

City of Calistoga Staff Report

TO: Honorable Mayor and City Council

FROM: Michael Kirn, Director of Public Works/City Engineer

DATE: November 1, 2016

SUBJECT: Consideration of adopting a Memorandum of Understanding with the University of California Extension - Napa Valley Master Gardeners for Maintenance of the Drought Tolerant Demonstration Garden at the Police Station

APPROVAL FOR FORWARDING:

Dylan Feik, City Manager

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- 1 **ISSUE:** Consideration of a Memorandum of Understanding (MOU) with the University of
 - 2 California Extension - Napa Valley Master Gardeners for Maintenance of the Drought
 - 3 Tolerant Demonstration Garden at the Police Station.
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 - 5 **RECOMMENDATION:** Authorize the City Manager to execute the MOU in substantia
 - 6 conformance with the attached MOU.
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 - 8 **BACKGROUND/DISCUSSION:** On May 17, 2015 the City Council received a presentation
 - 9 from the Napa Valley Master Gardeners affiliated with the University of California Extension
 - 10 to install a drought tolerant demonstration garden at the Police Station. On May 20, 2015 the
 - 11 Master Gardeners participated in the Mayor’s Forum to highlight the benefits associated with
 - 12 drought tolerant landscaping.
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 - 14 As a result of this collaboration, the demonstration garden was completed with volunteer
 - 15 efforts and donations and the City Council accepted the garden on August 18, 2015.
 - 16
 - 17 The Master Gardeners have offered to provide increased maintenance to the project and
 - 18 ongoing community public education in partnership with the City to increase the use of
 - 19 drought tolerant landscaping.
 - 20

21 **FISCAL IMPACT:** The recommended MOU would expand the City's ability to maintain the
22 demonstration garden at no cost the City. It would also increase the City's outreach and
23 education programs related to water conservation and zero-scape landscaping.
24

25 **ATTACHMENT**
26 1. Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE UNIVERSITY OF CALIFORNIA EXTENSION - NAPA VALLEY
MASTER GARDENERS AND THE CITY OF CALISTOGA**

This Memorandum of Understanding (“MOU”) is made on November 1, 2015 between the University Of California. Extension - Napa Valley Master Gardeners (Master Gardeners) and City of Calistoga (City).

RECITALS

WHEREAS, the Master Gardeners and the City have collaboratively planted a drought tolerant demonstration garden at eh Police Station; and

WHEREAS, it is the intent of the parties to continue the collaborative efforts to expand community outreach and education regarding zero-scape landscaping, water conservation and planting of drought tolerant plants; and

THEREFORE, the parties agree as follows:

1. Master Gardeners Responsibilities.

▪ **Garden Maintenances**

- Mulch and compost, as needed
- Maintain the irrigation equipment in the garden (we do not touch the controller or main lines to the garden)
- Help recruit and train community volunteers to pull weeds and maintain the appearance of the garden
- Replace plants that fail to thrive or are approved additions to the garden
- Provide monthly guidance on seasonal irrigation adjustments to follow ET curves

▪ **Education and Promotion**

- Conduct 2 to 4 educational workshops annually in the garden providing relevant topics and trained speakers
- Coordinate workshop promotions with the City and other partners
- Train, educate and supervise community volunteers in garden maintenance to build their skills

2. City Responsibilities:

▪ **Assure access and utilities**

- To the garden site for maintenance and approved programs
- To the neighboring public meeting room for training and public education
- To sufficient water through the installed irrigation equipment to maintain the plants on good health
- Manage the controller and main lines, as needed, to regulate the water supply

▪ **Education and Promotion**

- Support 2-4 educational garden events annually--location, promotion, etc.
- Provide signage and plant information--on city web site or a link to NMG web site

- Help recruit community volunteers to weed and maintain garden appearance
- **Materials and Supplies**
 - Mulch and compost as needed
 - Irrigation equipment and supplies
 - Plant materials to replace plants the fail to thrive

3. Term of MOU

The term of the MOU is for a period of three (3) years unless mutually extended. Either party may terminate this MOU by providing ninety (30) days written notice to the other party.

4. General Provisions

A. Notice. All notices, requests, demands, amendments, modifications, bills, or payments under this MOU shall be in writing. Notice shall be sufficient for all such purposes if personally delivered or sent by first class, registered or certified mail; or sent by facsimile transmission with written confirmation of receipt by recipient. Notice is effective upon personal delivery, two days after deposit in mail, or upon confirmed receipt by recipient.

City
 City of Calistoga
 414 Washington Street
 Calistoga, CA 94515
 (707) 942-2844
 Attention: Mike Kirn
 Public Works Director

Master Gardeners
 UC Napa Master Gardeners
 710 Soscol Avenue, Suite 4
 Napa, CA 94559, 1315
 (707) 253-4434
 Attention: David Lewis
 Director

B. Assignment and Successors. Neither party may transfer or assign its rights or obligations under this MOU, in part or in whole, without the other party's prior written consent. This MOU is binding on the heirs, successors, and permitted assigns of the parties hereto.

C. Third Party Beneficiaries. There are no intended third party beneficiaries to this MOU.

D. Nondiscrimination. City and Master Gardeners any Contractors hired by College to perform services contemplated under this MOU shall comply with all applicable federal, state and local laws, rules and regulations regarding nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, disability, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this MOU are incorporated by this reference.

E. Choice of Law and Venue. This MOU shall be governed by California law, and venue shall be in the County of Napa, California, and no other place.

F. Severability. If any provision of this MOU is determined to be illegal, invalid, or unenforceable, in part or in whole, the remaining provisions, or portions of the MOU shall remain in full force and effect.

- G. Amendment.** No supplement, amendment, or modification of this MOU shall be binding unless it is in a writing duly authorized and signed by the parties to this MOU.
- H. Provisions Deemed Inserted.** Every provision of law required to be inserted in this MOU shall be deemed to be inserted, and this MOU shall be construed and enforced as though included. If it is discovered that through mistake or otherwise that any required provision is not inserted, or not correctly inserted, this MOU shall be amended to make the insertion or correction.
- I. Entire Agreement.** This MOU constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties regarding the subject matter of this MOU and supersedes all prior written or oral understandings or agreements of the parties.
- J. Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this MOU shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- K. Force Majeure.** If either party is delayed or hindered in or prevented from the performance of any act required hereunder because of strikes, lockouts, inability to procure labor or materials, failure of power, riots, insurrection, war, fire or other casualty, or other reason beyond the reasonable control of the party delayed, excluding financial inability (“Force Majeure Event”), performance of that act shall be excused for the period during which the Force Majeure Event prevents such performance, and the period for that performance shall be extended for an equivalent period. Delays or failures to perform resulting from lack of funds shall not be Force Majeure Events.
- L. Headings.** The headings in this MOU are included for convenience only and shall neither affect the construction or interpretation of any provision in this MOU nor affect any of the rights or obligations of the parties to this MOU.
- M. Execution in Counterparts.** This MOU may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- N. Authorization.** Each individual executing this MOU, or its counterpart, on behalf of the respective party, warrants that he/she is authorized to do so and that this MOU constitutes the legally binding obligation of the entity which he/she represents.
- O. Mutual Indemnification.** Each party (individually herein as “Indemnifying Party”) shall indemnify, defend, and hold harmless to the full extent permitted by law, the other party, its governing body, officers, agents, employees, and volunteers (collectively, “Indemnified Party”) from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorney fees and costs and fees of litigation) (collectively, “Liability”) of every nature arising out of or in connection with Indemnifying Party’s performance or failure to comply with any of its obligations under this MOU, except such Liability caused by or arising from the sole negligence or willful misconduct of the Indemnified Party.

P. Dispute Resolution. The parties agree to make a good faith effort to resolve any dispute arising from or relating to this MOU through mediation prior to commencing litigation. Within sixty (60) days following a written request by either party to mediate a dispute that has not been resolved by informal negotiation, the parties shall mutually agree upon a mediator, schedule a mediation, and shall share the costs of mediation equally, except costs incurred by each party for representation by legal counsel.

Q. Joint Representation. Each party to this MOU has received a full written disclosure and understands that School and College Legal Services of California (“SCLS”) provides legal services to each of the parties. Each party agrees that following such disclosure it consented in writing to joint legal representation by SCLS for the limited purpose of drafting this MOU.

IN WITNESS WHEREOF, the parties agree to the foregoing:

City of Calistoga:

_____ Date: _____
Dylan Feik, City Manager

NAPA VALLEY MASTER GARDENERS:

_____ Date: _____
David Lewis, Director