is or becomes regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law now or hereafter in affect pertaining to environmental protection, contamination, or cleanup. The Foundation shall keep upon the premises, in a location accessible to the City, on request during normal business hours, copies of all reports regarding hazardous or toxic materials on the premises that the Foundation has provided to any other governmental agency in the previous quarter. The Foundation shall , upon request by the City and at the Foundation's expense, provide the City with a copy of any such report. In the event of any accident, spill, or other incident involving hazardous or toxic matter that the Foundation is required to report to any governmental agency, the Foundation shall immediately report the same to the City and supply the City with all information and reports with respect to the same, together with the Foundation's clean-up or remediation plan and schedule. If such clean-up or remediation plan is not acceptable to the City in the City' sole discretion, the City may so notify the Foundation and, upon 48 hours prior written notice (or without notice if so required by an emergency) may enter upon the premises to conduct the cleanup or remediation and charge the Foundation the costs thereof. All information described herein shall be provided to the City regardless of any claim by the Foundation that it is confidential or privileged, provided that the City shall not publish or disclose the information to any third party except as pursuant to Chapter 42.17 RCW. The foundation agrees to hold harmless, protect, indemnify, and defend the City from and against any damage, loss, claim. or liability, INCLUDING Attorney fees and costs, resulting from the Foundation's use, disposal , transportation, generation, and/or sale of any Hazardous Substances. The City agrees to hold harmless, protect, indemnify, and defend the Foundation from and against any damage, loss, claim, or liability, including attorney's fees and costs resulting from (a) Hazardous Substances existing on the premises as of the

Effective Date of the Agreement; or (b) hazardous Substances thereafter used disposed of, or generated on the premises by the City. These indemnities will survive the termination of this Agreement, whether by expiration of the Term or otherwise.

14. PROVISION OF OFFICE SPACE AT GAFFNEY HOUSE AND USE OF OTHER SPACE: The City will provide the use of office space to the Foundation at the Gaffney House at no cost to the Foundation. Such space shall be lockable. Scheduling of shared conference and storage space will be coordinated with Public Works maintenance personnel, who will also be housed in the space. The real property, improvements, restoration, and all permanent fixtures shall become and remain the sole property of the City. Any personal property stored at the Gaffney House by the Foundation will remain the property of the Foundation. The Foundation will be responsible for set-up and paying for telephone service. The City will provide other utilities and janitorial service consistent with the services provided for the entire building. The Foundation will communicate with the Lake Wilderness Lodge Operator to reserve space at the Lodge for the purpose of conducting classes and holding meetings. The Foundation will follow the procedures established by the Contractor for reservation and use of the Lodge.
15. HOLD HARMLESS: The Foundation shall indemnify and hold harmless and free from liability the City, its elected and appointed officials, agents, servants or employees, while acting within the scope of their duties as such, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, which arises out of the Foundation's use of the Arboretum, or from the conduct of the Foundation's business, or from any activity, work or thing done, permitted or suffered by the Foundation in or about the Arboretum, except only such injury or damage as shall have been occasioned by the sole negligence of the City.
16. ASSIGNMENT: Neither Party will assign or sublet its rights or responsibilities under this Agreement without the written authorization of the other Party. Written authorization shall not be withheld unreasonably.
17. TERMINATION: Pursuant to the terms and conditions of this Agreement, this Agreement may be terminated upon written mutual agreement between the parties hereto.
 - 17.1 Either party may also terminate this Agreement unilaterally, and dispense with renewal or further renewal, after giving six (6) months prior written notice to the other party. This agreement shall remain in full force and effect during any such termination period.
18. ANTI-DISCRIMINATION: The Foundation shall not discriminate against any employee, applicant of employment, or any person seeking the services of the Foundation under this Agreement, on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental, or physical handicap.
19. LIENS: The Foundation shall keep the premises free from liens arising out of obligations incurred by the Foundation. At the City's written request, the Foundation will furnish written proof of payment made, that if not paid, could provide the basis for a lien on the premises.

20. LIABILITY INSURANCE: Before the Effective Date, the Foundation, at its expense, shall obtain and maintain commercial general liability insurance in the amount of \$1,000,000 per occurrence, \$2,000,000 general aggregate limit and \$2,000,000 products/completed operations aggregate. Every five (5) years, as part of the meeting contemplated in paragraph 5, the Foundation and the City shall review general liability insurance coverage. The Foundation shall obtain general liability insurance coverage in the amount then recommended by the City's insurance pool or provider. Said policy(ies) shall name the City as an additional insured and state that it is primary over any insurance carried by the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Foundation's insurance and shall not contribute to it. In the event of non-renewal, cancellation, or material change in the coverage provided, thirty (30) days written notice shall be furnished to the City prior to the date of non-renewal, cancellation, or change.

The Foundation shall provide a Certificate of Insurance or, upon request of the City, a duplicate of the policy as evidence of insurance protection provided. This insurance shall not be canceled or reduced without prior written notice to the City at least thirty (30) days in advance of the cancellation.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

21. ACCESS FOR INSPECTION OR UPKEEP: The City reserves the right to inspect the premises at a reasonable time and with reasonable notice. The Foundation may be present during such times.

II. EXECUTION OF IMPROVEMENTS

22. ALTERATION AND IMPROVEMENTS: The Foundation will not substantially alter or improve the grounds, buildings or natural resources of the premises without prior review and consent of the Parks Director and/or designee, either through the future acceptance of a Site Plan (to be attached as Exhibit B or on a project by project basis. Ownership of such alterations and improvements will remain with the City unless otherwise agreed upon in writing.

22.1 Time Frame: The City and Foundation shall agree upon time frames for all improvements and shall annually modify/adjust as needed to more accurately reflect the schedule.

22.2 Western Deciduous Azalea Display Garden: The parties agree that the Foundation has installed and maintains a Western Deciduous Azalea Display Garden at a mutually acceptable site adjacent to the Lake Wilderness Lodge. The Foundation, in coordination with the City, may remove the display garden within one year of termination of this agreement, provided a representative selection from the garden remains on site for the public benefit.

23. PROJECT FINANCING: The Foundation shall be responsible for any and all costs whatsoever, except for the cost of water and voluntary maintenance and improvements by the City, as outlined in paragraph 9. The Foundation shall be responsible for all design, construction, maintenance, and operations costs. The Foundation shall be responsible for all fees, inspections, insurance and bonds, related to the design, development, and construction of the Arboretum buildings.

24. CONTRACT DOCUMENTS AND BIDDING: The Foundation shall be responsible for preparing and submitting all of the required information necessary for obtaining any and all required permits. The

Foundation shall be identified as the lead agency for the purpose of obtaining permits. The Foundation may request waiver of fees associated with any City permits and the City may consider such in accordance with City policy.

25. **PROJECT CONSTRUCTION:** The Foundation shall perform the duties of the “Owner” as defined in the contract documents and specifications. In the construction of the Arboretum, the Foundation shall comply with all applicable laws, statutes, rules, codes, regulations and ordinances, including, without limitation, all necessary governmental permits and approvals.

25.1 If at any time, in the reasonable judgment of the City, the Foundation or any of its agents, employees, officers, or contractees fail to competently perform the duties stated herein, the City may seek remedy using the provisions of paragraphs 7, 8 and 8.1 of this Agreement.

26. **LICENSE TO ENTER PROPERTY:** The City hereby grants to the Foundation such license to enter upon its real property as necessary for the exercise of the rights and obligations set forth herein.

III. USE OF THE ARBORETUM

27. **PERMITTED USES:** The Foundation agrees to use the Arboretum for the primary purpose of providing historical, cultural, recreational, and educational services related to the functions of an Arboretum. The Foundation may use the Arboretum for its organizational purposes including membership activities, training, certification, support of similar or complimentary efforts and sale of items that are commonly sold at arboretums and normal fundraising activities, provided that the *net* proceeds of such activities shall be used solely for development, maintenance, and operations of the Arboretum. All activities conducted at the Arboretum are subject to the City’s regulations and policies, and to the further provisions of this Agreement. Use of the Arboretum for other purposes shall not be permitted without the City’s prior written consent.

28. **PRIORITY USE:** The Foundation will have priority use of the Arboretum during the period of this Agreement. All other uses of the Arboretum will be scheduled with and approved by the Foundation.

29. **COOPERATION WITH LODGE OPERATOR:** Because of the proximity of the Arboretum to the Lodge the Foundation shall share information about Foundation events that may conflict with or impact activities occurring at the Lodge.

30. **COMPLIANCE WITH ALL LAWS AND REGULATIONS:** In using the Arboretum, the Foundation will comply with all applicable laws, ordinances and regulations from any and all authorities having jurisdiction.

31. **ENTIRE AGREEMENT:** This Agreement contains the entire Agreement between the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties hereto. Proposed changes that are mutually agreed upon shall be incorporated by written amendment to this Agreement.

32. **WAIVER:** It is hereby agreed that no waiver of any condition or covenant in this Agreement, or any breach thereof, shall be taken to constitute waiver of any subsequent breach.

33. SEVERABILITY: Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Foundation, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.
34. NOTICES: Any written notice required or permitted to be given herein shall be made via registered or certified U.S. mail or delivery in person to the party who is the intended recipient of the notice at the following addresses or such other respective addresses as either party hereto may from time to time designate in writing:

SOUTH KING COUNTY
ARBORETUM FOUNDATION
President
P. O. Box 72
Maple Valley, WA 98038

CITY OF MAPLE VALLEY
City Manager
P. O. Box 320
Maple Valley, WA 98038

Exhibits

- A – Property Description/Map (to be provided by Parks Department)
- B – Current Site Plan (to be provided by Foundation)
- C – Proof of Tax Exemption (to be provided by Foundation)
- D – Officers of Board (to be provided by Foundation)
- E – Insurance (to be provided by Foundation)