

## OPERATING AGREEMENT

### Amendment No. 1

THIS AGREEMENT was initially made and entered on October 30, 2001, by and between Pierce County, a political subdivision of the State of Washington ("COUNTY"), and the Chambers Creek Foundation, a Washington private nonprofit corporation ("FOUNDATION"), and is replaced by this Amendment dated the 14<sup>th</sup> day of April, 2008.

### RECITALS

- I. The COUNTY owns approximately 932 acres in the vicinity of Chambers Creek in the cities of University Place and Lakewood and the Town of Steilacoom, County of Pierce, State of Washington, collectively known as the "Chambers Creek Properties". From these Properties, the County provides a variety of regional services including but not limited to administration, operations, and maintenance activities related to wastewater treatment, surface water management, site reclamation, natural resource protection, recreation services, trail and pathways, and other governmental services.
- II. The Chambers Creek Properties are being developed, improved, maintained, and used in accordance with a long-range plan entitled the *Chambers Creek Properties Master Site Plan* adopted by the COUNTY in August 1997 and amended in February 2007. The Master Site Plan includes a broad spectrum of new uses to be provided on the Properties including public access, open space, recreation, and educational opportunities previously unavailable to members of the public.
- III. The cornerstone of the COUNTY'S 1997 Master Site Plan Project was its extensive public information and outreach program that enabled hundreds of citizens to participate in more than one hundred public workshops, meetings, and forums relating to the development and approval of the Master Site Plan. A thirteen-member Citizens Committee was appointed to represent citizens throughout Pierce County and to provide input in the development of the Master Site Plan.
- IV. A group of citizens interested in the implementation of the Master Site Plan formed a private nonprofit charitable foundation, known as the Chambers Creek Foundation, to encourage active participation in fulfilling the vision for the Chambers Creek Properties. The FOUNDATION seeks to raise funds and garner other resources to support the development of the Master Site Plan's projects on the Properties for the public benefit and enjoyment.
- V. The Mission of the FOUNDATION contained in their Articles of Incorporation affirms that the FOUNDATION "will encourage active participation in fulfilling the vision for the Chambers Creek Properties. The FOUNDATION will raise, manage, and allocate resources to support and enhance the recreational, scientific, environmental, educational, and aesthetic pursuits necessary to develop the Properties for public benefit and enjoyment."

VI. The FOUNDATION has adopted a five-part vision to achieve the Mission, which indicates that the FOUNDATION will:

- A. "Be an advocate and catalyst for improvements cited in the Master Site Plan for the Chambers Creek Properties;
- B. Maintain a board of individuals that reflect the interests of local communities within a regional context;
- C. Foster communication between private individuals, groups, and Pierce County in a manner that meets objectives of the Master Site Plan, requirements of Pierce County, and expectations of users and donors to the effort;
- D. Establish a plan for endowing or otherwise funding both facilities and activities in the Chambers Creek Properties; and
- E. Monitor progress in fulfilling the potential of the Chambers Creek Properties."

VII. The COUNTY, pursuant to Title 36 RCW, may accept such gifts of money, property, or other resources from such organizations as the FOUNDATION for COUNTY purposes as appropriate.

VIII. Beginning in November 2000, the FOUNDATION has made numerous donations to the Chambers Creek Properties including: the materials for the paving of Phase I of Grandview Trail; the Spot of Shade plaza on Grandview Trail; and, partnered with the Tacoma Labyrinth Society in donating the Chambers Creek Properties Labyrinth.

IX. The COUNTY and the FOUNDATION reasonably anticipate a continuing series of donations (as defined herein) in support of the Master Site Plan, and the COUNTY has determined that it is in the best interest of the COUNTY and the residents of the county for the FOUNDATION to facilitate private fundraising efforts for development of the Properties to provide the most orderly, cost effective, and efficient method of managing private fundraising.

X. The COUNTY has the authority to enter into such agreements as are necessary to facilitate COUNTY operations and purposes.

XI. The FOUNDATION represents and warrants that it has full power and authority to purchase, lease, accept as a gift, bequest or devise, or otherwise acquire any real or personal property to be held, administered, or used in any way whatsoever for the benefit of the COUNTY or the FOUNDATION to assist the COUNTY in the fulfillment of COUNTY purposes.

XII. The FOUNDATION represents and warrants it has the power and authority to execute contracts and agreements by proper resolution duly adopted by a majority vote of the Board of Directors as provided within its Articles and Bylaws.

XIII. The FOUNDATION represents and warrants that it has the authority and the ability to hold and apply the corpus and income of any donation, grant, devise or bequest, or any part thereof in such manner as may have been stipulated or provided in the donor's instrument creating such donation, grant, devise, or bequest.

XIV. The FOUNDATION represents and warrants that its Articles and Bylaws restrict the use of its assets and earnings to purposes associated with the fulfillment of the Chambers Creek Properties, including the Master Site Plan, payment of expenses necessarily incident to the COUNTY and further that no part of such assets and earning shall inure to the benefit of any employee, officer, or member of the FOUNDATION, COUNTY, nor any other individual except in a payment of reasonable compensation for services actually rendered or expenses necessarily incurred therein.

NOW, THEREFORE, based on the foregoing and in consideration of the mutual premises herein, the parties hereby agree as follows, relative to the Chambers Creek Properties:

### **AGREEMENT**

The FOUNDATION and the COUNTY, hereby agree:

**I. CHAMBERS CREEK PROPERTIES MASTER SITE PLAN:**

A. The parties to the AGREEMENT respect the role of the Chambers Creek Properties Master Site Plan (Master Plan) and its supporting documents as the primary policy and development plan for Pierce County's Chambers Creek Properties.

B. It shall be the responsibility of the COUNTY to implement the Master Plan as adopted and solicit input in future plan updates of the Chambers Creek Properties Master Site Plan from the FOUNDATION as well as from other organizations and jurisdictions of Pierce County.

C. It shall be the responsibility of the FOUNDATION to represent its interests to the COUNTY through participation in the planning process for any future updates of the Master Plan and through regular and timely communications with the appropriate County staff.

**II. COUNTY AND FOUNDATION RELATIONSHIP:**

A. The FOUNDATION recognizes the COUNTY'S right and authority to develop, operate, and maintain the Chambers Creek Properties in accordance with the Chambers Creek Properties Master Site Plan and all applicable state and county codes.

B. The COUNTY and FOUNDATION agree that the FOUNDATION shall act as a clearinghouse for donations made to the Chambers Creek Properties and the COUNTY will not accept donations for the Chambers Creek Properties which have not been donated through the FOUNDATION unless otherwise specified under Section V (B) (1).

C. The COUNTY will not establish direct contractual relationships with other organizations, non-profit or otherwise, for donations as specified under Section VII that in anyway conflict with this Agreement.

D. The COUNTY and the FOUNDATION may maintain contractual relationships with other organizations, nonprofit or otherwise, which do not conflict with this Agreement.

E. The FOUNDATION will encourage continuous and special philanthropic support, benefactions, and relationships for the benefit of the COUNTY in support of the Chambers Creek Properties.

F. The FOUNDATION will maintain its status as a nonprofit organization under section 501(c)(3) of the Internal Revenue Code as now enacted or hereafter amended or supplemented.

G. The FOUNDATION will maintain its stated purpose of existence as set forth herein and in its Articles and Bylaws during the lifetime of this Agreement unless otherwise agreed to by both parties.

H. The FOUNDATION and COUNTY mutually agree that at all times and for all purposes of this AGREEMENT that the FOUNDATION in the performance of this AGREEMENT shall act in an independent capacity and not as an agent or representative of the COUNTY.

I. The FOUNDATION will be responsible for the hiring, training, discipline, and supervision of FOUNDATION personnel.

### III. COUNTY SUPPORT

A. The COUNTY will be responsible for the hiring, training, discipline, and supervision of COUNTY personnel necessary to operate and maintain the Chambers Creek Properties.

B. **Liaison:** The Director of Pierce County Public Works and Utilities or a designee will serve as Liaison to the FOUNDATION on an ongoing basis.

1. The Liaison will facilitate the COUNTY'S review and acceptance of the proposed transfers and gifts and in the development of the terms and instructions that are to accompany each transfer and gift.

2. The Liaison will serve as the COUNTY representative at FOUNDATION board meetings.

3. The Liaison will facilitate use of COUNTY facilities and administrative and graphic support as COUNTY workloads allow.

C. **Administrative and Graphic Support:** The COUNTY will provide at no cost to the FOUNDATION additional county staff support when appropriate up to a maximum of 520 hours per calendar year. This determination will be made on a case by case basis by the COUNTY Liaison.

D. **Office Space:** The COUNTY will make available office space to FOUNDATION staff on an as available basis to be determined quarterly at the Environmental Services Building. As future facilities at the Properties are developed, the COUNTY may determine it is necessary to relocate FOUNDATION staff. Office space shall also include the use of conference rooms on a space available basis. The FOUNDATION shall pay a proportionate share

of rent of office space and all direct costs associated with the use of these facilities.

**E. Use of Facilities at Chambers Creek Properties:** The COUNTY agrees to allow the FOUNDATION use of the Environmental Services Building, grounds, and trails for fundraising or Board use outside of normal day to day office use, as provided above, contingent upon the FOUNDATION abiding by all relevant County and Departmental policies related to the use of the space.

1. Reservation of Environmental Services Building and facilities and Chambers Creek Properties trails and meadows will be based on availability.
2. The FOUNDATION will not pay a rental fee for the use of COUNTY facilities for fundraising activities but shall pay all direct costs associated with the use of the facilities (coffee, security, etc...). COUNTY facilities do not include facilities operated by a vendor (e.g. Chambers Bay Golf Course).
3. The COUNTY will provide to the FOUNDATION a letter of concurrence for the proposed fundraising activity. The letter may agree, agree with conditions, or decline the proposed fundraising activity. The COUNTY reserves the authority to determine whether or not a proposed fundraising activity is an appropriate use for the Properties. No fundraising activity will occur at the Chambers Creek Properties without the approval of the COUNTY.

**F. Public Outreach:**

1. **Joint Communication:** Each project which includes a charter as identified under Section IV (B)(1) and Section V (A)(1) shall include a communication element and will include how joint communications from the COUNTY and FOUNDATION will be handled.
2. **Materials:** The COUNTY agrees to provide the FOUNDATION with COUNTY brochures to support fundraising and board development activities.
  - a) The COUNTY will develop brochures and other informational materials for the FOUNDATION as appropriate and as staff is available. This determination will be made on a case by case basis by the COUNTY Liaison. The FOUNDATION shall be responsible for the direct cost of the production of the brochures (cost of paper, print jobs, etc.)
  - b) If the COUNTY develops brochures and other informational materials specifically for the use of the FOUNDATION, the time spent producing and editing such material shall be included as part of the maximum time allotment identified in Section III (C).
3. **Graphics:** The COUNTY agrees to allow the FOUNDATION the use of County produced images, graphics, and text associated with the

Chambers Creek Properties and the Master Site Plan, including but not limited to the Pierce County logo, Chambers Creek Properties project image, Chambers Bay logo, and other future graphics as developed by and for the COUNTY.

- a) The FOUNDATION agrees to use the designated images, graphics, and text for information and fundraising purposes only and will not use them for commercial purposes and will not alter such without COUNTY permission.
- b) When using COUNTY provided photographic images, the FOUNDATION will credit the appropriate photographer.

4. **Site Tours:** The COUNTY will facilitate site access and tours as appropriate in support of FOUNDATION fundraising activities and board development without direct cost to the FOUNDATION.

5. **Website:** The COUNTY will maintain general information about the FOUNDATION and a link to the FOUNDATION website on the COUNTY'S website. The general information will be updated as requested.

- a) The FOUNDATION will maintain an independent website and provide a link to the COUNTY website.
- b) The COUNTY agrees to provide existing graphics and photographs for use on the FOUNDATION website.
- c) When using COUNTY provided photographic images, the FOUNDATION will credit the appropriate photographer.

#### IV. COMMUNITY CELEBRATIONS:

A. **Definition:** Community Celebrations are defined as large scale celebrations for the public hosted jointly or separately by the FOUNDATION and the COUNTY. Community Celebrations include groundbreaking ceremonies, opening ceremonies, dedication ceremonies, annual events, and family events.

For all Community Celebrations, the COUNTY and FOUNDATION will mutually develop a charter and/or project scope detailing the outreach and responsibilities for each event.

B. **Process:** For all community celebrations, the following process applies.

- 1. The COUNTY and the FOUNDATION will mutually and concurrently develop a charter and/or project scope detailing the outreach and responsibilities for each community celebration.
- 2. COUNTY as Primary Sponsor: When the COUNTY is the primary financial sponsor for the project, the COUNTY will serve as the lead in determining the size and scale of the community celebration and be responsible for all aspects of organization.
- 3. FOUNDATION as Primary Sponsor: When the FOUNDATION is the primary financial sponsor for the project, the FOUNDATION will serve as

the lead in determining the size and scale of the community celebration and be responsible for all aspects of organization.

4. Neither the COUNTY nor the FOUNDATION is obligated to participate in any community celebration.

5. The COUNTY will provide to the FOUNDATION a letter of concurrence for the proposed community celebration. The letter may agree, agree with conditions, or decline the proposed community celebration. The COUNTY reserves the authority to determine whether or not a proposed community celebration is an appropriate use for the Properties. No community celebration will occur without the approval of the COUNTY.

**C. Events:**

a) **Groundbreakings:** Groundbreaking ceremonies are appropriate for projects identified within the Master Site Plan.

b) **Openings:** Opening ceremonies will be held as appropriate for large capital projects identified within the Master Site Plan.

c) **Dedications:** Dedications can be held for any project as determined by the COUNTY or the FOUNDATION. Dedications are intended to be smaller scale events and for smaller projects. Past dedication ceremonies included Spot of Shade and the Chambers Creek Labyrinth.

d) **Family Events.** Family events are expected to vary in size and complexity and are intended to be held in conjunction with another community celebration. The purpose of a family event is to broaden the outreach of the community celebration with an emphasis on reaching multiple age groups. The COUNTY or the FOUNDATION can choose to hold a family event in conjunction with another type of community celebration.

e) **Special Events.** Special events are intended to be a large scale fundraising event for the FOUNDATION. The FOUNDATION will be responsible for all aspects of these events. COUNTY involvement will be limited to the support as provided within this AGREEMENT.

**V. DONATIONS:**

A. **Definition:** Donations are defined as being the donation of land, services, or funds for use at the Chambers Creek Properties. Donations will typically be used for site furnishings and small capital projects. Donations for large capital projects shall fall under a separate agreement.

1. **Large Capital Projects:** Large capital projects are defined as projects where the total cost exceeds \$50,000 and are included within the COUNTY'S Capital Improvement Plan.

2. **Small Capital Projects:** Small capital projects are defined as projects where the total cost is less than \$50,000 but more than \$10,000. For the purposes of this AGREEMENT, projects which require work to be completed by contractors and not COUNTY staff or vendors and cost less than \$50,000 shall be considered a small capital project.

**B. Process for Donations to the Chambers Creek Properties.** All donations to the Chambers Creek Properties shall meet the intent and desire of the Chambers Creek Properties Master Site Plan and Chambers Creek Properties Standards.

1. **COUNTY as Primary Sponsor:** The COUNTY will continue to plan for and construct capital improvements at the Chambers Creek Properties as identified in the Chambers Creek Properties Master Site Plan and adopted Capital Facilities Plan. As the primary or sole financial sponsor of a capital improvement project, the COUNTY may apply for grants, loans, or accept donations to offset the COUNTY'S capital expenditures.

2. **FOUNDATION as Primary Sponsor:** It is the intent of this AGREEMENT, that the FOUNDATION will raise funds necessary for the completion of a donation project in which they are the primary or sole financial sponsor. The COUNTY will not accept funds directly for a project which the FOUNDATION is the primary sponsor.

3. The COUNTY will be responsible to purchase, construct, maintain, and implement the project or program with the funds donated by the FOUNDATION unless otherwise stipulated in a separate agreement.

4. The COUNTY and FOUNDATION are not obligated to accept donations to the Chambers Creek Properties which do not meet these intents and desires.

**C. Donation Proposal.** Prior to an acceptance of a donation, the FOUNDATION shall prepare and submit a donation proposal that outlines the scope and intent of the project, the timing, and proposed location of the donation.

**D. Letter of Concurrence.** The COUNTY will provide to the FOUNDATION a letter of concurrence for the donation. The letter may agree, agree with conditions, or decline the proposed donation.

**E. Letter of Delivery.** Once the FOUNDATION deems a donation campaign complete, the FOUNDATION will prepare a letter of delivery outlining the terms, instructions, and project scope for the donation and conveying the necessary funds or services. For the purposes of this AGREEMENT, a donation campaign will be considered complete when all funds or services have been raised for the project or program.

**F. Letter of Acceptance.** Upon the COUNTY'S receipt of a letter of delivery, the COUNTY will prepare a letter of acceptance acknowledging the donation, outlining the timeline for completion or installation of the project, and the designated project manager for the project.



1. Upon the COUNTY'S issuance of letter of acceptance, the FOUNDATION will not have any responsibility or liability, financial or otherwise, for any changes to and all aspects of completion of a given project or program including but not limited to cost over-runs and change orders unless the terms of the letter of delivery expressly provides otherwise.

**G. Use of Donation.** The COUNTY will use all donated proceeds and services in a lawful manner following all county rules and procedures for design and construction of public facilities and in accordance with terms of each project described in each letter of delivery.

1. **Site Furnishings:** Site furnishings such as benches, drinking fountains, trees, and play equipment may be placed at the site as mutually agreed. Site furnishings shall meet the intent of the Chambers Creek Properties Standards.

a) The FOUNDATION will be responsible for providing funds to, at the minimum, cover the cost of the site furnishing, donation signage, delivery, and installation. Installation costs will be determined on a case by case basis.

b) The COUNTY will be responsible for the ordering and installation of the appropriate site furnishing and signage and all ongoing maintenance.

2. **Commemorative Signage:** Signage will be in compliance with the Chambers Creek Properties Sign Standards.

3. **Public Art:** The COUNTY will only accept the donation of art which follows the policies established in the Chambers Creek Properties Standards and relevant County policies, such as "1% for Arts".

**H. Capital Projects**

1. The COUNTY will retain all authority, responsibility, and liability for all aspects of planning, permitting, construction, alteration, repair, or improvement of property, administration of contracts, operations, and maintenance related to the Chambers Creek Properties.

a) **Planning and Permitting:** The COUNTY will be responsible for all planning and permitting for projects which occur at the Chambers Creek Properties.

(1) Pierce County staff or their consultant staff will prepare all necessary environmental and land use plans and permits necessary to complete the proposed project outlined in the Letter of Delivery as described under Section V of this AGREEMENT.

b) **Construction Management:** The COUNTY will provide all necessary construction management services necessary to

complete a given project as outlined in the Letter of Delivery as described under Section V of this AGREEMENT.

c) **Operation and Maintenance:** Upon acceptance of the Letter of Delivery, the COUNTY shall be responsible for the ongoing maintenance and operation of the project or program.

(a) **Damage and Vandalism.** Upon notice to the COUNTY that a donated project or site furnishing has been damaged or vandalized, the COUNTY shall be responsible for its repair, replacement, or removal.

(i) The determination to repair, replace, or remove the damaged or vandalized project or site furnishing shall be at the sole discretion of the COUNTY.

(ii) If the COUNTY chooses to replace the damaged project or site furnishing, the replacement shall be an exact match or better equivalent material.

(iii) In any instance, the COUNTY will notify the FOUNDATION of the damage or vandalism in writing with a timeline for repair, replacement, or reasons for removal.

(iv) In addition, the COUNTY will also provide a letter to the donator explaining the timeline for repair, replacement, or reason for removal. Contact information for the donator shall be provided by the FOUNDATION.

## 2. Large Capital Projects:

a) The implementation of large capital projects in which the FOUNDATION is the primary sponsor or in which the COUNTY and FOUNDATION are cosponsors shall require a separate agreement.

b) The implementation of a large capital project in which the COUNTY is the sole financial provider and sponsor shall be considered exempt from this AGREEMENT.

## 3. Small Capital Projects:

a) Small capital projects shall follow the same process as outlined under Section V.

(1) Small capital projects in which the COUNTY will use outside contractors or which require the purchase of materials which exceed the COUNTY established purchase limits determined by the Pierce County Purchasing

Department, the COUNTY shall follow standard protocol for bid procedures.

(2) The final cost of a small capital project shall be determined by the lowest approved county bid, as per County code.

(3) If in the event the dollar amount of the apparent low bid exceeds funds raised by the FOUNDATION for the project, the FOUNDATION may choose to either:

(a) Provide additional funds to complete the project,  
or

(b) Withdraw the letter of delivery and terminate the letter of acceptance.

## VI. VOLUNTEER CORPS.

A. **Chambers Creek Properties Volunteer Corps:** There is an increasing need for the development of a volunteer corps for events and trail cleanups at the Properties.

Should the FOUNDATION choose to establish a volunteer corps for the Properties, the FOUNDATION shall:

### B. FOUNDATION Responsibilities:

1. The FOUNDATION shall determine a Volunteer Program Coordinator.

a) Collect from each participant in the volunteer corps a Release and Hold Harmless Agreement prior to any activities at the Chambers Creek Properties.

b) Release and Hold Harmless Agreements shall be required to be signed annually for each participant.

c) All Release and Hold Harmless Agreements shall be forwarded to the COUNTY for their records. The COUNTY will only accept original signatures.

d) Provide training for all participants using the safety information and training aids provided by the FOUNDATION'S Volunteer Program Coordinator.

e) Make arrangements to provide all necessary tools to complete a given volunteer project. Only volunteers 18 and over may use power tools.

### C. Program Rules:

1. Any organization which volunteers may be authorized to participate in the Chambers Creek Properties Volunteer Corps subject to the following rules:

2. A volunteer organization shall not be eligible whose name:

- a) Endorses or opposes a particular candidate for public office.
  - b) Advocates a position on a specific political issue, initiative, referendum, or piece of legislation.
  - c) Includes a reference to a political party.
3. Volunteer organizations participating in trail cleanup activities shall be assigned trail sections on a "first-come, first-served" basis.
  4. Each volunteer organization participating in the Chambers Creek Properties Volunteer Corps shall have a designated representative.
  5. All participants shall sign the Release and Hold Harmless Agreement and be at least 14 years of age. Written parental consent shall be submitted for all minors (under 18 years of age) prior to participating in the Chambers Creek Properties Volunteer Corps.
  6. During volunteer activities there shall be at least one adult supervisor present from the organization for every four minors.
  7. The COUNTY will provide signage and notification on its website and kiosks and will coordinate with its maintenance staff and vendors to provide limited assistance on days of trail maintenance and other projects.

## VII. PARTNERSHIPS

**A. Collaboration with Community Organizations and Non-Governmental Organizations (NGO).** As the Chambers Creek Properties continues to develop, other community organizations and NGOs may want to participate in its development and operation. The COUNTY and FOUNDATION agree that such relationships may be appropriate for the development of the Properties.

1. Community organizations and NGOs wishing to have an ongoing involvement in the development of the Properties shall work in partnership with the FOUNDATION and COUNTY. Such partnership shall fall under a separate agreement with the FOUNDATION and COUNTY. The COUNTY reserves the right to decline to participate in a partnership which does not meet the stated goals or objectives of the Master Site Plan and its operating documents. The FOUNDATION reserves the right to decline to participate in a partnership which does not meet the stated goals or objectives of the FOUNDATION bylaws, mission, and operating agreement.
2. This Agreement does not preclude the COUNTY or the FOUNDATION from pursuing or maintaining relationships, contractual or otherwise, with other organizations or NGOs which are focused on the pursuit of a specific project or program consistent with the Master Site Plan.

**VIII. DEFENSE AND INDEMNITY:**

The COUNTY will defend, indemnify, and save harmless the FOUNDATION, its directors, officers, employees, and agents any and all costs, claims, judgments, damages, injunctions, losses, expenses, reasonable attorneys fees, liabilities, and deficiencies resulting from any suits, claims, liabilities, or negligent acts or omissions of the COUNTY, its officers, employees, or agents associated with this AGREEMENT including, without limitation, any claims or injunctive action related to the development or use of the Chambers Creek Properties, injury to any person, or damage to any property at the Chambers Creek Properties, misuse of donated proceeds, or breach by the COUNTY of any provision of this AGREEMENT. The FOUNDATION will not be liable or responsible for any claim, demand, loss, or liability of any kind arising out of the negligence of the COUNTY or its agents.

The FOUNDATION will defend, indemnify, and save harmless the COUNTY, its directors, officers, employees, and agents any and all costs, claims, judgments, damages, injunctions, losses, expenses, reasonable attorneys fees, liabilities, and deficiencies resulting from any suits, claims, liabilities, or negligent acts or omissions of the FOUNDATION, its officers, employees, or agents associated with this AGREEMENT including, without limitation, any claims or injunctive action related to the development or use of the Chambers Creek Properties, injury to any person, or damage to any property at the Chambers Creek Properties, misuse of donated proceeds, or breach by the FOUNDATION of any provision of this AGREEMENT. The COUNTY will not be liable or responsible for any claim, demand, loss, or liability of any kind arising out of the negligence of the FOUNDATION or its agents.

**IX. ASSIGNMENT:**

This AGREEMENT shall not be assignable by either party, in whole or in part, without prior written consent of the other party.

**X. INSURANCE:**

The FOUNDATION will maintain board member liability insurance and provide proof of insurance to the COUNTY each year.

**XI. ENTIRE AGREEMENT:**

This AGREEMENT represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements or understandings, oral or written, except as expressly set forth herein. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties hereto.

**XII. RENEWAL and MODIFICATIONS:**

This AGREEMENT shall be reviewed annually by representatives from both the FOUNDATION and COUNTY and any desired modifications shall be made in writing in accordance with Section VIII of the AGREEMENT.

**XIII. TERMINATION WITHOUT FAULT:**

Either party effective upon may terminate this AGREEMENT with written notice to the other party at least one hundred eighty (180) days in advance thereof. Any subsequent agreements for capital campaign projects will not affect this Operating Agreement. Termination of subsequent agreements will be covered on an individual basis by that agreement.

**XIV. SEVERABILITY:**

If any provision of this AGREEMENT is determined to be unenforceable or invalid by a court of law, then this AGREEMENT shall be modified to implement the intent of the parties to the maximum extent allowable under law.

**XV. SURVIVAL:**

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.

**XVI. REGULATIONS AND REQUIREMENTS:**

This AGREEMENT shall be construed and enforced in accordance with and the validity and performance hereof shall be governed by the laws of the State of Washington. Venue for all litigation arising out of this contract shall be Pierce County, Washington.

PIERCE COUNTY CONTRACT SIGNATURE PAGE

CONTRACT NAME: Chambers Creek Foundation Operating Agreement, Contract #01-13252, Amendment #1

CHAMBERS CREEK FOUNDATION

PIERCE COUNTY

Kath L. Wells 4/1/08  
Katherine L. Wells Date  
Executive Director

M. Peter Pholley 04/01/08  
Deputy Prosecuting Attorney Date  
(as to form only)

Gayle Hampton-Smith 4/3/08  
Gayle Hampton-Smith Date  
President

P. Kinney 4-09  
Budget and Finance Date

Approved:

W. K. Starling 4/2/08  
Department Director Date  
(less than \$250,000)

[Signature] 4/14/08  
County Executive Date  
(over \$250,000) Chief of Staff