

## RESOLUTION NO. 2018-17

A RESOLUTION of the City Council of the City of Lakewood, Washington, Authorizing the City Manager to Sign an Interlocal Agreement with the Clover Park Technical College for the City to pay the College for power used by certain Street Lights owned and operated by the City.

WHEREAS, Twelve street lights, owned and operated by the City, are connected to College's electrical power meter and the College is paying Lakeview Power & Light for power that should be assessed against and paid for by the City;

WHEREAS, In order for the City to directly pay for the power used by the above-referenced Street Lights, the City would be required to disconnect them from the College's meter and build its own connection and meter at a cost in excess of thirty thousand of dollars;

WHEREAS, Instead of disconnecting the Street Lights from the College's meter and constructing its own connection and meter, the College and the City have agreed that the City should pay the College based on an average cost of power consumed by the above referenced street lights, with any utility rate increases reflected in the costs assessed.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON HEREBY RESOLVES as follows:

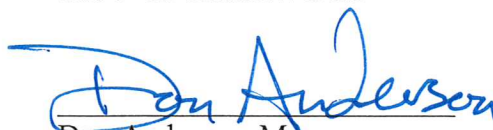
Section 1. The City Manager is authorized to sign the Interlocal Agreement which is attached and incorporated herein as Exhibit A.

Section 2. Severability. If any sections, sentence, clause or phrase of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property or circumstance, such invalidity or unconstitutionality or inapplicability shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Resolution or its application to any other person, property or circumstance.


Section 3. That this Resolution shall be in full force and effect upon passage and signatures hereon.

PASSED by the City Council this 19<sup>th</sup> day of November, 2018.

CITY OF LAKEWOOD

  
Don Anderson, Mayor

Attest:

  
Briana Schumacher, City Clerk

Approved as to Form:

  
Heidi A. Wachter City Attorney

## **INTERLOCAL AGREEMENT FOR CITY PAYMENT TO THE CLOVERPARK TECHNICAL COLLEGE FOR POWER USED BY CERTAIN CITY OWNED STREET LIGHTS**

THIS INTERLOCAL AGREEMENT (hereinafter referred to as this "Agreement") is made and entered into this 24<sup>th</sup> day of October, 2018, by and between the Clover Park Technical College (The College) and the City of Lakewood (City).

### **BACKGROUND**

- A. The College operates pursuant to Chapter 28B.50 RCW. The College's District Twenty Nine Board of Trustees consists of five members appointed by the Governor of Washington State for five-year terms, subject to confirmation by the Washington State Senate. The Board of Trustees is responsible for the overall operation and administration of the College. The College is a "public agency" as defined in the Interlocal Cooperation Act, Chapter 39.34 RCW.
- B. The City of Lakewood is an optional code city formed pursuant to Chapter 35A RCW. The City is a "public agency" as defined in the Interlocal Cooperation Act, Chapter 39.34 RCW.
- C. This Agreement is entered into pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW. The Parties represent that under state law they each have authority to perform the services, activities, and undertakings contemplated herein.
- D. Twelve street lights, owned and operated by the City, are connected to the College's electrical power meter and the College is paying Lakeview Power & Light for power that should be assessed against and paid for by the City.
- E. In order for the City to directly pay for the power used by the above-referenced Street Lights, the City would be required to disconnect them from the College's meter and build its own connection and meter at the cost of over thirty thousand dollars.
- F. Instead of disconnecting the Street Lights from the College's meter and constructing its own connection and meter, the College and the City have agreed that the City should pay the College \$200 per year based on an average cost of power consumed by the above referenced street lights, with any future utility rate increases reflected in the costs assessed.

NOW, THEREFORE, the Parties agree as follows:

### **TERMS AND CONDITIONS**

- 1. Incorporation of recitals. Each of the recitals set forth above as Background is incorporated into this Agreement as though fully set forth herein.
- 2. Purpose. The Purpose of this Agreement is to establish a framework for the City to pay the College for power used by certain Street Lights owned and operated by the City.
- 3. Parties' Roles. The Parties' roles are as follows:

### 3.1 City of Lakewood.

The City will own, operate, maintain, repair and replace the 12 street light poles as needed and in accordance with City objectives for providing light to the community. Should the City decide to eliminate these poles or disconnect from the College's power supply, the City will notify the College within 30 days and terminate this agreement as provide in Section 12. Should the College need to replace/rebuilt/remodel their facilities in such a way as to remove the City's ability to power the street lights from their system, the City agrees to meet with the College to determine if there is a mutually satisfactory way to keep the street lights connected to the College's system. Should the City and College agree on a way to keep the current connection, the City will pay any additional cost associated with keeping the current connection to the College or provide for the connection independently at the City's cost with approval from the College. Should the City decide this is not possible, the City will notify the College and Section 12 will go into effect.

### 3.2 The Clover Park Technical College.

The College will continue to allow the City to access power to serve the 12 street lights currently connected to its power supply system. The College agrees not to sever service without following Section 14. Should the College need to replace/rebuilt/remodel their facilities in such a way as to remove power to the street lights, the College agrees to meet with the City to determine if the College's work can accommodate a connection for the street lights.

4. Duration. The term of this Agreement shall be ten years, commencing on the date of execution by the Authorized signatories for both parties, and terminating ten years (10) to the day, unless sooner terminated as provided in Section 13. This agreement will automatically renew for an additional ten years should neither party express a desire to terminate the agreement no later than 60 days prior to the end of the duration. This renewal process will repeat every ten years unless mutually agreed upon to end it.

### 5. Designated Representatives.

City of Lakewood:	Clover Park Technical College:
Finance Director	VP for Finance and Administration
City of Lakewood	Clover Park Technical College
6000 Main Street S.W.	4500 Steilacoom Blvd. SW, Lakewood, 98499
Lakewood, WA 98499	
@cityoflakewood.us	
Phone: (253) 983-7706	Phone: (253) 589-5602



6. Definitions.

“City” means the City of Lakewood, 6000 Main Street SW Lakewood, Washington 98499-5027

“College” means The Clover Park Technical College, main campus located at 4500 Steilacoom Boulevard SW Lakewood, Washington 98499-4004.

“Connection” refers to the means by which the Power Company provides electrical power to the Street Lights.

“Interlocal Cooperation Act” refers to Chapter 39.34 RCW, the purpose of which is to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

“Power Company” means the Lakeview Light & Power Company, as originally incorporated in 1922 and as currently operating in the City of Lakewood at 11509 Bridgeport Way SW Lakewood, WA 98499-3041 or its successor.

“Power” means electrical energy produced by a utility.

"Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

"State" means a state of the United States.

“Street lights” mean twelve (12) light fixtures constructed at Steilacoom Boulevard and Haged Street (general location; attach map).

7. Finance. The City agrees to pay the College annually at the end of the fiscal year, December 31<sup>st</sup> via electronic transfer of funds or other agreeable means with the College upon invoicing from the College.

8. Options of Parties 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 14 below.

9. Right of Entry.

The College grants to the City, its personnel, and contracted agencies or services the right to enter onto the property for the express purpose of disconnecting the power to the street lights for maintenance and/or replacement.

10. Maintenance of Street Lights.

The City will maintain the street lights in accordance with its established protocols subject to budget availability. The City will replace any street lights damaged from vehicles within a reasonable time in consideration of available budget, contracting processes, contractor availability, etc.

11. Hold Harmless and Indemnity.

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.

12. Termination. This Agreement is subject to termination based upon the following:

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

12.2 Default. By reason of a breach of this Agreement by a Party, the other Party 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 14 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.

12.3 Public Convenience. Any Party may withdraw from the Agreement for public convenience upon thirty (30) calendar days' written notice, provided that

13. No Separate Entity Created. This Agreement does not create any separate legal or administrative entity. This Agreement shall be administered by the City Manager or designee of the City of Lakewood. There shall be no joint financing or jointly acquired or held assets and the Agreement will terminate as described herein.

14. Dispute Resolution. Unless otherwise specified, disputes regarding any matter contained herein shall be referred to the City Manager or his designee for the City of Lakewood and to the Board of Trustees or its designee 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 above representatives or their designees may be submitted to a mediator to resolve disputes should the Parties agree to utilize the services of a mediator. The cost of mediating a dispute shall be borne equally by all the Parties.

15. Notice. Any written notice which is required or permitted regarding this Agreement shall be given by U.S. first-class mail or by personal delivery to the designated representative of the Party which is the intended recipient of the notice at its address as set forth in Section 5– Designated Representatives.

16. Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein.

17. Amendments in Writing. Any amendment or modification of this Agreement must be in writing and executed by the Parties agreeing thereto.

18. 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.

19. Legislative Approval. The Interlocal Cooperation Act, Chapter 39.34 RCW, requires that this Agreement be approved by the governing bodies of the Parties 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.

20. Applicable Law. This Agreement shall be construed under the laws of the State of Washington.

21. 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.

22. 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.

23. 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.

24. No Restriction on Police Powers. Nothing in this Agreement shall diminish any of the Parties' governmental or police powers.

25. 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 24th DAY OF OCTOBER, 2018.**

**City of Lakewood**

**The Clover Park Technical**

By: [Signature] 11/26/18

By: [Signature]

TITLE: City Manager

TITLE: VP for Finance & Administration

**ATTEST:**

**ATTEST:**

[Signature]

City Clerk

[Signature]

Compliance Officer

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

[Signature]

Lakewood City Attorney

State of Washington AAG