

**INTERLOCAL AGREEMENT FOR COOPERATIVE PLANNING,
DESIGN AND CONSTRUCTION OF THE CHAMBERS CREEK CANYON TRAIL**

THIS INTERLOCAL AGREEMENT (hereinafter referred to as this "Agreement") is made and entered into this _____ day of, 2018, by and between the City of University Place, (hereinafter also referred to as "UP"), City of Lakewood (hereinafter also referred to as "Lakewood"), and Pierce County (hereinafter also referred to as "County"); collectively referred to in this Agreement as the "Parties" and singularly referred to as a "Party."

BACKGROUND

- A. The County and the cities of Lakewood and UP own certain real property in Chambers Creek Canyon where the north side of the canyon lies in UP and the south side of the canyon lies in Lakewood. The dividing line between the two cities is the center line of Chambers Creek.
- B. In 1997, following an extensive public process, the County adopted the Chambers Creek Properties Master Site Plan which included a proposed trail extending from an existing trailhead on Chambers Creek Road at the west end of the trail up the canyon on both the north and south sides.
- C. In June of 1997 the City of University Place adopted its first Parks, Recreation and Open Space Plan ("UP PROS Plan") citing the Chambers Creek Properties Master Site Plan and describing the Chambers Creek Canyon Trail in detail. The Trail is identified as a future component of the UP park system in the 2007 and 2014 UP PROS Plan updates.
- D. On June 19, 2000, the County, UP and Lakewood entered into a Joint Procedural Agreement to facilitate and develop the Chambers Creek Properties, including a trail in Chambers Creek Canyon ("Trail").
- E. In 2004, with the help of the Washington State Recreation and Conservation Office and Pierce County Conservation Futures, UP purchased the Kobayashi property, which is proposed to be the location of the eastern end of the Trail.
- F. On August 6, 2012 the UP City Council adopted Resolution 696, Council Goals for 2013 – 2014. Included within the 2013 – 2014 Goal of improving parks and recreation, the City Council listed as desired outcomes: To develop an implementation plan for the development of the Leach Creek/Chambers Creek Trail and commence construction of the Phase 1 Leach Creek/Chambers Creek Trail (funding dependent).
- G. On January 29, 2013, the County, UP and Lakewood jointly held a Trail open house attended by 80 people from surrounding communities where there was broad support for development of the Trail.
- H. In April 2013, the County provided UP with a right to access its properties for the purpose of surveying a proposed trail alignment.

- I. On November 26, 2013 the County, UP and Lakewood staff completed the Draft Chambers Creek Canyon Trail Plan attached hereto as Exhibit A and agreed the next step in trail implementation would be to enter into an interlocal agreement for the planning and design of the Trail.
- J. In February 2014, the County adopted the Pierce County 2014 Parks, Recreation, and Open Space Plan (“County PROS Plan”) in which the lower portion of the Trail is identified as a proposed Regional Trail and the upper portion as a Regional Trail Link. The County PROS Plan indicates trail development is a high priority and includes capital improvements for the Trail.
- K. On March 3, 2014, the City of Lakewood adopted the Lakewood Legacy Plan, a long range strategic parks, recreation and open space plan, which emphasized creating safe access to open space through a connected system of urban, non-motorized trails. The Chambers Creek properties were identified as important regional assets.
- L. In February 2015, the Parties entered an Interlocal Agreement for Cooperative Planning, Design, and Construction of the Chambers Creek Canyon Trail.
- M. In January 2017, the Parties submitted a joint grant application to the Recreation Trails Program (RTP) to fund construction of a pedestrian bridge over Chambers Creek just west of Kobayashi Park.
- N. In February 2017, the Parties released a Preliminary Design Report for the Chambers Creek Canyon Trail. The Design Report defines a final trail alignment with cost estimates for Chambers Creek Canyon including trail surfacing, bridge and boardwalk location, and trailhead designs and locations. The Design Report was jointly funded by the three Parties.
- O. The Parties have mutually determined that the public interest would be best served by the Parties to continue to work collaboratively on the Trail between the Chambers Creek Road Trailhead and Kobayashi Park/Phillips Road, including trail connections to street ends on both sides of the canyon, boardwalks crossing sensitive areas in the canyon, and two pedestrian bridge crossings between the north and south sides of the canyon.
- P. This Agreement is entered into pursuant to RCW 39.34 (Interlocal Cooperation Act). The Parties represent that under state law, including but not limited to RCW 35.75, RCW 36.34.340, RCW 36.75.060, RCW 36.89.030, RCW 47.01.260 and RCW 67.20.010, they each have authority to perform the services, activities, and undertakings contemplated herein.

NOW, THEREFORE, the Parties agree as follows:

TERMS AND CONDITIONS

- 1. INCORPORATION OF RECITALS. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein.
- 2. PURPOSE. The Purpose of this Agreement is to establish a framework for the Parties to cooperate and participate in the planning, design and permitting work for the Trail,

boardwalk and bridges and associated trail connections and amenities as necessary, and to collaboratively seek grants and other funding sources for the Trail located between the Chambers Creek Road Trailhead and Kobayashi Park/Phillips Road.

3. PARTIES' ROLES. The Parties' roles are as follows:

3.1 University Place. In accordance with the Joint Procedural Agreement, UP will act as the lead agency and provide the project management necessary for planning, design and permitting work of the trail, boardwalk and bridges and associated Trail connections and amenities as necessary. UP will participate in funding and the grant application process, and will provide right-of-access to lands it owns in the canyon as set forth more fully below. As the lead agency, University Place will be advised and informed by the Designated Representatives identified in Section 5.

3.2 Lakewood. Lakewood will cooperate and participate in the planning, design and permitting work for the Trail, boardwalk and bridges and associated Trail connections and amenities as necessary. Lakewood will participate in funding and the grant application process.

3.3 Pierce County. Pierce County will cooperate and participate in the planning, design, and permitting work for the Trail, boardwalk and bridges and associated Trail connections and amenities as necessary. The County will participate in funding, the grant application process and provide right-of-access to lands it owns in the canyon as set forth more fully below.

3.4 This Agreement covers the planning, design and permitting work on this project leading to construction of the Trail. This Agreement is not intended to address all of the construction, operation and maintenance phases of the Trail project. If grants and other funding resources become available and are awarded for construction of the Trail, boardwalks, bridges, Trail connections and amenities, the Parties fully contemplate that further amendments to this Agreement will be necessary to further define roles and responsibilities regarding the construction, operation and maintenance of the Trail and its components.

4. TERM. The term of this Agreement shall be five (5) years, commencing on the 1st day of _____ 2018, and terminating on the 31st day of December 2022, unless sooner terminated as provided in Section 9 or extended by amendment as provided in section 14.

5. DESIGNATED REPRESENTATIVES

City of University Place:

Gary Cooper, Director
Parks and Public Works
City of University Place
4951 Grandview Drive West
University Place, WA 98467
Phone: 253.460.6494

City of Lakewood:

Mary Dodsworth, Director
Parks, Recreation and Community Services
City of Lakewood
6000 Main Street S.W.
Lakewood, WA 98499-5027
Phone: 253-859-2489

Pierce County:

Roxanne Miles, Director
Parks and Recreation Services
Pierce County
9112 Lakewood Drive S.W.
Lakewood, WA 98499-3998
Phone: 253-798-4007

6. RELATIONSHIPS AMONG THE PARTIES.

6.1 Finance of Trail Design or Development. The Parties anticipate that they will each voluntarily contribute capital improvement program ("CIP") or other funds toward the final design, permitting, or development of the Trail project, in amounts to be determined later. Nothing in this Agreement obligates any Party to fund any aspect of the Trail project contemplated herein. However, once a Party voluntarily commits to contribute particular funds towards the Trail project, then such Party will be obligated to contribute such funds unless and until the Parties mutually negotiate another outcome. Parties that commit to contribute funds toward Trail design and development are termed "Funding Parties" for purposes of this Agreement.

6.2 Manner of Collecting, Holding, and Accounting for Money. A lead agency will be designated by mutual agreement of the Parties for each funded project for the design, permitting, and construction of the Trail. The lead agency will provide budget and accounting documentation to Funding Parties. The lead agency's budget and accounting documentation will be consistent with generally accepted accounting principles as well as any additional guidance provided by the Parties through the Designated Representatives. During the project, the lead agency will invoice the Funding Parties in advance of actual expenditures, on a quarterly basis or such other basis as the Parties may decide. The invoice will show the sum total of funds requested for the coming quarter or other period, each Funding Party's share of that total, and will identify the proposed expenditures by cost category, activity code or such other criteria as the Parties may agree upon. The Funding Parties will provide funds to the lead agency within thirty (30) calendar days of invoice receipt. The lead agency will deposit the funds in a CIP account, from which they may expend funds on the Trail project.

The lead agency will also prepare and distribute to all Parties, on a quarterly basis or such other basis as the Parties may decide, a receipt or accounting statement showing the actual expenditures from the immediate preceding quarter and the current account balance, if any. Furthermore, the lead agency will cooperate with individual Parties to meet any other specific accounting or bookkeeping requirements they may have.

- 6.3 Parties' Options Not Limited. Nothing in this Agreement shall limit the Parties' legal rights or remedies, or their broader freedom to creatively resolve the contingencies addressed in this section or other contingencies not contemplated in this Agreement; PROVIDED, that the Parties shall attempt to work cooperatively in good faith through the Designated Representatives as set forth above; and provided further, that in the event of a dispute they shall first utilize the dispute resolution process set forth in Section 9 below.

7. RIGHT OF ENTRY

- 7.1 County-Granted Right of Entry: The County hereby grants UP and Lakewood, their employees, agents, contractors and consultants an irrevocable right to enter and use the real property described as tax parcels 0220224001, 0220271001, 0220271008, 0220271011, 0220271013, 0220271045, 0220271064, 0220272012, 0220272030, 0220275015, 0220275016, 0220275017, 0220281037, 0220281040, 0220281041, 0220282015, 0220282016, 0220283013, 0220285023, 0220291009, 0220294019, 0220294020, 0220294023, 0220294024, 9085900590, 0220282009, 0220272029, 0220282019, 0220291020, 6430493940, and any abutting County road Right-of-Way ("Property") for the purpose of planning, design and permitting work for the Trail, boardwalk and bridges and associated Trail connections and amenities as necessary, and to collaboratively seek grants and other funding sources for the Trail located between the Chambers Creek Road Trailhead and Kobayashi Park/Phillips Road.
- 7.2 UP-Granted Right of Entry: UP hereby grants to the County and Lakewood, their employees, agents, contractors and consultants an irrevocable right to enter and use the real property described as tax parcels 0220271072, 0220271069, 0220281034, 4002910220, 4002640190 and any abutting City road Right-of-Way ("Property") for the purpose of planning, design and permitting work for the Trail, boardwalk and bridges and associated Trail connections and amenities as necessary, and to collaboratively seek grants and other funding sources for the Trail located between the Chambers Creek Road Trailhead and Kobayashi Park/Phillips Road.
- 7.3 Lakewood-Granted Right of Entry: Lakewood hereby grants to the County and UP, their employees, agents, contractors and consultants an irrevocable right to enter and use any abutting City road Right-of-Way ("Property") for the purpose of planning, design and permitting work for the Trail, boardwalk and bridges and associated Trail connections and amenities as necessary, and to collaboratively seek grants and other funding sources for the Trail located between the Chambers Creek Road Trailhead and Kobayashi Park/Phillips Road.
- 7.4 Maintenance of Properties: These rights of entry shall commence on the date of this Agreement and shall expire on December 31, 2022 unless earlier terminated or extended by the grantees. Prior to its expiration, all grantees will return the property to a condition reasonably comparable to the condition of the Property prior to the effective date of this Agreement, except to the extent that changes to the condition of the Property did not occur as a result of an act of any grantee, its employees, agents, contractors, or consultants. Gates will be secured, and fences, if temporarily

removed, shall be replaced. All excavations shall be filled and leveled. There shall be no cutting or removal of paved surfaces without prior notice and written approval by the appropriate grantors.

- 7.5 Access: Access will typically be by foot, light duty truck or car along common access ways or trails and with prior notice in a manner mutually agreed upon. No vehicles larger than a light duty pick-up truck shall be permitted on the Property without prior notice and written approval by the appropriate grantor. All grantees understand the Property includes an active trail used by the general public and the rights herein granted shall at all times be exercised in a manner that does not unreasonably interfere with the use of the Property by the grantors.

8. HOLD HARMLESS AND INDEMNITY AGREEMENT

Each party (the Indemnitor) agrees to defend, indemnify and save harmless each other (the Indemnitees), their board or council members, officers, agents and employees, from and against all loss or expense including, but not limited to, judgments, settlements, attorney's fees and costs by reason of any and all claims for damages, penalties or other relief based upon the Indemnitor's alleged negligence, or wrongful conduct, except for the injuries, penalties and damages caused by the sole negligence or wrongful conduct of the Indemnitor. Such claims for damages or other relief include, but are not limited to, those for personal or bodily injury including death from such injury, property damage, torts, defamation, penalties imposed by any agency of the state or federal government for failure to comply with applicable law in the performance of this Agreement. If the claim, suit or action involves concurrent negligence of the Parties, the indemnity provisions provided herein shall be applicable only to the extent of the percentage of each party's negligence. It is further and expressly understood that the indemnification provided herein constitutes each party's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

9. **TERMINATION.** This Agreement is subject to termination based upon the following:

9.1 Necessity. In the event that any of the parties determines that termination of this Agreement is necessary due to lack of funding or any other reason that justifies termination, one of the parties shall give the other Parties thirty (30) days' written notice of termination of this Agreement. Upon termination of the Agreement, all Parties shall be released from any future funding or other obligations related to this Agreement.

9.2 Default. By reason of a breach of this Agreement by a Party, the other Parties may terminate this Agreement; provided that written notice specifying the breach, and thirty (30) days to cure the breach is given, and thereafter, in the absence of a substantial cure, the dispute resolution procedures set forth in Section 11 below are followed. The notice and dispute resolution requirements do not apply where protection of the public's health, welfare, or safety requires immediate termination.

- 9.3 Lack of Appropriation. Any Party's obligation under this Agreement that may extend beyond the current appropriation year is expressly conditioned upon that Party's legislative appropriation of sufficient funds to support the activities described in this Agreement. If the Party's legislative body does not appropriate sufficient funds for those purposes, then that Party's participation under this Agreement shall terminate automatically at the end of the current appropriation year.
- 9.4 Public Convenience. Any Party may withdraw from the Agreement for public convenience upon thirty (30) calendar days' written notice, provided that to the extent each Party has obligated itself to provide funding for the Trail project, that funding obligation shall survive the termination of the Agreement and funding shall continue to be provided by the Party until the end of the Party's current appropriation year, after which the Party shall have no further funding obligation to the Trail project.
- 9.5 Account Close-Out If Project Abandoned. If, for any reason, the Trail project is abandoned or otherwise terminated before the Trail design, permitting, or construction is completed, then the lead agency for each project will settle up all remaining obligations, close out the project account, liquidate or return personal property consistent with applicable surplus requirements, provide a final account summary to the other Funding Parties, and return any unspent funds on a prorated basis that reflects each Funding Party's relative contribution to the project.
10. **NO SEPARATE ENTITY CREATED.** This Agreement does not create any separate legal or administrative entity. This Agreement shall be administered by the Public Works, Parks & Facilities Director for the City of University Place, the Parks, Recreation and Community Services Director for the City of Lakewood, and the Director of Parks and Recreation Services for Pierce County. There shall be no joint financing or jointly acquired or held assets and the Agreement will terminate as described herein.
11. **DISPUTE RESOLUTION.** Unless otherwise specified, disputes regarding any matter contained herein shall be referred to the City Managers or their designees for the Cities of University Place and Lakewood and to the Pierce County Executive or designee for Pierce County for mediation and/or settlement. Any controversy or claim arising out of, or relative to this Agreement or the alleged breach thereof that cannot be resolved by the Lakewood and University Place City Managers and the Pierce County Executive or their designees may be submitted to a mediator to resolve disputes should the Parties agree to utilize the services of a mediator. The cost of mediating a dispute shall be borne equally by all the Parties.
12. **NOTICE.** Any written notice, which is required or permitted regarding this Agreement, shall be given by U.S. first-class mail or by personal delivery to the designated representative of the Party which is the intended recipient of the notice at its address as set forth in Section 5 – Designated Representatives.

13. ENTIRE AGREEMENT. This Agreement contains the Parties' entire understanding with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein.
14. AMENDMENTS IN WRITING. Any amendment or modification of this Agreement must be in writing and executed by the Parties agreeing thereto.
15. NO CONTINUING WAIVER OF DEFAULT. The waiver of any default under any provision of this Agreement must be in writing to be valid and shall not constitute a waiver of any other default, whether of the same or of any other provision.
16. LEGISLATIVE APPROVAL. The Interlocal Cooperation Act, Chapter 39.34 RCW, requires that this Agreement be approved by the Parties' legislative bodies prior to execution. The Parties hereby affirm their intent to use their best efforts to seek timely approval of the Agreement by their respective legislative bodies.
17. APPLICABLE LAW. This Agreement shall be construed under the laws of the State of Washington.
18. VENUE. Venue for any lawsuit arising out of this Agreement or for any action to enforce any term of this Agreement shall be Pierce County, Washington.
19. EXECUTION IN COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original.
20. ASSIGNABILITY; TERMS AND CONDITIONS BINDING ON SUCCESSORS AND ASSIGNS. Any or all of the rights and obligations of a Party to this Agreement may be assigned and delegated to other persons, firms, or corporations only with the express written consent of the other Parties. This Agreement shall be binding on such approved assignees and delegates.
21. NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement shall create or be construed to create any rights, duties, obligations, or cause of action in any person not a party to it.
22. NO RESTRICTION ON POLICE POWERS. Nothing in this Agreement shall diminish any of the Parties' governmental or police powers.
23. SEVERABILITY. If any provision of this Agreement is deemed unlawful or unenforceable, such provision shall be fully severable, and the remainder of this Agreement shall be in full force and effect with the automatic addition of a provision as similar in its terms to such illegal or unenforceable provision as may be possible to make such provision legal and enforceable.

EXECUTED THIS _____ DAY OF _____, 2018.

City of University Place

City of Lakewood

By: _____

By: _____

TITLE: _____

TITLE: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

University Place City Attorney

Lakewood City Attorney

Pierce County

By: _____

TITLE: _____

APPROVED AS TO FORM:

Deputy Prosecuting Attorney