

RESOLUTION NO. 900

A RESOLUTION OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, APPROVING AN INTERLOCAL AGREEMENT WITH CITY OF LAKEWOOD AND PIERCE COUNTY FOR COOPERATIVE PLANNING, DESIGN, CONSTRUCTION AND MAINTENANCE OF THE CHAMBERS CREEK CANYON TRAIL

WHEREAS, Chapter 39.34 RCW allows municipalities to enter into interlocal agreements with other local governments to carry out their responsibilities; and

WHEREAS, the Chambers Creek Canyon Trail ("Trail") project will be constructed on certain real property owned by Pierce County and within the cities of Lakewood and University Place; and

WHEREAS, the City of University Place and the City of Lakewood and Pierce County desire to work collaboratively on this project, as evidenced by the prior (now expired) interlocal agreement for this purpose, and there is a need for a new interlocal agreement to memorialize this relationship;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AS FOLLOWS:

Section 1. Approval of form of Interlocal Agreement. The City Council hereby approves execution of the Interlocal Agreement between the City of University Place, the City of Lakewood, and Pierce County in substantially the form accompanying this Resolution.

Section 2. Completion of Transaction. The City Manager or his designee is authorized to take and execute any additional measures or documents that may be necessary to complete this transaction, which are consistent with the approved form of documents attached, and the terms of this Resolution.

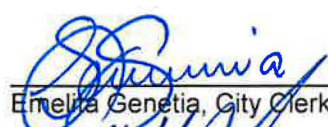
Section 3. Effective Date. This Resolution shall be effective immediately upon adoption by the City Council.

ADOPTED BY THE CITY COUNCIL ON OCTOBER 21, 2019.



Kent Keel, Mayor

ATTEST:



Emelita Genetia, City Clerk

APPROVED AS TO FORM:



Matthew S. Kaser, City Attorney

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

THIS INTERLOCAL AGREEMENT (hereinafter referred to as this "AGREEMENT") is made and entered into this ____ day of, 2019, 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 Parks and Recreation (hereinafter also referred to as "PARKS"); collectively referred to in this AGREEMENT as the "PARTIES" and singularly referred to as a "PARTY."

RECITALS

- I. The Chambers Creek Canyon Trail (hereinafter referred to as "TRAIL") project will be constructed on certain real property owned by the County and the cities of Lakewood and UP. 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. See Appendix A for tax parcel ownership, county and city right of ways and proposed trailhead locations.
- II. In 1997, following an extensive public process, Pierce 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.
- III. In June of 1997 UP adopted its first Parks, Recreation and Open Space Plan (UP PROS Plan) citing the Chambers Creek Properties Master Site Plan and describing the TRAIL in detail. The TRAIL is identified in the 2007 and 2014 UP PROS Plan updates.
- IV. On June 19, 2000, the PARKS, UP and LAKEWOOD entered into a Joint Procedural Agreement (JPA) to facilitate and develop the Chambers Creek Properties, including the TRAIL.
- V. In 2004, with the help of the Washington State Recreation and Conservation Office (RCO) and Pierce County Conservation Futures Program, UP purchased the Kobayashi property, which is the location of the eastern end of the TRAIL.
- VI. On August 6, 2012 the UP City Council adopted Resolution 696, Council Goals for 2013 – 2014 identifying the development of 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 as funding allows.
- VII. On January 29, 2013, PARKS, 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.

- VIII. On November 26, 2013, the PARTIES completed the Draft Chambers Creek Canyon Trail Plan and agreed to enter into an interlocal agreement for the planning and design of the TRAIL.
- IX. In February 2014, PARKS 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 Sub-Regional Trail and the upper portion as a Connector Trail. The County PROS Plan indicates trail development is a high priority and includes capital improvements for the TRAIL.
- X. On March 3, 2014, LAKEWOOD adopted the LAKEWOOD Legacy Plan which identified the TRAIL as an important regional asset, which if completed, contributed to LAKEWOODS plan mission and level of service standards. Trail expansion and trailhead improvements were proposed in the plan and included in capital improvement plans.
- XI. In February 2015, the PARTIES entered an Interlocal Agreement for Cooperative Planning, Design, and Construction of the TRAIL.
- XII. In January 2017, the PARTIES submitted a joint grant application to the RCO Recreational Trails Program (RTP) to fund construction of a pedestrian bridge over Chambers Creek west of Kobayashi Park.
- XIII. In February 2017, the PARTIES jointly funded a Preliminary Design Report for the TRAIL that determined a final trail alignment and provided cost estimates for the TRAIL.
- XIV. The original joint use agreement expired in 2017. It is in the public interest that the PARTIES continue to work collaboratively on the TRAIL between the Chambers Creek Road Trailhead and the Chambers Creek Road West Trailhead, 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.
- XV. 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 36.89.030, and RCW 67.20.010, they each have authority to perform the services, activities, and undertakings contemplated herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the PARTIES agree as follows:

TERMS AND CONDITIONS

- I. **INCORPORATION OF RECITALS.** Each of the recitals set forth above is incorporated into this AGREEMENT as though fully set forth herein.
- II. **PURPOSE.** The Purpose of this AGREEMENT is to establish a framework for the PARTIES to cooperate and to jointly commit to the planning, design, permitting, construction and long-term maintenance of the TRAIL.
The TRAIL is defined as improved pedestrian pathways consisting of unpaved (soft) or boardwalk surfaces. This definition may include formal access points as agreed upon by the PARTIES but does not apply to informal routes connecting to the TRAIL that were constructed by private entities without approval.
- III. **PARTIES' ROLES.**
 - A. The PARTIES jointly agree to:
 1. Provide funding for the permitting, design, construction and long-term maintenance of the TRAIL.
 2. Sponsor and assist with the grant application process.
 3. Participate in fundraising, seeking donations, local matching funds and in-kind services for TRAIL projects in consultation with the other PARTIES.
 4. Provide right-of-access to all real property defined in Appendix A.
 5. Design and construct proposed trailheads on their properties (as defined in Appendix A) within ten years of trail construction.
 6. Maintain proposed trail and trailheads on their properties for the term of this agreement.
 - B. UP. In accordance with the JPA, UP will:
 1. Act as the lead agency for the planning, full design and permitting work of the TRAIL, in consultation with the Designated Representatives identified in Section V.
 2. Complete the full design and secure all necessary permits prior to construction timeline, as agreed on by PARTIES.
 - C. LAKEWOOD. LAKEWOOD will:
 1. Cooperate and participate in the planning, design and permitting work for the TRAIL.
 - D. PARKS. PARKS will:
 1. Cooperate and participate in the planning, design, and permitting work for the TRAIL.
 2. Act as the lead agency for construction of the TRAIL.

IV. TERM. The term of this AGREEMENT shall be ten (10) years, commencing upon execution of this agreement, unless sooner terminated as provided in Section XI or extended by amendment as provided in section XVI.

V. DESIGNATED REPRESENTATIVES

A. UP:

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

B. 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

C. PARKS:

Kimberly Freeman, Superintendent
Pierce County Parks and Recreation Service, Resource Stewardship
9112 Lakewood Blvd.
Lakewood, WA 98499-3998
Phone: 253-798-4009

VI. RELATIONSHIPS AMONG THE PARTIES.

A. Funding of Trail Design or Development. The PARTIES will jointly contribute funds toward the final design, permitting, construction and maintenance of the TRAIL. Nothing in this AGREEMENT obligates any PARTY to fund any aspect of the project contemplated herein beyond those funds appropriated by their respective legislatures or other governing bodies in each fiscal year.

B. Manner of Collecting, Holding, and Accounting for Money. UP will act as the lead agency for each funded project for the design and permitting, of the TRAIL. COUNTY will act as lead for each funded project for the construction and maintenance of the TRAIL. The lead agency will provide budget and accounting documentation to the PARTIES. 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.

C. 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 XIV below.

VII. RIGHT OF ENTRY

A. PARTIES hereby grant to one another an irrevocable Right of Entry. This Right of Entry gives all PARTIES' employees, agents, contractors and consultants an irrevocable right to enter and use their respective properties as described in Appendix A for the purpose of planning, design, permitting, construction and maintenance of the TRAIL as necessary.

B. Care of Properties: These Rights of Entry shall commence on the date of this AGREEMENT and shall expire ten (10) years from date of execution unless earlier terminated or extended by the PARTIES. Prior to its expiration, all PARTIES will return the properties to a condition reasonably comparable to the condition of the properties prior to the effective date of this AGREEMENT, except for trail improvements made in accordance with this agreement and except to the extent that changes to the condition of the properties did not occur as a result of an act of any PARTY, 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 PARTIES.

C. Access: Access will typically be by foot, light duty truck or car along common access ways or trails. No vehicles larger than a light duty pick-up truck shall be permitted on the properties except as needed for emergency vehicles. All PARTIES understand the properties include 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 properties by the PARTIES.

VIII. DESIGN PHASE

A. Planning. As the lead agency for planning, design, and permitting, UP will incorporate the Preliminary Design Report (2017) specifications as agreed upon by the PARTIES. Significant modifications from the Preliminary Design Report will be communicated to the PARTIES.

B. Permitting. As the lead agency for planning, design and permitting, UP will obtain all necessary Federal, State and Local permits.

C. Communications.

- a. UP will facilitate regular, factual and productive communication to ensure all PARTIES have an opportunity to participate in planning, design and permitting decision-making.
- b. All parties shall assist the Grant Holder, PARKS, in communicating necessary information with the RCO.

- D. Timeliness. UP will ensure that all design deadlines are met and all permitting is completed in a timely manner, with a deadline prior to the construction timeline, as agreed on by the PARTIES for full design and permitting.

IX. CONSTRUCTION PHASE

- A. General Obligation Regarding Construction. PARKS will complete all TRAIL construction and installation, working closely with UP and LAKEWOOD to make sure construction meets community needs as well as applicable state and local laws. PARKS, its agents, and contractors, will perform all work on the TRAIL in accordance with construction plans and specifications approved by all parties. PARKS will assume responsibility for or control over the working conditions and safety practices of employees, contractors, or subcontractors hired to perform any work on the TRAIL or its amenities.
- B. Trailhead Construction. The PARTIES are responsible for designing and constructing proposed trailheads as defined in Appendix B. The PARTIES agree to use the County PROS Plan, Appendix I: Trail Design Guidelines, "Trailheads" (page I-7) as guidance for their designs to ensure continuity throughout the TRAIL system.
- C. Minimum Plan Requirements. During construction planning, PARKS will address the management of construction impacts on site, including but not limited to stockpiling of materials, equipment storage, and erosion and sediment control.
- D. Public Notice. PARKS will install safety barriers, signage regarding temporary detours and/or closures and any other appropriate device or infrastructure necessary to ensure public safety during construction. PARKS will leave such measures in place until after UP and LAKEWOOD have had the opportunity to inspect the TRAIL and/or TRAIL amenities upon completion and all parties determine the construction conforms to the construction plans. The PARTIES will work together to inform the public about plans to develop or open new TRAIL sections. The PARTIES will provide each other the opportunity to review and comment on all public notices regarding trail development, closures or openings.
- E. Communication. PARKS will facilitate regular, factual and productive communication to ensure all PARTIES have an opportunity to participate in decision-making. PARKS will give UP and LAKEWOOD reasonable prior notice of all pre-construction and construction meetings and of the commencement of construction, so that UP and LAKEWOOD may attend these meetings and inspect the TRAIL and/or TRAIL amenities during construction.

X. POST CONSTRUCTION PHASE

- A. PARKS will complete all work within the project area in a neat and efficient manner. PARKS will remove all construction-related debris and restore decommissioned or volunteer trails with native plants. PARKS agrees to provide

final plans of TRAIL improvements and/or amenities to UP and LAKEWOOD as soon as possible after completion of TRAIL work.

B. Insurance:

- a. During the time of construction of the improvements, the PARTIES shall require their contractors, subcontractors, and other agents to carry appropriate and customary insurance coverages and amounts. In addition, the PARTIES shall maintain reasonable and customary liability insurance for bodily injury, personal injury, death, contractual liability and property damage arising out of, or having to do with the PARTIES' and the general public's use, occupancy, and possession of, or acts or omission on or about the TRAIL, and shall provide each other with satisfactory evidence of such insurance on an annual basis. Such insurance shall name the other Parties as an additional insured with respect to all coverages, with the exception of Worker's Compensation Insurance.
- b. If a Party is a municipal corporation or a subdivision or an agency of the State of Washington and is self-insured for any of the above insurance requirements, a certification of self-insurance shall be attached hereto and be incorporated by reference and shall constitute compliance with this section.
- c. PARKS will ensure that all new infrastructure on PARKS property (See Attachment A) is protected by PARKS' insurance. The PARTIES agree to jointly fund expenses related to infrastructure damage not covered by PARKS' insurance.

XI. LONG-TERM MAINTENANCE PHASE

- A. The PARTIES shall develop, adopt and commit to a long-term maintenance plan that will ensure the trail conditions remain at or near their original construction conditions or intended standards.
- B. PARKS will act as lead agency to implement the long-term maintenance plan
- C. The PARTIES shall jointly and equally provide funding or services to adequately meet the intended standards of the adopted long-term maintenance plan based on expected annual costs.
- D. Parks shall not modify the long-term maintenance plan without communicating with UP and LAKEWOOD.
- E. The PARTIES will maintain trailheads on their properties, as identified in Appendix A, to the intended standards and at their own expense.

XII. 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.

XIII. **TERMINATION.** This AGREEMENT is subject to termination based upon the following:

- A. 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.
- B. 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 XIV 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.
- C. 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 for which funds were appropriated. The PARTIES shall notify each other in writing for any such non-allocation of funds as soon as practicable under the circumstances.
- D. 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 and maintenance fund, that funding obligation shall survive the termination of the

AGREEMENT until the end of the withdrawing PARTY's current appropriation year, after which the withdrawing PARTY shall have no further funding obligation to the TRAIL or maintenance fund.

E. 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 (UP) 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 PARTIES, and return any unspent funds on a prorated basis that reflects each PARTY's relative contribution to the project.

XIV. 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 for Pierce County. The PARTIES shall not financially obligate one another by seeking joint debt financing or by attempting to acquire or hold joint assets. Doing so will result in termination of this AGREEMENT as described herein.

XV. 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 the PARTIES.

XVI. 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 V – Designated Representatives.

XVII. 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.

XVIII. AMENDMENTS IN WRITING. Any amendment or modification of this AGREEMENT must be in writing and executed by the PARTIES agreeing thereto.

XIX. 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.

- XX. **LEGISLATIVE APPROVAL.** The Interlocal Cooperation Act, RCW 39.34 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.
- XXI. **APPLICABLE LAW.** This AGREEMENT shall be construed under the laws of the State of Washington.
- XXII. **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.
- XXIII. **EXECUTION IN COUNTERPARTS.** This AGREEMENT may be executed in counterparts, each of which shall be deemed an original.
- XXIV. **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.
- XXV. **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.
- XXVI. **NO RESTRICTION ON POLICE POWERS.** Nothing in this AGREEMENT shall diminish any of the PARTIES' governmental or police powers.
- XXVII. **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 _____, 2019.

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

APPENDIX A

- A. The following tax parcels and their abutting county road right-of-ways are owned by PARKS: 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. The following trailheads are owned by PARKS: 91st Ct. SW, and Chambers Creek Rd W.
- B. The following tax parcels and their abutting city road right-of-ways are owned by UP: 0220271072, 0220271069, 0220281034, 4002910220, 4002640190. The following trailheads are owned by UP: Chambers Creek Rd. East, Kobayashi and 86th Ave W.
- C. The following city road right-of-ways and trailheads are owned by LAKEWOOD: Phillips Rd., and Zircon Dr. SW.