

AGREEMENT
Between
LOWER COLUMBIA COLLEGE
And
LOWER COLUMBIA COLLEGE FOUNDATION

This Agreement (this "Agreement") is entered into by and between Lower Columbia College, Community College District No. 13 (the "College"), and the Lower Columbia College Foundation, a nonprofit corporation (the "Foundation").

WHEREAS, the College, pursuant to RCW 28B.50.140(8), may receive such gifts, grants, conveyances, devises and bequests of real and personal property from private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out College programs; and

WHEREAS, the College has, from this express power to receive property, the implied power to solicit the same; and

WHEREAS, the College has the authority to enter into contracts for these and other lawful purposes; and

WHEREAS, the Foundation as a tax-exempt nonprofit corporation must be organized and operated exclusively to receive and administer property for the benefit of the College and to make contributions, grants, gifts, and transfers of property to the College; and

WHEREAS, the Foundation is empowered by the College to solicit and receive contributions, grants, gifts, and property in the name and on behalf of the College and receive property and to make contributions, grants, gifts and transfers of property to the College; and

WHEREAS, Article 3 of the Articles of Incorporation of the Foundation, states the purpose of the Foundation to be as follows:

The purpose for which the corporation is organized shall be:

- a. To support the College and gain better understanding of its objectives and achievements;
- b. To raise and administer funds for projects which, though desirable and necessary in an institution of higher learning, cannot presently be financed from public money; and
- c. To provide a means for perpetual trusteeship of capital funds donated for the benefit of the college by benefactors.

WHEREAS, the Foundation and College recognize that close collaboration and cooperation is necessary to:

- a. Appropriately serve the educational mission and priorities of the College;
- b. To avoid competition for funds or unproductive duplication of effort

NOW, THEREFORE, the parties hereby agree as follows:

I. SEPARATE OBLIGATIONS**A. The Foundation shall:**

1. Expend its best efforts to seek to accrue gifts, grants, conveyances, devises, and bequests of money and real and personal property for the benefit of the College. For this purpose, it will design and implement programs and procedures in collaboration with the College to solicit and receive such money and property and also to acquire such property by purchase, lease, exchange or otherwise, all to further the purposes of the educational mission of the College as determined by the College Board of Trustees in stated goals, objectives, and priorities.
2. Comply with all applicable federal and state laws. For this purpose, the Foundation will establish rules and procedures for the management of all affairs of the Foundation in accordance with (a) the requirements for tax-exempt entities under the federal Internal Revenue Code, including its section 501(c)(3), and (b) the laws of the State of Washington applicable to the Foundation including, but not limited to, those governing charitable solicitations (e.g., RCW 19.09), nonprofit corporations (e.g., RCW 24.03A, RCW 23.95), trusts holding property for charitable purposes (e.g., RCW 11.110), and the authority of state agencies (e.g., RCW 43.09);
3. Tender to the College immediately all gifts and donations it may receive wherein the College is designated as recipient, and properly account and be responsible for all donations which designate the Foundation as recipient;
4. Record gifts at their fair market value on the date received, following generally accepted accounting principles.
5. Accept, hold, administer, invest and disburse such funds and properties of any kind or character as from time to time may be given to it, in accordance with the terms of such gift, provided, however, that any restricted or conditional gift which in any way obligates the College shall not be accepted by the Foundation without the prior written consent of the College President or other College official specifically delegated with written authority to approve such gifts on behalf of the College;
6. Make contributions, grants, gifts, and transfers of property, both real and personal, either outright or in trust, to or for the benefit of the College;
7. Use all assets and earnings of the Foundation for the exclusive benefit of the College or for payment of necessary and reasonable administrative expenses of the Foundation. No part of such assets and earnings shall accrue to the benefit of any director, officer, member, or employee of the Foundation or of any other individual, except for appropriate payment of reasonable compensation for services actually rendered or reimbursement of reasonable expenses necessarily incurred;
8. Not merge, consolidate, or change the Foundation's Articles of Incorporation without the written consent of the College;

9. Direct Foundation staff to act in cooperation with the College faculty and staff and conduct themselves in accordance with the College's operational policies and procedures as determined by the College Board of Trustees, recognizing the College's leading role in this relationship;
10. Accept, hold, invest, protect, administer, and disburse funds received from the State and other sources under the exceptional faculty awards program in accordance with RCW 28B.50.835-.844 and WAC 131-16-450, and any instructions provided by the College pursuant to exceptional faculty awards rules, regulations and agreements. The principal of the endowment fund shall not be invaded. If the Foundation ceases to exist or function properly, or fails to provide the services specified in this Agreement, the ownership, management, and control of all such funds shall, upon notice and in accordance with the directions from the College Board of Trustees, be transferred to the College. The Foundation further agrees that at the end of each fiscal year it will provide a report and accounting of the endowment corpus and interest and any appreciation in value earned by the exceptional faculty award fund. The Foundation further agrees to provide to the College any other such information the College may request regarding this endowment fund.

B. The College shall:

1. Provide the Foundation with office space, including utilities, use of office furniture, file cabinets, and associated equipment, and warehouse space for temporary storage of donated materials and equipment;
2. Provide the Foundation with use of office machines, materials and services as reasonably required for its operation, including consumable office supplies, telephone service, postage, use of word-processing, photocopying, facsimile transmission, duplication, publication, and audio-visual equipment and services;
3. Provide the Foundation with financial support for professional and/or staff services as follows:
 - i. 60% of Assistant Director employee position;
 - ii. 60% of Foundation Accountant employee position;
 - iii. 20% of VP of Foundation, HR & Legal Affairs employee position (VP of Foundation, HR & Legal Affairs allocated workload for the foundation is 40%, College pays 50% of that allocation);
 - iv. Effective January 2023, 50% of Foundation Development Associate position;
 - v. Effective January 2023, 50% of Foundation Specialist position;
4. The time allocated to services to the Foundation shall not be full-time for any College employee.

C. Blackbaud Renewal Costs

The "Blackbaud renewals" costs are the annual renewal fees for the AcademicWorks scholarship software subscription and Blackbaud NXT Software fees. The contract for Blackbaud renewals is between the Blackbaud Solutions and the Foundation. The Foundation shall send Blackbaud invoices to the College as soon as possible and no later than 5 days from receipt. The College will pay the Blackbaud invoice as follows: (1) The Foundation will reimburse the College for 50% of the AcademicWorks scholarship software subscription fee; and (2) The College shall cover up to, but not more than, \$5,419.13 of the Blackbaud NXT Software fees and the Foundation shall reimburse the College for the remainder. The College shall promptly notify the Foundation of payment. All Foundation reimbursements shall be made to the College as soon as possible and no later than 15 days from notice of payment.

II. ACCOUNTING AND AUDITING

To provide proper accounting and auditing for the property and services provided by each party under Article I of this Agreement:

- A. Accounting and fiscal functions shall be the responsibility of the Vice President of Foundation, Human Resources, and Legal Affairs of the College and the Principal Accountant of the Foundation.
- B. Each fiscal year (July 1 through June 30), the College business office shall prepare a budget showing all anticipated transactions and services under this Agreement for that upcoming fiscal year, including all space and equipment, supplies, personnel, and other services the College expects to provide to the Foundation. The Foundation Board Chair and the College President, and/or their designees, will review and approve that budget.
- C. The value of all space and equipment, supplies, personnel, and other services, which the College provides to the Foundation, shall not exceed the total amount of \$250,000 in any fiscal year. The College will regularly keep track of the space and equipment, supplies, personnel, and other services it is providing to assure that this maximum amount is not being exceeded. The College business office will annually prepare, and the Foundation Board Chair and the College President and/or their designees will annually review, a post-closing summary of the transactions between the two parties to assure that this maximum has not been exceeded.
- D. The Foundation shall annually confirm to the College:
 1. That it has fully complied with its obligation to expend its best efforts to seek to accrue gifts, grants, donations and endowments for the benefit of the College; and
 2. That it has used all assets and earnings of the Foundation for the exclusive benefit of the College or the payment of necessary and reasonable administrative expenses of the Foundation. For this purpose, the Foundation will list its accomplishments for the preceding year and share with the College its revenue and expense statements for the preceding year and its end-of-year balance sheet.

- E. The Foundation is a separate entity from the College, and shall be periodically audited by a reputable independent accounting firm.
- F. The parties acknowledge that the College is a state institution of higher education, and shall be audited by the State Auditor's Office. The parties also acknowledge that the College is subject to the Public Records Act, RCW 42.56.
- G. The Foundation shall permit the College President or his or her designee, to inspect and/or copy pertinent Foundation books, accounts and records at all reasonable times in order to determine compliance with the commitments made in this Agreement. The College President's designee may include institutional or state auditors. Nothing herein shall be deemed to affect the rights and responsibilities of the State Auditor.

III. OTHER AGREEMENTS

- A. Independent Capacity: At all times and for all purposes of this Agreement, each party shall act in an independent capacity and not as an agent or representative of the other party.
- B. No Indemnification: Each party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority.
- C. No Assignment: This Agreement is not assignable by either party, in whole or in part.
- D. Governing Law and Disputes: This Agreement shall be governed by the laws of the State of Washington. Before instituting any legal action hereunder, a party, through the Foundation Board Chair or College President, shall meet the other party, through the Foundation Board Chair or College President, and attempt in good faith to resolve the disagreement. Venue of any action hereunder shall be in Cowlitz County Superior Court.
- E. Entire Agreement: This Agreement constitutes the entire agreement of the parties, including all oral understandings, on the subject of their general and overall relationship. However, the parties may enter into other stand-alone agreements on specific subjects. All such other agreements shall also be in writing, signed by the parties, and approved as to form by the Attorney General or his or her designee.
- F. Modification: No alteration or modification of any term of this Agreement shall be valid unless made in writing, signed by the parties, and approved as to form by the Attorney General or his or her designee.
- G. Termination: This Agreement shall continue until terminated. It may be terminated by either party only at the end of a State fiscal biennium, upon written notice to the other party given at least ninety (90) days in advance. Provided however, this Agreement or a successor overall agreement by and between the College and the Foundation shall be necessary for the Foundation to operate.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the parties on this 21 day of June, 2023

LOWER COLUMBIA COLLEGE FOUNDATION

By Jennifer Isaacson
Jennifer Isaacson
Foundation Board, Chair
Lower Columbia College Foundation

LOWER COLUMBIA COLLEGE

By Liz Cattin
Liz Cattin
Board of Trustees, Chair
Lower Columbia College

Approved as to form:

Shelley Williams
Shelley Williams
Assistant Attorney General