

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made and entered into this 17th day of August, 2017 by and between the DAVIS JOINT UNIFIED SCHOOL DISTRICT, hereinafter referred to as “DISTRICT” and “THE NORCAL BEARS TRAVEL BASEBALL CLUB,” hereinafter referred to as “NCB” (collectively, the “Parties”).

WHEREAS, pursuant to the DISTRICT’S Board Policy No. 3290, the Board may accept gifts or money or property on behalf of the DISTRICT pursuant to any terms and conditions as agreed to by the Board;

WHEREAS, NCB has voluntarily offered to provide as a gift to the DISTRICT the labor, materials and services to perform work at the Holmes Jr. High School Baseball Field as identified in the attached Exhibit “A” PROJECT SCOPE OF WORK (“PROJECT”);

WHEREAS, NCB intends to provide all materials and labor at no cost to the DISTRICT and to perform the PROJECT work with volunteers and/or volunteer coordinators as further defined below;

WHEREAS, the Community Recreation Act, California Education Code sections 10900 through 10914.5, authorizes school districts and cities to organize, promote, and conduct community recreation programs and activities to promote the health and general welfare of the community;

WHEREAS, the Civic Center Act, California Education Code sections 38130 through 38138, establishes a civic center at each and every public school that allows for various community uses, including supervised recreational activities and organized sports leagues;

WHEREAS, NCB requested priority scheduling of Holmes Jr. High School Field, second to DISTRICT’S use of the Holmes Jr. High School Field facilities, in return for the gift of the PROJECT;

WHEREAS, DISTRICT’S Board Policy No. 1330 and Administrative Regulation No. 1330 provide that DISTRICT may allow the public to utilize school facilities when such public activities do not interfere with school-related activities;

WHEREAS, the Board has reviewed NCB’S gift and its request for priority scheduling of the Holmes Jr. High School Field and DISTRICT deems such uses consistent with the DISTRICT’S Policies, Regulations, visions, philosophy, and operations and deems the gift and conditions consistent with the Community Recreation Act and the Civic Center Act; and

WHEREAS, the DISTRICT accepts the PROJECT pursuant to the terms and conditions set forth in this MOU.

NOW, THEREFORE, the Parties hereto agree as follows:

I.
PROJECT SCOPE OF WORK

NCB agrees to provide to the DISTRICT the improvements to the Holmes Jr. High School baseball field as more specifically defined in the attached Exhibit "A" PROJECT SCOPE OF WORK. NCB shall provide all materials and labor necessary for the PROJECT at NCB'S sole cost and expense and at no charge to the DISTRICT. NCB agrees that the DISTRICT shall own all improvements installed for the PROJECT pursuant to this Agreement.

II.
TERM

This MOU shall have a term of the earlier of one year from the date first set forth above or the date the PROJECT is complete, and may be renewed by mutual written agreement of the Parties.

III.
LABOR.

NCB may retain (at its sole cost and expense) licensed contractors reasonably acceptable to DISTRICT, which may also retain subcontractors, to complete the PROJECT. Notwithstanding the above, all labor provided by NCB for the PROJECT will be performed by "volunteers" and/or "volunteer coordinators" as defined and in accordance with California Labor Code section 1720.4. Any labor provided by NCB for the PROJECT not in compliance with California Labor Code section 1720.4 shall meet the requirements set forth in Chapter 1 of Part 7 of Division 2 of the California Labor Code (Section 1720, *et seq.*) and California Code of Regulations, Title 8, Chapter 8, Subchapters 3 & 4 (Section 16000, *et seq.*). NCB agrees to fully indemnify, defend and hold the DISTRICT, its officers, agents, employees and others harmless from any and all claims, actions, suits, or other proceedings, arising out of or related to NCB'S failure or alleged failure to meet the requirements set forth in Chapter 1 of Part 7 of Division 2 of the California Labor Code (Section 1720, *et seq.*) and California Code of Regulations, Title 8, Chapter 8, Subchapters 3 & 4 (Section 16000, *et seq.*), except for any liability resulting from the gross negligence or willful misconduct of the DISTRICT.

IV.
INSURANCE.

A. NCB and/or its contractors performing work on the PROJECT shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to DISTRICT, which will protect NCB and DISTRICT from claims which may arise out of or result from NCB'S actions or inactions relating to the PROJECT, whether such actions or inactions be by themselves or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

(1) Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California, but not less than \$1,000,000.

(2) Comprehensive general and auto liability insurance with limits of not less than \$1,000,000 combined single limit, bodily injury and property damage liability per occurrence, including:

- (i) Owned, non-owned and hired vehicles;
- (ii) Blanket contractual;
- (iii) Broad form property damage;
- (iv) Products/completed operations; and
- (v) Personal injury.

B. Each policy of insurance required in Section IV.A. above shall name DISTRICT and its officers, agents and employees as additional insureds; shall state that, with respect to the work of NCB hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to DISTRICT prior to cancellation; and, shall waive all rights of subrogation. NCB shall notify DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, NCB shall deliver to DISTRICT certificates of insurance as evidence of compliance with the requirements herein.

V. **INDEMNITY.**

A. To the fullest extent permitted by law, NCB and/or its contractors performing work on the PROJECT agree to indemnify, and hold DISTRICT entirely harmless from all liability arising out of:

(1) Workers Compensation And Employers Liability. Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to NCB'S employees arising out of NCB'S work on the PROJECT pursuant to this MOU; and

(2) General Liability. Liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law; or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by NCB or the DISTRICT, or any person, firm or corporation employed by NCB or the DISTRICT upon or in connection with the services provided for the PROJECT by NCB and its contractors pursuant to this MOU, except for liability resulting from the sole or active negligence, or willful misconduct of the DISTRICT, its officers, employees, or agents.

B. NCB, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings, arising out of this Agreement, that may be brought or instituted against the DISTRICT, its officers, agents or employees, on any such claim or liability, and shall pay or

satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

VI.

PROJECT CONSTRUCTION TERMS AND CONDITIONS

A. Approval Of Plans And Scope Of Work. NCB shall prepare and submit to the DISTRICT all necessary plans and other documents detailing the work to be performed, including a list of all materials, products, fixtures, etc. All work must be reviewed and approved in writing by the DISTRICT prior to any work commencing on the PROJECT.

B. Quality Of Work. NCB shall perform all work on the PROJECT in a neat and workmanlike manner. The DISTRICT shall approve the quality of all work for the PROJECT and shall have the right to request NCB to perform any corrective work that the DISTRICT reasonably determines is not satisfactory or not within the DISTRICT'S standards.

C. No Hazardous Materials. NCB certifies that all materials used for the PROJECT do not contain any asbestos, polychlorinated biphenyl, or any other material defined as being hazardous by California Health and Safety Code section 25249.5. NCB shall fully indemnify and defend the DISTRICT as set forth in Section V. above for any claims, damages, loss or liability resulting from NCB'S use of any hazardous materials on the PROJECT.

D. Imported Soil Testing Requirements. If soils are imported and used on the PROJECT, NCB shall not permit the importation of soil or fill material to the property containing any substance defined as a hazardous waste, hazardous substance, or hazardous material by the California Health and Safety Code or regulations or guidelines promulgated by the California Department of Toxic Substances Control ("DTSC") in excess of relevant DTSC risk thresholds. NCB shall, at its sole cost, comply with all requirements set forth by DTSC with respect to the importation of soil or fill material to the PROJECT. In addition, NCB shall, at its sole cost, comply with all requirements and recommendations, including recommended fill material sampling, set forth in the most current version of DTSC's "Information Advisory - Clean Imported Fill Material, October 2001," which may be found at http://www.dtsc.ca.gov/Schools/upload/SMP_FS_Cleanfill-Schools.pdf. All such soil sampling shall, at District's option, be conducted under the supervision of a consultant provided by NCB. Upon completion of such sampling, NCB, at its sole cost, shall provide District copies of any reports related thereto. In the event DTSC determines that soil or fill material imported to the PROJECT by NCB, including its agents and contractors, is not suitable for school site use due to the presence of hazardous substances, NCB shall, at its own expense, remove all such disapproved soil and replace it with soil approved by DTSC.

E. Disposal of Sod Removed and Unused and Dirt. NCB, at its sole expense and cost, will dispose of all removed and unused sod and dirt as noted in Appendix "A." NCB shall dispose of these materials legally and lawfully at an appropriate location.

F. Continuance Of District Classes And Operations. NCB shall provide a schedule detailing when the work will be performed for approval by the DISTRICT. All work on the PROJECT shall be performed to ensure that any existing classes, operations or other activities at the

PROJECT are maintained and not disrupted, unless otherwise approved in writing by the DISTRICT.

G. Hours Of Work. All work for the PROJECT shall be performed during times and dates approved by the DISTRICT. NCB shall comply with all City ordinances or other requirements applicable to the PROJECT including, but not limited to, restrictions governing noise and hours when work can be performed.

H. District's Responsibilities. Other than the responsibilities set forth in this MOU, the DISTRICT'S responsibilities for the PROJECT are limited to providing oversight and observation of the work being performed. The DISTRICT further agrees that NCB may use the DISTRICT'S and Holmes Jr. High School's name, photographs of the PROJECT and descriptions of the PROJECT, in promotional materials during and after the PROJECT.

I. NCB's Responsibilities. In addition to providing DISTRICT with plans and specifications for DISTRICT review and approval prior to commencing the scope of work, NCB will be responsible for regular maintenance of the field when used by NCB as discussed herein. NCB will maintain the infield, including: providing all curative measures, including soil importation and/or leveling the infield playing surface, as needed (such as to cover holes, washouts, etc.) and general maintenance of the infield (dragging and/or raking) to maintain the surface of the pitcher's mound, batter's/catcher's box, and the base paths. Any imported soil shall comply with the requirements with subsection D of this Section. NCB will chalk the base lines and batter's/catcher's box as needed during times that NCB is utilizing the field. NCB will maintain infield/outfield radius to maintain safe playing conditions, on an as-needed basis, so long as NCB is utilizing the field. NCB shall maintain the infield in a neat, clean and safe condition. NCB will remove weeds and other impediments from the infield, as needed, when NCB uses the Holmes J. High School Field.

VII. **SAFETY.**

A. Safety Plan. NCB has sole responsibility for maintaining safety and must have a safety plan onsite. NCB is also responsible for reviewing all emergency shut-off valve locations, as well as providing trench protection via trench plates and trench warning tape, as applicable.

B. After Hours Work. All after hours work shall be coordinated with DISTRICT personnel to ensure accessibility. If keys are made available to NCB, NCB shall be responsible for any losses.

C. Non-District Personnel On Campus.

(1) While on campus, all Non-DISTRICT personnel must wear an identifying badge at all times.

(2) Strict compliance with either of the methods of ensuring student safety as set forth in Education Code section(s) 45125.2(a)(1) (installation of a physical barrier) or 45125.2(a)(2) (continual supervision by an employee of contractor who has not been convicted of a serious or violent felony) will be enforced. If NCB elects to provide continual supervision pursuant to

Education Code section 45125.2(a)(2), NCB shall require the person(s) who will provide that continual supervision to be fingerprinted/background checked by the Department of Justice (“D.O.J.”). Upon verification from the D.O.J. that those persons fingerprinted have no record of a serious or violent felony, contractor will so certify by signing and submitting to the DISTRICT the required certification form(s).

D. Driving On School Property. When children are present on campus and workers must drive a vehicle on school grounds, it is mandatory that a spotter walk alongside the vehicle.

E. Construction Process. Weekly meetings involving NCB and designated DISTRICT personnel are required. NCB hereby agrees to coordinate all activities performed hereunder with the DISTRICT to make this PROJECT a successful and beneficial experience for everyone.

F. Parking. Approved parking locations will be designated at the school by the DISTRICT. In some cases, parking areas will be arranged on school grounds, at the end of parking lots or adjacent properties. In other cases parking will be on the street, and will be subject to local parking jurisdiction and authority.

G. Staging. Approved staging locations will also be designated at the school by the DISTRICT. No staging outside this approved area will be allowed.

H. Clean-Up. All work areas are required to be cleaned up on a daily basis. Deficient cleanup may result in charges to NCB. At completion of the work and prior to final acceptance/inspection, a thorough cleaning of the areas affected shall be carried out by the contractor’s forces.

I. Supervision. NCB is responsible for full-time supervision of workers. At no time shall work be performed without an approved supervisor on site. The DISTRICT reserves the right to approve and reject supervision. Hiring undocumented workers is prohibited by law. NCB shall secure and cause its subcontractors to secure proof of eligibility/citizenship from all workers.

J. Testing And Inspection. NCB is responsible for all required testing, with all test report(s) delivered to the DISTRICT. Any work, materials or equipment not meeting industry standards and/or the requirements and intent of this PROJECT may be rejected by the DISTRICT, and unsuitable work and materials shall be made good by NCB.

K. Smoking. All campuses are smoke-free facilities. If workers want to smoke, it must be done off campus.

L. Drugs. Use or possession of drugs of any kind is strictly forbidden.

VIII. **PRIORITY OF USE**

A. Use of Facilities. The Facilities will be used to the maximum extent possible for recreation and baseball facilities purposes. To that end, the Facilities will be utilized in accordance with the policies and standards set forth by District and in accordance with law, except no person or organization shall be permitted to use the Facilities where such use is

inconsistent with the educational, recreational and/or community programs and activities allowed by the DISTRICT. Permitted uses of the facilities by third parties shall be determined by the DISTRICT'S Policies, Procedures, and Administrative Regulations.

B. Priority of Scheduling. DISTRICT shall always maintain first priority of use. In the event that the DISTRICT is not utilizing the Holmes Jr. High School Field, priority of use shall be as follows:

(1) For the first ten (10) hours of NCB'S weekly use of the Holmes Jr. High School Field, priority of scheduling of Holmes Jr. High School Field shall be as follows:

- a. NCB'S practices and programs; and
- b. All other groups and parties.

Nothing in this Memorandum of Understanding shall limit, or otherwise impair, DISTRICT'S ability to modify priority of scheduling as it sees fit.

C. NCB Request of Additional Use of Holmes Jr. High Baseball Field. NCB may request additional weekly hours of utilization of the Holmes Jr. High School field beyond those hours described in subsection B of this Section. DISTRICT will maintain first priority use of the field and NCB'S requests shall be subject to:

- (1) DISTRICT consent to NCB'S request for additional usage of the
- (2) field; Availability of the Holmes Jr. High School baseball field; and
- (3) The following priority of scheduling:
 - a. DISTRICT'S official classes, school associated competitive uses, and other school and school sponsored activities;
 - b. Non-NCB affiliated groups and parties; and
 - c. NCB'S practices and programs.

D. DISTRICT'S Ability to Reschedule. DISTRICT reserves the right to reschedule the use of Holmes Jr. High School Field upon 24 hours of notice to all interested parties. Notice shall be provided from DISTRICT'S representatives to the affected party via telephone and via e-mail.

IX. GENERAL TERMS AND CONDITIONS

A. Incorporation By Reference. The Recitals and Exhibits are hereby incorporated by reference as if fully set out herein.

B. Entire Agreement. This MOU contains the entire agreement between the Parties with respect to the matters covered hereby, and supersedes all prior agreements, written or oral, between the Parties. No other agreement, statement, or promise made by any Party not contained

herein shall be binding or valid. This MOU shall be construed as one document and all of the agreements herein are in exchange for and in consideration of the commitments of each and all of the Parties herein as set out above.

C. Modifications. This MOU may be amended only by a writing signed by the Parties.

D. Severability. Should any provision of this MOU be declared or determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected thereby and said illegal, unenforceable, or invalid part, term, or provision shall be deemed not to be part of this MOU.

E. Governing Law. This MOU shall be construed, determined and enforced in accordance with the laws of the State of California with venue in Yolo County, California.

F. Construction. The Parties agree that each Party has independently reviewed this MOU; and that any rules of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in any interpretation of this MOU or any amendments or exhibits thereto.

G. Counterparts. This MOU may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

The Parties, through their authorized representatives, have executed this MOU as of the day and year first written above.

**THE NORCAL BEARS TRAVEL
BASEBALL CLUB**

By: _____

Name: _____

Title: _____

DAVIS JOINT UNIFIED SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

EXHIBIT "A"

PROJECT SCOPE OF WORK

Holmes Jr. High School Baseball Field Improvements

The existing Holmes Jr. High School field consists of a fenced "back stop" area and a grass field. Currently, there is no dirt "infield" area for the baseball field. NCB's proposed improvements to the facilities include the development of an intermediate level youth baseball field, including a dirt infield, base paths and batter's/catcher's box. Under this scope of work, NCB will complete the following: (1) surveying and field layout; (2) removal of grass/sod necessary for the infield playing surface; (3) grading; (4) sprinkler reconfiguration (as needed); (5) spreading and leveling of infield mix for dirt infield and pitcher's mound and batter's/catcher's box; and (6) installation of base sleeves and pitcher's mound rubber. This scope of work must be approved by submission of plans and specifications to DISTRICT prior to the commencement of any NCB work as indicated in Section VI of this MOU. NCB improvements include, but are not limited to:

1. Surveying and Field Layout. NCB shall stake the existing grass field area to indicate the infield area, including location of bases, home plate, and pitcher's mound as appropriate for an intermediate level youth baseball field. (An intermediate youth baseball field is known as a "50/70" baseball field where the pitcher's mound is fifty (50) feet from home plate and the bases are seventy (70) feet apart from one another). Surveying will include distances and alignment between the bases; the bases and the pitcher's mound; and alignment of the batter's/catcher's box, home plate and the bases.
2. Sod and Dirt Removal. Because the existing field is entirely grass and NCB proposes a dirt infield playing surface, NCB must remove existing grass/sod or "skin" the infield area, including: the base path, the pitcher's mound, and the batter's/catcher's box. NCB, at its sole cost, will dispose of all removed and unused sod and dirt prior to the completion of the Project.
3. Grading. NCB will grade the infield area to ensure that the area is level and to provide a level surface for the installation of the pitcher's mound, batter's/catcher's box and bases. NCB and its subcontractors will solely be responsible to grade and compact the infield area, as needed, to ensure that said improvements meet District standards.
4. Sprinkler Reconfiguration. Sprinklers may require reconfiguration due to existing location and proposed field and base location. NCB shall coordinate removal and relocation of sprinklers and irrigation hardware with District pursuant to Section VI of this MOU prior to completing such removal/relocation.
5. Spreading Dirt/Mix for Infield, Pitcher's Mound, and Batter's/Catcher's Box. Once sod is removed from the proposed infield area, NCB shall spread dirt/infield mix and level it according to plans and specifications provided to and approved by District.

6. Installation of Base Sleeves, Pitcher's Mound Rubber, and Home Plate. NCB shall install base sleeves and a pitcher's mound rubber in accordance with plans and specifications provided to and approved by District.