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 PIERCE COUNTY, WASHINGTON

AGREEMENT BETWEEN PIERCE COUNTY AND THE CITY OF UNIVERSITY PLACE REGARDING GRANDVIEW DRIVE WEST PHASE III AND THE CHAMBERS CREEK PROPERTIES

THIS AGREEMENT is entered into this day by and between **PIERCE COUNTY**, a political subdivision of the State of Washington (herein referred to as "County") and the City of University Place, a municipal corporation of the State of Washington (herein referred to as "City").

WHEREAS, County owns approximately 928 acres of property which are collectively known as the Chambers Creek Properties, including 700 acres located in the City of University Place, from which the County provides a variety of regional services; and

WHEREAS, the County is utilizing and developing the Chambers Creek Properties in accordance with a long-range plan entitled the *Chambers Creek Properties Master Site Plan* adopted by Ordinance No. 97-71S by the County in August 1997; and

WHEREAS, on 3/12/00, the County, the City by Resolution No. 257, and the City of Lakewood by Motion 2000-01, executed an agreement called the Joint Procedural Agreement which set forth the development process and procedures necessary to facilitate implementation of the *Chambers Creek Properties Master Site Plan* and the projects contained therein; and

WHEREAS, the Chambers Creek Properties are bordered on the eastside by Grandview Drive West and on the northside by 64th Street both of which are City streets; and

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WHEREAS, one of the early projects identified as occurring within the first ten years after the adoption of the *Chambers Creek Properties Master Site Plan* is the Grandview/64th Street Trail and Buffer which will run parallel to Grandview Drive West; and

WHEREAS, beginning in 1996, the City has been improving portions of Grandview Drive West and now seeks to install additional improvements on Grandview Drive West from 48th Avenue to 64th Street West (known as Grandview Drive West Phase III); and

WHEREAS, the City's Grandview Drive West Phase III project as designed will necessitate that the County grant a perpetual non-exclusive easement for right of way and otherwise permit and allow the City to utilize a portion of the Chambers Creek Properties fronting on Grandview Drive West to complete the construction of the improvements; and

WHEREAS, the parties wish to memorialize the agreement between them relating to the City's street improvement and the County's construction on the Chambers Creek Properties;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is mutually agreed by and between the County and the City as follows:

SECTION 1. PURPOSE.

Purpose of this agreement is to document the understanding reached between the City and the County for the beneficial improvement of Grandview Drive West and the coordination of the Grandview Drive West improvements with the County's design and construction of its Environmental Services Building and associated improvements in Area 5 and the Grandview/64th Street Trail and Buffer project. The County's goals are: (1) to maintain the integrity of the buffer required around the Chambers Creek Properties; (2) to ensure continued compliance with Washington State Department of Natural Resources mining requirements; (3) to achieve maximum economies for the construction activities of the County and City; and (4) to identify and perform appropriate mitigation measures associated with the County's development of the Chambers Creek Properties prior to such development. The City's goals are: (1) to obtain right of way easements necessary to construct the Grandview Drive West Phase III improvements;

and (2) to facilitate the construction of the Grandview/64th Street Trail and Buffer in an earlier timeframe than originally anticipated.

SECTION 2. CITY RESPONSIBILITIES.

- A. City shall design and construct the Grandview Drive West Phase III right-of-way improvements.** The City will design and construct the Grandview Drive West Phase III street improvements within City rights-of-way and within the additional perpetual non-exclusive easement area provided by this Agreement. The non-exclusive easement together with a temporary construction easement are described in Exhibit "A" attached hereto and incorporated by this reference. The non-exclusive easement shall provide rights necessary for the City and its franchise holders to construct, maintain, inspect and repair street, utility and storm drainage improvements upon and within the property legally described in the easement. Except as otherwise provided in this Agreement, the responsibility for funding the Grandview Drive West Phase III Street Improvements within the right-of-way and non-exclusive easement shall be the City's.
- B. City shall be responsible for relocating certain chain link fencing with barbed wire along Grandview Drive West at County's expense.** At the County's expense, the City will reinstall the existing chain link fence with barbed wire or provide new similar fencing as necessary on the Chambers Creek Property that is affected by construction within the non-exclusive easement legally described in Exhibit A. The County shall provide the City with a fencing plan showing the location and type of fence to be reinstalled. The City shall relocate or reinstall the fencing on the western line of the non-exclusive easement or at such other location as the County determines. The fencing installed by the City shall be similar to the existing chain link fencing with barbwire presently used on the site. The County shall not be required to obtain any permits or pay any fees for the reinstallation of fencing removed by the City.

To insure that mining safety is not compromised during construction of the project, the City will insure that the County's property is secured at all times during construction by fencing or by some other mutually agreeable method.

- C. **City shall construct retaining structures as necessary to protect mature trees within the temporary construction easement area used for transition between the sidewalk and adjacent property.** The City will install retaining structures acceptable to the County in conjunction with the Grandview Drive West Phase III improvements in the areas where more than five feet (horizontally behind edge of sidewalk) is required for transitions between existing slopes and the improvements. Slopes within the transition areas shall not exceed 1.5:1 for cut slopes and 3:1 for fill slopes without approval by the County. The City will install additional retaining structures acceptable to the County to save mature trees identified by the County within the non-exclusive easement and five foot transition areas. After initial surveying of the street improvements by the City's contractor and before clearing and grubbing begins, representatives of the County, City and City's contractor shall jointly walk the non-exclusive easement and temporary easement areas and the County shall mark the mature trees which should not be disturbed by the street improvements and protected from construction activities.
- D. **City shall grant a variance from its code to permit a combined urban trail/sidewalk concept.** The City's Grandview Drive West Phase III project anticipates the installation of sidewalks running parallel to Grandview Drive West. The County, in its development plans for that portion of the Chambers Creek Properties adjacent to Grandview Drive West and 64th Street West, has designed an urban trail system, some portion of which will run parallel to Grandview Drive West and 64th Street West and some portions which will not. The City and the County recognize the benefit an urban trail will have to the public enjoyment of the Chambers Creek Properties. Therefore, the City shall approve a variation allowing the construction of a joint urban trail (12 foot wide concrete surface with

a meandering location) in lieu of constructing both a trail and separated sidewalk from the start of the 62nd Street roundabout, south around the new curve at 64th Street and Grandview Drive and then continuing along 64th Street to the intersection of 64th Street and Chambers Creek Road (south). The City and County shall equally share in the cost of constructing the joint urban trail starting at the 62nd Street roundabout and continuing south around the curve at Grandview and 64th Street to the end of the Grandview Drive West Phase III project. The County shall be responsible for the cost of constructing the remaining portion of the joint urban trail. The County shall be responsible for maintaining the entire length of the joint urban trail.

- E. City shall allow a temporary waiver to allow truck traffic southbound on Grandview Drive between 62nd and 64th Streets for a two year duration.** The improvement of Grandview Drive West presents an opportunity to improve the design of the three way intersection at Grandview Drive West and 64th Street West. The County has maintained an entrance at 64th Street West and Grandview Drive West to its road shop facility and to the Glacier Northwest (formerly Lone Star Northwest) Gravel Pit, owned by the County and leased to Glacier Northwest. In developing the plan for the Environmental Services Building, the County developed an alternative access for the road shop facility on 64th Street West to a location compatible with future site design. Therefore, the County will no longer need the entrance at the corner of Grandview Drive West and 64th Street West. In conjunction with the City's road improvements, the County has proceeded with plans for the entrance to Area 1. The plan will also close the current entrance point at 64th Street West and Grandview Drive West and will result in the construction by the City of a roundabout at 62nd Street West and Grandview Drive West. Relocation of the Grandview Drive West entrance will require existing truck traffic to traverse Grandview Drive West between 62nd and 64th Street West. The City currently has a ban on truck traffic on this portion of Grandview Drive West. The City recognizes the long-term public benefit

received by relocating to the north the Grandview Drive West entrance to the Chambers Creek Properties and the traffic safety issues associated with the alternative truck traffic routes. Therefore, simultaneously with the execution of this Agreement, the City agrees to take the legislative action necessary to temporarily allow southbound truck traffic on Grandview Drive West between 62nd and 64th Street West for a period not to exceed 2 years.

To reduce the impact of the relocation of the entrances to the Chambers Creek Properties and in support of the temporary waiver for truck traffic in the 6200-6400 blocks of Grandview Drive West, the County agrees to relocate the existing trailer storage activity utilized by County tenant Abitibi Consolidated to another portion of the Chambers Creek Properties. The County further agrees to require Abitibi trucks using the Chambers Creek Properties to exit onto Chambers Creek Road rather than Grandview Drive. The City will not require any permits, fees, or other compensation for this relocation.

To support a realignment of the intersection of Grandview Drive and 64th Street West, the County agrees to relocate the entranceway to the Chambers Creek Road Shop. The new location will be further east on 64th Street West approximately halfway between Grandview Drive and Chambers Creek Road at about the midpoint of the County's property along 64th Street West. This new entranceway will become the primary entranceway into what the Chambers Creek Master Site Plan refers to as Area 5 and to the location of the new Environmental Services Office Building and adjacent ball fields. The City agrees to allow temporary relocation and reconstruction of this entranceway at its new location without requiring any permits or fees. The County shall submit final plans for this entranceway to the City with the site plan for the Environmental Services Building.

- F. City shall accept grant of non-exclusive easement.** In order to install the Grandview Drive West Phase III right-of-way improvements the City requires additional right-of-way

from the County. The County is willing to grant a perpetual non-exclusive easement to the City in exchange for the City's acknowledgement that by accepting a non-exclusive easement, the property lines for the Chambers Creek Properties will remain the same, and that the granting of the easement will not alter the measurement of setbacks, nor create non-compliance with other City development standards which may apply to the County's property.

The City shall maintain all City facilities (e.g., curb, gutter, storm drainage and lighting) located within the easement area at City expense in a safe manner. The City shall not allow the facilities located in the non-exclusive easement area to be operated in an unsafe manner or to violate any applicable local, state or federal law or regulation.

As necessary, the City will support the County's efforts to amend the existing DNR Mining and Reclamation permit in order to allow the the installation of both the City's street improvements and the County's Grandview/64th Street Trail and Buffer improvements within the existing mining buffer area.

Once the non-exclusive easement is granted, the final design plans for City and County improvements within the non-exclusive easement area shall not be modified without the written approval of the City and County. Neither the County nor the City shall unreasonably withhold approval of design changes.

- G. City acknowledgment of urban trail as mitigation.** The parties recognize that the *Chambers Creek Properties Master Site Plan* and associated Final Environmental Impact Statement (FEIS) provides overall guidance and direction to the County in the development of the Chamber Creek Properties. The FEIS identified the Grandview/64th Trail and Buffer as a mitigation measure designed to offset some of the probable impacts of future developments identified in the Master Site Plan. As an identified mitigation measure, the City will not seek to impose additional mitigation on the development of the projects identified in the Master Site Plan beyond those already identified in the FEIS or

mitigation measures identified as rationally related during project specific environmental review.

Nothing in this agreement shall prohibit the City from requiring building, electrical, plumbing, and/or life safety permits which may be necessary for construction of any Master Site Plan project. Further, nothing in this agreement shall constitute a waiver of site specific mitigation that are logically related to the impact proposed. However, all conditions imposed on the County by the City shall be consistent with federal and state constitutional law.

H. City and County to share costs for the design and construction of the curve at 64th Street West and Grandview Drive. The City will acquire at the County's expense the additional right-of-way necessary for the curve from the adjoining property owner necessary to accommodate the design of the new curve at 64th Street West and Grandview. The redesigned curve will result in the relocation of the existing road to a new location within the newly acquired right-of-way. Once the curve is relocated, the City will initiate legislative steps to vacate the excess right-of-way lying west and south of the realignment of the 64th/Grandview intersection to the County. The vacation shall protect any existing utility easements. The vacation of the excess right-a-way for the new right-a-way shall be considered a like value exchange and not involve the exchange of any additional payment by the County. The area to be vacated by the City shall be any existing right-of-way located 30 feet west and south of the centerline of the new curve beginning with the start of the curve on Grandview Drive West and ending with the transition out of the curve on 64th Street West. After the street vacation is complete the joint urban trail shall be located on property owned by the County.

The City shall be responsible for the design and construction of the redesigned curve. The County agrees to be responsible for any additional design and construction costs of the redesigned curve beyond those costs the City would have reasonably expected to

incur with its original round-a-bout design for the intersection of 64th Street West and Grandview Drive West.

SECTION 3. COUNTY RESPONSIBILITY

A. County shall grant a perpetual non-exclusive easement to the City for the Grandview Drive West Phase III right-of-way improvements. Subject to the County's prior approval of the Grandview Drive West Phase III final design plans as provided in the previous section, the County hereby grants a perpetual non-exclusive easement to the City on the County's Chambers Creek Properties for the construction, maintenance and operation of certain street, utility and storm drainage improvements along Grandview Drive West. In consideration and exchange for the City building the Grandview Drive Phase III Street Improvements, the County hereby grants the non-exclusive easement to the City at no cost.

B. County to Provide Fencing Plan. The County shall provide a fencing plan to the City detailing the fencing type and reinstallation location for fencing previously located within the non-exclusive easement area and disturbed by the City during construction of the Grandview Phase III project.

C. County to design Trail and Cirque Plaza and acquire additional right-of-way for new curve at Grandview and 64th Street West. The County will design the Chambers Creek Properties Grandview/64th Street Trail and the Cirque Drive Plaza (also known as the viewpoint at 56th Street West). The County will make every effort to open the Cirque Drive Plaza and an initial section of the Chambers Creek Properties Grandview/64th Street Trail in conjunction with completion of the City's Grandview Drive West Phase III project

The County agrees to pay the additional costs of the redesigned curve beyond the design and construction costs the City would have reasonably incurred with its original round-a-bout design for the intersection of 64th Street West and Grandview Drive.

D. County shall provide owner representative to assist in construction. The County will assign an owners representative to represent the County's property interests and verify that construction occurs in accordance with this Agreement. The County shall promptly notify the City of any construction or property issues it feels are not in accordance with the non-exclusive easement, the final construction plans for the Grandview Drive Phase III project or this Agreement. The City shall work cooperatively with the County to resolve any construction issues to the mutual satisfaction of both parties.

SECTION 4. TERM OF THE AGREEMENT. The right of way easement granted herein shall be perpetual. All other terms of the Agreement shall be in full force and effect commencing on the date of execution of this Agreement and terminating on December 31, 2030. After the initial term, this Agreement shall automatically renew for one (1) year increments beginning January 1 and ending midnight, December 31, unless terminated by giving ninety (90) days written notice to the other party. Termination of this agreement shall have no affect on the obligations of either party to maintain the improvements installed by each on their respective property and right-of-way.

SECTION 5. INDEMNIFICATION AND DEFENSE. The County shall defend, indemnify, and save harmless the City, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the County, its officers, employees, or agents associated with this Agreement. In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule, regulation, resolution, custom, policy or practice is at issue, the City shall

defend the same at its sole expense, and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and attorney's service charges.

The City shall defend, indemnify and save harmless the County, its officers, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the City, its officers, employees or agents associated with this Agreement. In executing this Agreement, the City does not assume liability or responsibility for or in any way release the County from any liability or responsibility which arises in whole or in part from the existence or effect of County ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such County ordinance, rule, regulation, resolution, custom, policy, or practice is at issue, the County shall defend the same at its sole expense, and if judgment is entered or damages are awarded against the County, the City, or both, the County shall satisfy the same, including all chargeable costs and attorney's service charges.

SECTION 6. NO THIRD-PARTY BENEFICIARY. The County, by this Agreement, does not assume any contractual obligations to anyone other than the City. The City, by this Agreement, does not assume any contractual obligations to anyone other than the County. There is no third-party beneficiary to this Agreement.

SECTION 7. INSURANCE COVERAGE. The City shall maintain at all times during the course of this Agreement a general liability insurance policy or other comparable coverage with a self-insured retention of not more than \$500,000.00 and a policy limit of not less than \$5,000,000.00 dollars.

SECTION 8. NON-DISCRIMINATION. The County and the City certify that they are Equal Opportunity Employers.

SECTION 9. ASSIGNMENT. Neither the County nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

SECTION 10. NOTICE. Any formal notice or communication to be given by the County to the City under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

CITY OF UNIVERSITY PLACE
3715 Bridgeport Way West
University Place, WA 98466

Attn: * City Manager

Any formal notice or communication to be given by the City the County under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

PIERCE COUNTY
Pierce County Executive's Office
930 Tacoma Avenue South, Room 737
Tacoma, WA 98402-2100

Attention: Executive Director of Operations

The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either the City or the County giving written notice thereof to the other as herein provided.

SECTION 11. THE CITY AND THE COUNTY AS INDEPENDENT CONTRACTORS. The City is, and shall at all times be deemed to be, an independent contractor. The County is, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between City and the County or any of the County's agents or employees. The City and the County shall each independently retain all authority for the rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by the City and the County pursuant to this Agreement.

Nothing in this Agreement shall make any employee of the City a County employee or any employee of the County a City employee for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded County or City employee by virtue of their employment.

SECTION 12. WAIVER. No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement.

SECTION 13. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

SECTION 14. AMENDMENT. Provisions within this Agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved, and executed by duly authorized agents of both parties.

SECTION 15. FILING. Copies of this Agreement, together with the resolution of the Pierce County Council and the City Council approving and ratifying this Agreement, shall be filed with the City Clerk, the Pierce County Auditor, and the Secretary of State of Washington after execution of the Agreement by both parties.

SECTION 16. SEVERABILITY. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

IN WITNESS WHERE OF, the parties have caused this Agreement to be executed on this 17 day of MARCH, 2000.

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UNIVERSITY PLACE

[Signature]
CITY MANAGER

PIERCE COUNTY

Kae R. Goon 2/23/00
DEPARTMENT DIRECTOR Date

Approved as to Form:

[Signature]
CITY ATTORNEY

M. Peter Phully 02/24/00
DEP. PROSECUTING ATTY Date
(as to form only)

P. Kenny 3-10
BUDGET AND FINANCE Date

[Signature] 3/13/00
EXECUTIVE DIRECTOR Date
(if applicable)

[Signature] 3/17
COUNTY EXECUTIVE Date
(if over \$50,000)

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