

INTERLOCAL AGREEMENT RE DAVID STORY FIELD

THIS INTERLOCAL AGREEMENT (the “Agreement”) between the **CITY OF LONGVIEW** (hereafter “City”), a municipal corporation under the laws of the State of Washington, and **Lower Columbia College** (hereafter “LCC”), a non-profit State Educational Institution under the laws of the State of Washington; individually “Party” or together the “Parties”.

WITNESSETH:

WHEREAS, the Interlocal Cooperation Act, as amended, and codified in Chapter 39.34 of the Revised Code of Washington provided for interlocal cooperation between governmental agencies; and

WHEREAS, LCC is the owner of the David Story Field (the “Field”) and

WHEREAS, LCC is entering into a rental agreement with the Boys of Summer, Inc., dba Cowlitz Baseball Club (the “Club”), to use the Field for baseball events; and

WHEREAS, having the baseball events by the Club at the Field will be a great asset to the community financially and be of great family entertainment; and

WHEREAS, it is estimated 25,000 fans will attend games; and

WHEREAS, the City, pursuant to LMC 3.04 collects Admission Tax for events such as the baseball games; and

WHEREAS, in connection with the Rental Agreement, the Club is assisting the Lower Columbia College Foundation (the “Foundation”) with certain facility improvements to the Field; and

WHEREAS, this direct positive impact of the baseball events would be increased and furthered by the dedication of the Admissions Taxes back into improving the Field; and

WHEREAS, this measurable impact on the area, most notably in the form of hospitality, food and restaurant revenue, strongly supports the directing of the admission tax to LCC for the improvement of the Field; and

NOW, THEREFORE, the Parties agree as follows:

1. **PURPOSE**: The purpose of this Agreement is for the City to direct the proceeds from the Admissions Tax (and any successor tax) to LCC for the purpose of making facility improvements to the Field.

2. **ADMINISTRATION**: LCC is the owner of the Field. LCC, in conjunction with the Lower Columbia College Foundation (the "Foundation"), maintains the Field. There is no separate entity created by this Agreement.

3. **SCOPE**: This Agreement shall allow the following activities:

3.1. The City agrees to pay to LCC the amount equal to the Admissions Tax (and any successor tax) (the "Tax Funds") received by the City from games of the Club occurring within the City. Payment will be made by the City to LCC within ninety (90) days of receipt of the Tax Funds by the City.

3.2 LCC agrees to use the Tax funds solely for facility improvements and maintenance and operational expenses for the Field. LCC agrees to provide an accounting for the use of the funds within thirty (30) days of request for the accounting by the City, including any supporting documentation; the providing of an accounting and supporting documentation, shall occur not less than January and June of each calendar year during the term of this Agreement.

4. **DURATION OF AGREEMENT - TERMINATION**: This Agreement shall commence on the date the last Party fully executes this Agreement and the Agreement is filed as provided in paragraph 7 below. The Agreement shall remain in force for as long as Club games are played at Lower Columbia College. Either Party may terminate this Agreement for any cause upon ninety (90) days advance written notification to the other Party. Termination shall not alter the obligations of the City to make payment to LCC of any Tax Funds up to the date of termination of the Agreement.

5. **COMPLIANCE WITH LEGAL REQUIREMENT**: Each Party accepts responsibility for compliance with federal, state or local laws and regulations.

6. **FINANCING**: Funding for the provisions herein shall be as provided each year in the respective budgets of each Party to this Agreement.

7. **FILING**: Fully executed copies of this Agreement shall be filed by the City as required by Section 39.34.040 of the Revised Code of Washington prior to this Agreement becoming effective.

8. **NON-DELEGATION/NON-ASSIGNMENT**: Neither Party may delegate the performance of any contractual obligation herein to a third party, unless mutually agreed upon in writing by the other Party.

9. **INSURANCE/HOLD-HARMLESS:**

9.1 Each Party hereto shall maintain sufficient insurance to cover any risk of liability that may arise under this Agreement.

9.2 Each Party shall be liable and responsible for the consequences of any negligent or wrongful act or failure to act on the part of itself and its officers, employees, contractors and agents.

9.3 No Party assumes responsibility to the any other party, its officers, employees, contractors and agents, for the consequences of any act or omission of any person, firm or corporation not a Party to this Agreement.

9.4 Each Party agrees to indemnify and hold harmless the other Party, its officers, employees, contractors and agents from any and all claims, actions, costs, damages and expenses of any nature arising out of or in conjunction with any act authorized by this Agreement.

10. **DISPUTE RESOLUTION:** Disputes arising under this Agreement shall be resolved through agreement of the City Manager, or his/her designee, and the President of LCC, or his/her designee. If consensus resolution is not obtained, either Party reserves its right to pursue other forms of relief.

11. **ACQUISITION/DISPOSITION:** It is not contemplated that there will be any jointly-owned property in the administration of this Agreement and thus no method is necessary to dispose of property upon partial or complete termination of this Agreement. All purchases of equipment and other assets by LCC for the Field shall remain in the ownership of LCC.

12. **GENERAL PROVISIONS:**

12.1. **Governing Law.** The Agreement will be governed by the laws of the State of Washington and its choice of law rules. The Parties irrevocably consents to the exclusive personal jurisdiction and venue of the federal and state courts in Cowlitz County, Washington, or the applicable federal court for such County, with respect to any dispute arising out of or in connection with the Agreement, and agree not to commence or prosecute any action or proceeding arising out of or in connection with the Agreement other than in the aforementioned courts.

12.2. **Severability.** If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

12.3. **Non-waiver.** Any failure by the Parties to enforce strict performance of any provision of the Agreement will not constitute a waiver of the Parties' right to subsequently enforce such provision or any other provision of the Agreement.

12.4. **Notices.** All notices and other communications required under the Agreement must be in writing, and must be given by registered or certified mail, postage prepaid, or delivered by hand to the City Manager and City Clerk of the City or the Vice President of Administration for LCC.

12.5. **Legal Fees.** In any lawsuit between the Parties with respect to the matters covered by the Agreement each Party will be responsible for its own attorneys' fees and costs incurred in the lawsuit.

12.6. **Counterparts.** The Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document.

12.7. **Captions.** The captions in this Agreement are for convenience only and do not in any way limit or amplify particular provisions.

12.8. **Modifications or Amendments.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the Parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly signed by the Parties hereto.

LOWER COLUMBIA COLLEGE

ATTESTED TO:

APPROVED AS TO FORM:

ATTORNEY

CITY OF LONGVIEW

ROBERT J. GREGORY, CITY MANAGER

ATTESTED TO:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY