

AMENDMENT No. 2
To Contract No. 2021-012
BETWEEN THE CITY OF LAKEWOOD AND THE STATE OF
WASHINGTON THROUGH PIERCE COLLEGE

THIS AMENDMENT (Amendment No 2), dated this 15th day of February, 2023, is, entered into by and between the City of Lakewood, a Municipal Corporation of the State of Washington, hereinafter referred to as “City,” and Pierce College, a public community college of the State of Washington, hereinafter referred to as “College,” hereinafter referred to collectively as “Parties” pursuant to the authority granted by the Washington State Interlocal Cooperation Act, Chapter 39.34 RCW.

WHEREAS, On January 29, 2021, the Parties executed an **Interlocal Agreement, City Contract No. 2021-012 (Agreement)**, to expand and improve the fields at Ft. Steilacoom Park. Specifically, the Agreement provides approval from both Parties to enhance and redevelop four ball fields in Fort Steilacoom Park, (Project). The Project includes adding synthetic infield turf to four of the baseball fields as well as adding new or enhanced dugouts, batting cages, press box, scoreboard, storage areas, backstop, spectator seating, portable mound, fencing, safety elements and utilities to one field (field #3), creating a home field for Pierce College baseball; and

WHEREAS, the Agreement establishes the Parties’ responsibilities as follows:

- A.** The City shall perform the following tasks:
 - a.** Routine maintenance and operation as owner of Fort Steilacoom Park;
 - b.** Responsibilities as fiscal agent for the project;
 - c.** Coordinate all permits necessary to update the facilities;
 - d.** Manage and make all final decisions during the construction period; and
 - e.** Own the facility and be responsible for management, maintenance and operations of all improved areas.
- B.** The College shall perform the following tasks:
 - a.** Provide details, documentation and timely payments relating to all costs associated with the home field improvements; to include all additional labor, materials, overhead, equipment, over runs and proportionate costs for planning, permitting and project management.
 - b.** Provide inspections and decisions during construction period.
 - c.** Support future maintenance of improved areas.
- C.** The responsible party for each component part shall pay for and execute any and all necessary tasks and agreements to accomplish that component part.

WHEREAS, On October 20, 2021, the Parties amended the Agreement in **Amendment No. 1** to Contract No 2021-012, which amendment verified financial contributions in relation to an executed agreement with DA Hogan in the total amount of \$259,365; and

WHEREAS, By letter dated November 30, 2022 Pierce College acknowledged the need for additional resources to complete the home field complex and committed to provide a total of \$6,000,000, which total includes the initial \$1,600,000 Pierce College previously committed to pay:

Fort Steilacoom Park Sport fields project	Revenues and expenditures not to exceed
Funding Sources	
City of Lakewood	\$ 1,600,000
Pierce College	\$ 6,000,000
Total Project Revenues	\$ 7,600,000

WHEREAS, The Agreement states that on or before completion of the Project, the Parties “will execute an Agreement addressing the details of the City’s ownership of improvements and Pierce College’s rights to use the home field complex, along with other details of the access, maintenance, operations, facility replacement and use of the updated fields going forward”; and

WHEREAS, The Pierce College Home Field, originally referred to as field 3, will now be referred to as field 1, and herein referred to as the ‘Home Field Complex’ as identified in **Exhibit A**

NOW, THEREFORE, in exchange for the mutual promises enumerated herein, the Parties now execute this Second Amendment to the Agreement to address the details of the City’s ownership of improvements and Pierce College’s rights to use, along with other details of the access, maintenance, operations, facility replacement and use of the Home Field Complex going forward, and more specifically, as follows:

1. Access & Use: The City shall create and maintain the master schedule for use and access to the Home Field Complex described in **Exhibit B**, attached and incorporated herein. Use will be appropriate to the site to prevent undue wear and tear or damage beyond reasonable use. The Parties agree to abide by and enforce the Code of Conduct outlined in the Field Use Policy, which is attached and incorporated as **Exhibit C**.

Field use priority shall be given to the College to support their baseball program. Advance notice of the College game schedule shall be given to the City by December 31st each year for the following season. After February 1st each year, additional City programs and activities and College use shall be scheduled on a first-come, first-serve basis through standard City booking procedures.

College priority access schedule for home field:

January 15th – May 31st (7AM-9PM weekends, 12PM-8PM weekdays)

September 1st – October 31st (7AM-9PM weekends, 12PM-8PM weekdays)

2. Facility Operations, Maintenance & Replacement: The parties commit to ensuring the maintenance of the baseball fields through performance of certain tasks and contributions of funding as defined in the Operations, Maintenance & Replacement Plan, which is attached and incorporated herein as Exhibit B.

The City and the College will each supply its own field, maintenance and batting facility equipment & consumable supplies in order to fulfill their respective use and tasks. Maintenance equipment may be cooperatively purchased and utilized by each party supporting regular and routine field maintenance activities defined in Exhibit B. Access to storage areas for use and maintenance equipment shall be accessible to both parties at all times of the year.

Incidents of vandalism or graffiti will be responded to by appropriate party within 48 hours. Repair, replacement or cleanup will be based on situation, available resources, and safety.

City shall serve as fiscal agent for all shared replacement & improvements of the Homefield Complex at the time of the expenditure. City may transfer responsibility as fiscal agent with thirty (30) days' written notice to the College when the College is responsible for a majority of the improvement.

POINT OF CONTACT: Each party will designate contacts for the purpose of managing and maintaining home field or amending this agreement.

The City: PRCS Director, Mary Dodsworth, Phone (253) 983-7741

The College: Athletics Director, Duncan Stevenson, Phone (253) 964-6612

3. Supervision & Security: The City reserves the right to cancel or postpone any scheduled use of the Home Field Complex due to unanticipated circumstances, conflicts, safety or compromised integrity of the facility and disregard of field use policy outlined in Exhibit C. Presence in the park after hours shall be subject to LMC 8.76.400 and authorized by the City special use permit. It is the responsibility of the party, for approved usage after established park hours, to include security and supervision of event areas and participants.

4. Reimbursement for Utilities: Reimbursement of utilities associated with the use of the Home Field Complex will be assessed based on priority use dates and the responsibility of the Party.

5. Fees & Cost Sharing: Per LMC Chapter 8.76.150 'Facility Use - Sale of Goods or Services' all revenue associated with park facilities for financial gain shall be subject to concession contracts or by special use permit issued by the City Parks Recreation and

Community Services Department. Registration and use fees will be retained by the collecting party.

6. Operational Review: A biennial review will be conducted by the Parties to review use, operations, maintenance fees and replacement costs over a 2 year period.

7. Conflict Resolution: In the event of a disagreement or dispute to the terms outlined in this agreement, or if one party determines that the other is not fulfilling the performance obligations established by this agreement, the objecting party shall give written notice of its complaint to the other party. The party receiving the complaint shall, within fourteen (14) calendar days, correct the situation and confirm the correction in writing or reject the complaint. If rejecting the complaint, the receiving party shall explain why it is rejecting the complaint. If the representatives are unable to resolve the conflict, the issue shall be referred to the College President and the City Manager for resolution.

8. Mutual Indemnification and Liability Coverage:

A. The College shall indemnify and hold the City and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the College's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the College; and provided further, that nothing herein shall require the College to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

B. The City shall indemnify and hold the College and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the College arising out of, in connection with, or incident to the execution of this Agreement and/or the City's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the College, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the City; and provided further, that nothing herein shall require the City to hold harmless or defend the College, its agents, employees and/or officers from any claims arising from the sole negligence of the College, its agents, employees, and/or officers. No liability shall attach to the College by reason of entering into this Agreement except as expressly provided herein.

C. Each party shall carry general liability coverage with limits of \$5 million per occurrence and \$10 million in aggregate coverage. Coverage through a self-insured risk pool is acceptable.

9. TERM AND TERMINATION. This Memorandum shall terminate on December 31, 2052, unless terminated sooner as provided herein. Either party may terminate this Memorandum without cause upon the giving of ninety (90) days written notice of the intent to terminate beyond an initial depreciation period of 10 years (December 31, 2034). Any financial impacts or obligations created by either party in advance of the termination will be the full responsibility of the associated party. This Memorandum must be extended for additional periods by written agreement of the parties, and renewable every 10 years through written agreement by both parties.

10. TERMINATION FOR NON-ALLOCATION OF FUNDS. If the State or the City does not allocate funds or severely reduces City or Pierce College funding, both Parties may, by thirty (30) days written notice, beginning on the third day after the postmark, terminate or suspend this Agreement, in whole or in part. If this Agreement is so terminated or suspended, Pierce College shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of the termination or the period before and after the suspension. Additionally, Pierce College and City must provide proof of the lack of appropriations as well as not appropriate funds for the same or similar Services within the term of this Agreement. Furthermore, all amounts due and payable by Pierce College prior to the fiscal year for which funds were not appropriated are to remain in full effect.

11. GENERAL PROVISIONS. All other terms and provisions of the original Agreement, together with any prior amendments thereto, not modified by this Second Amendment, shall remain in full force and effect. Any and all acts done by either Party consistent with the authority of the amendment, together with any prior amendments thereto, after the previous expiration date and prior to the effective date of this Amendment, is hereby ratified as having been performed under the Agreement, as modified by any prior amendments, as it existed prior to this Amendment. The provisions of Section V of the Agreement shall apply to and govern this Second Amendment. The parties whose names appear below swear under penalty of perjury that they are authorized to enter into this Second Amendment, which is binding on the parties of this contract.

12. GOVERNING LAW AND THIRD PARTY RIGHTS. This Memorandum shall be governed by the laws of the State of Washington and there shall be no third party beneficiaries to this Memorandum.

13. SEVERABILITY. If any section of this Agreement is adjudicated to be invalid, such action shall not affect the validity of any section not so adjudged.

14. EFFECTIVE DATE. This Memorandum shall be effective on the last date entered below.

IN WITNESS WHEREOF, the parties hereto executed with their signatures this agreement on the date first above set forth.

CITY OF LAKEWOOD

PIERCE COLLEGE



John J. Caulfield, City Manager

Name: Andrew Glass

Title: Interim Vice President of Administrative Services

ATTEST:

 2/16/2023

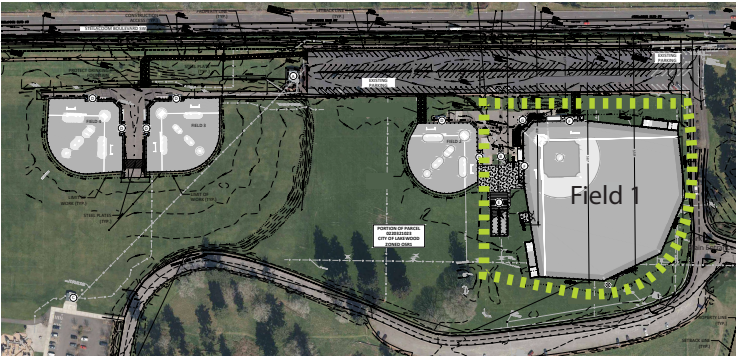
Briana Schumacher, City Clerk

APPROVED AS TO FORM:



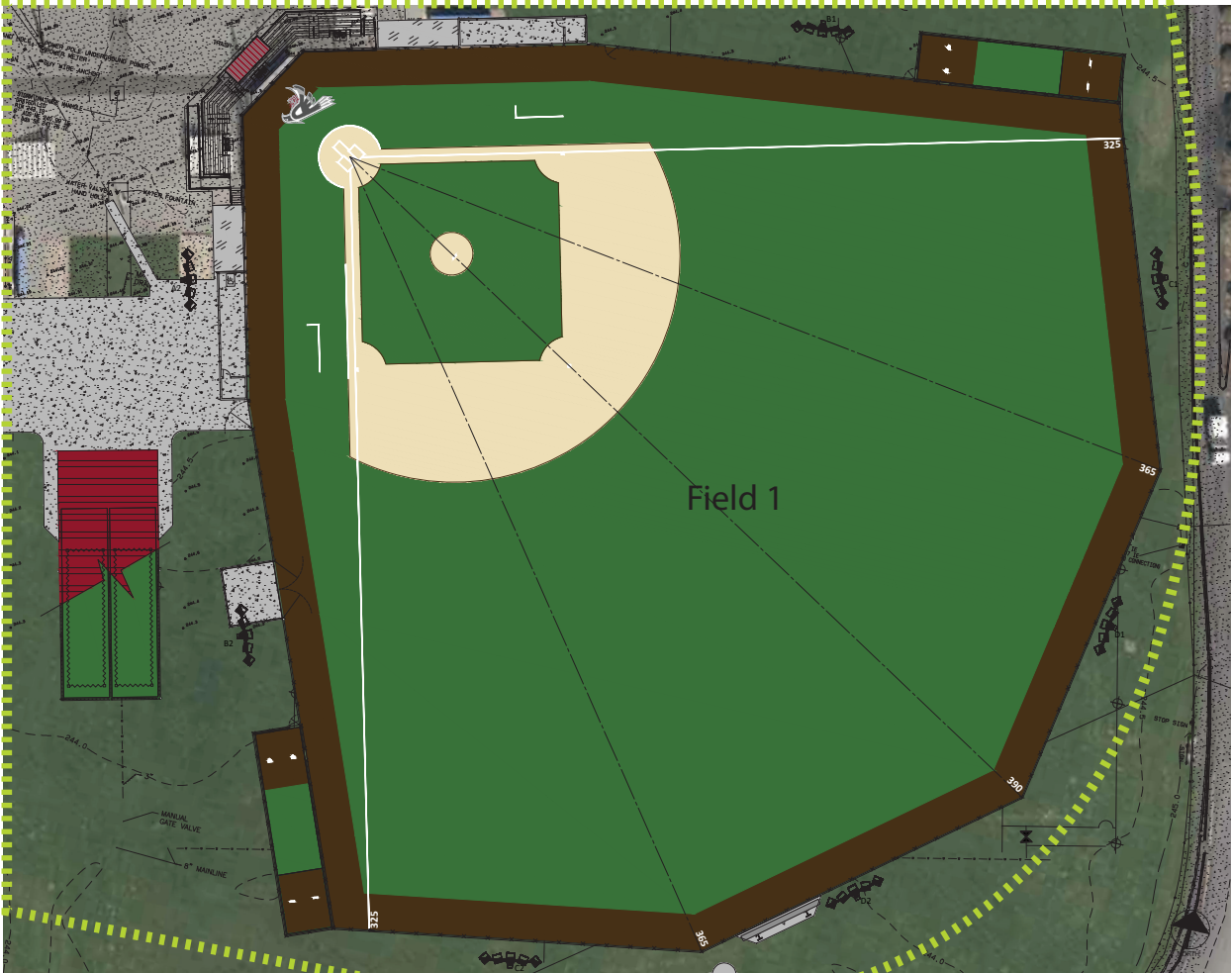
Heidi Wachter, City Attorney

(Exhibit A) Home Field Complex Fort Steilacoom Park



..... Home Field Complex extent 'Field 1'

baseball fields Ft. Steilacoom Park



expanded view Home Field Complex

Operations Maintenance & Replacement Plan Home Field Complex (EXHIBIT B)

Task Description	City	Pierce College
<u>Full Turf Replacement</u> <ul style="list-style-type: none"> • Replacement between Years 10 – 12 (2033-34) • Cost in 2022 dollars is \$1,350,000 	25%	75%
<u>Turf Repair</u> <ul style="list-style-type: none"> • Inspect the field for loose seams and makes repairs 	June-Aug As Needed	January-May September-October As Needed
<u>High Wear Turf Routine Replacement</u> <p>a. Home Plate, Bases, and Batter's On Deck Circle</p> <ul style="list-style-type: none"> • Frequency replacement is every 3-years. <p>b. Pitcher's Mound</p> <ul style="list-style-type: none"> • Frequency replacement is 2-3 months while college is in season <p>c. Batter's box areas</p> <ul style="list-style-type: none"> • Frequency replacement is 2x year 	As needed June-Aug	a. 100% b. 100% c. 100%
<u>Wind Screen Replacement</u> <ul style="list-style-type: none"> • Frequency replacement is 1x year 	0%	100%
<u>Dugouts and Press Box Routine Painting</u> <ul style="list-style-type: none"> • Frequency is every 2 years 	0%	100%
<u>Vandalism, Graffiti or other Unanticipated Damage</u> <ul style="list-style-type: none"> • Reviewed within 48 hours and addressed by party on case by case basis 	TBD	TBD
<u>Fencing, Scoreboard, Lighting, Bleachers. Press Box, Flag Pole & Batting Facility Repairs*</u> <ul style="list-style-type: none"> • Cost to be assessed for each occurrence 	TBD	TBD
<u>Routine Field Maintenance</u> <ul style="list-style-type: none"> • Filling/restoring rubber pellets in low spots • On- Field Debris removal • On-Field Washing using water hoses • Pitcher's Mound Restoration • Empty Trash Cans into Park's Central Dumpster • Sweeping of Dugouts, Press Box and Viewing Stands. 	June -August Nov – Dec	January – May September -October
<u>10. Utilities</u> Utilities associated with field use to be metered and reimbursed to City	100% June -August Nov - Dec	100% January - May September -October

PIERCE COLLEGE RAIDERS HOME FIELD COMPLEX USE POLICIES AND CODE OF CONDUCT (Exhibit C)

To protect the field surface and maximize the lifespan of synthetic turf fields, the City of Lakewood asks that every team official, coach, player, spectator, and parent be aware of the following rules & regulations for use of the synthetic turf field.

Coaches are responsible for the conduct and behavior of players and spectators on the field.

- A. Only water is permitted. No flavored drinks are allowed (soda, juice, Gatorade). Glass and other breakable containers are prohibited.
- B. No food allowed on synthetic turf surface. All food including gum, sunflower seeds, nuts and chewing tobacco are prohibited.
- C. No dogs or pets are allowed on the synthetic turf surface. Dogs or other animals are only allowed on the grass perimeter.
- D. Suntan lotions, oils or creams of any kind that may stain the turf are prohibited. Sunblock should be applied before entering the synthetic turf area.
- E. Athletic footwear must consist of molded rubber cleats (less than 1 inch), turf shoes or running shoes. Metal cleats/spikes and high heeled shoes are prohibited. Athletic footwear should be clean and free of mud.
- F. Marking or taping on the synthetic turf surface is prohibited.
- G. Vehicles of any kind including but not limited to automobiles, bicycles, scooters, skateboards, RC cars, planes, drones, or other vehicles that use fuel are prohibited.
- H. Sharp or blunt equipment are prohibited including chairs, benches, flags, shade structures, tents, stakes, and umbrellas. No temporary or permanent equipment shall be staked down onto the synthetic surface
- I. Large objects, including goals that need to be moved across the field should be carried or have turf wheels. Dragging heavy items or equipment across the field may cause significant damage.

User Responsibilities

1. You are responsible to leave the field cleaner than you found it and ready for the next user. Following practices and/or games please inspect the field and remove anything left by your players or spectators such as trash, athletic tape, or equipment.
2. Any foreign substances, including bodily fluids, should be removed and rinsed as quickly as possible. Thoroughly rinse and avoid slippery areas that could result in injury. Immediately report the location of accident or injury resulting in bodily fluids (blood, vomit, urine, etc.) on the turf to City staff.
3. Inspect your playing area before and after practices & games and immediately report any areas of the playing surface that are damaged or deficient.
4. Educate your players, parents and spectators about the Synthetic Turf Rules & Regulations to minimize damages to the playing surface.