

**Facilities Use Agreement  
Between  
NAPA SILVERADOS BASEBALL CLUB  
And  
NAPA VALLEY COLLEGE COMMUNITY COLLEGE DISTRICT**

This Agreement (hereinafter "Agreement") is entered into by and between NAPA SILVERADOS BASEBALL CLUB (hereinafter "BASEBALL") and Napa Valley College Community College District (hereinafter "DISTRICT"). Agreement to be managed by the Napa Valley College District Auxiliary Services, a Community College Auxiliary Foundation for Napa Valley Community College District, organized and existing under the laws of the State of California (hereinafter "NVC-DAS").

**WHEREAS**, BASEBALL is established for the cultural and recreational purposes of the communities of the District, and is a member of the Pacific Association of Professional Baseball Clubs; and

**WHEREAS**, BASEBALL desires to use the DISTRICT's facilities for purposes of practices and games and in connection with such games, intends to bring awareness of and support for the District's educational activities and improvements to the District's facilities;

**WHEREAS**, DISTRICT and NVC/DAS desire to improve their facilities, support the goals of BASEBALL to increase visibility for the District, and create additional recreational opportunities for District communities;

**WHEREAS**, Education Code Section 82537 et seq., permits the use of DISTRICT facilities for supervised recreational activities;

**WHEREAS**, Education Code Section 82542 permits the use of DISTRICT facilities for entertainment or a meeting where an admission fee is charged;

In consideration of the mutual agreements herein, both parties agree as follows:

**Article 1. EFFECTIVE DATE, TERM, TERMINATION AND EFFECT OF TERMINATION**

- 1.1. This Agreement shall be effective as of the date that it is signed by both Parties to this Agreement and approved by the District Board of Trustees (the "Effective Date")
- 1.2. This Agreement shall be effective for five years, commencing on the Effective Date of the Agreement.
- 1.3. Either party may terminate this Agreement for its own convenience or for no reason by providing written notice to the other party no later than September 15, for an effective termination date of December 31 of that same year. DISTRICT may immediately terminate this Agreement for cause or if an emergency exists which requires the DISTRICT's immediate need to use the facilities. In the event BASEBALL is deemed to be in default under this Agreement, DISTRICT shall provide

BASEBALL thirty (30) days to cure such default. If, after thirty (30) days, and provided BASEBALL is making no reasonable effort to cure such default, Pacific Association of Professional Baseball Clubs (“PABC”), at its sole option, shall have the right to cure such default and by virtue thereof be subject to all rights and obligations of BASEBALL under this Agreement. Upon termination, DISTRICT shall not have any further obligations to BASEBALL under this Agreement.

- 1.4. If the DISTRICT terminates this Agreement, without cause, within the first four (4) years, the DISTRICT will reimburse BASEBALL for its cost to improve the DISTRICT’s bleachers (bleachers, footings, and engineering), as follows:
- Year One: 80%
  - Year Two: 60%
  - Year Three: 40%
  - Year Four: 20%

The estimated cost of improvements to District’s bleachers is approximately \$150,000. See also: Exhibit C.

## **Article 2. GOVERNANCE**

- 2.1. BASEBALL shall be responsible for all operations of BASEBALL.
- 2.2. For NVC-DAS, on behalf of the DISTRICT, NVC Superintendent/President and NVC-DAS Board Chair, shall have full authority to make decisions with respect to the terms and procedures of this Agreement and any and all events produced by BASEBALL.

## **Article 3. FACILITIES AND SCOPE OF USE OF FACILITIES**

- 3.1. The DISTRICT, shall make available to BASEBALL the following property and facilities:
- 3.1.1. BASEBALL shall have access to and use of the District’s Baseball field, Hardcourt, Parking Lot J, baseball restroom, paved and grass areas contiguous the Baseball field, and locker rooms, located at Building 600 (collectively “Facilities”).
- 3.2. BASEBALL may use the Facilities solely for the purpose of BASEBALL games and practices and for no other purpose unless approved, in writing, by the DISTRICT or NVC-DAS.
- 3.3. BASEBALL may only use the Facilities during BASEBALL’s season from May through August during the term of this Agreement, and at no other time, absent written consent from the DISTRICT or NVC-DAS.
- 3.4. BASEBALL’S access to the Facilities under this Agreement shall be non-exclusive and DISTRICT and NVC-DAS reserve the right to cancel or reschedule BASEBALL games or practices, at their sole discretion, to meet the needs of the DISTRICT. However, DISTRICT and NVC-DAS shall make reasonable efforts to accommodate BASEBALL, and to coordinate scheduling and use of the Facilities by other District constituents, including but not limited to, the DISTRICT’s baseball team, with BASEBALL. To that end, the DISTRICT shall provide BASEBALL with a schedule of other events and activities scheduled at the Facilities, on or about December 15 of each year,

during the term of this Agreement. BASEBALL shall provide its preliminary calendar for review and approval prior to December 31 of each year. BASEBALL shall provide its final schedule no later than February 1 of each year. Specific hours of use during BASEBALL's season shall be mutually agreed upon annually in writing by BASEBALL and the DISTRICT or NVC-DAS.

- 3.5. BASEBALL estimates that it will play approximately 40 games per season, and anticipates that approximately 200 -600 community members will attend such games. Material deviation from the BASEBALL's estimated number of games, or attendees, constitutes a material change in the anticipated scope of use of the Facilities which shall require written consent of the DISTRICT or NVC-DAS.
- 3.6. 3.6 To the extent permitted by law and in accordance with all necessary licensing and permits, BASEBALL may operate its own concessionaires/concessions at the games.

**Article 4. SERVICES AND EQUIPMENT**

- 4.1. NVC-DAS, on behalf of DISTRICT , shall provide access to BASEBALL to the existing District Internet network and utilities to the extent that they are available in the ordinary course at the Facilities.
- 4.2. DISTRICT shall provide and be responsible for all utilities reasonably necessary for BASEBALL to use the Facilities as set forth in this Agreement.
- 4.3. BASEBALL may provide temporary storage facilities at a mutually agreed location for its use during its regular season that shall be removed at the conclusion of its season.
- 4.4. Upon prior written approval of the DISTRICT or NVC-DAS, BASEBALL may install and maintain signage on DISTRICT fencing surrounding BASEBALL field during the course of its regular season.

**Article 5. PAYMENT AND ALLOCATION OF DIRECT COSTS**

- 5.1. BASEBALL shall pay District in-kind for use of the Facilities in the form of marketing and promotional activities, and through improvements of the District's premises and property as follows:
- 5.1.1. BASEBALL shall designate DISTRICT as a BASEBALL Founding Partner, which shall result in recognition of the DISTRICT through prominent placement of DISTRICT's name and a brief summary of the DISTRICT's educational mission in promotional materials, including BASEBALL's signage, print media (including BASEBALL's yearly program, daily program, and other advertising), audio, and digital media (including, but not limited to, BASEBALL's website, social media, and email marketing) per the Marketing and Partnership Information packet dated 2/15/18, attached hereto as **Exhibit A** and incorporated by this reference. In addition, BASEBALL shall include DISTRICT in its Seventh Inning Stretch activities during the games.

- 5.1.2. With the written approval of DISTRICT, BASEBALL shall complete the following (collectively "Improvements"):
  - 5.1.2.1. Improving Baseball Field bleachers to increase seating from 120 to 450
  - 5.1.2.2. Improving the Press/Announcer box and public address system;
  - 5.1.2.3. Improvements to Backstop/Backstop area;
  - 5.1.2.4. Temporary striping to realign/relocate-disabled parking.
- 5.2. In accordance with Education Code Sections 82542 et seq., and Title 5 of the California Code of Regulations Sections 59601 et seq., and to the extent such costs are not addressed by consideration identified in Item 5.1, BASEBALL shall also be responsible for the following direct costs where services are required outside the normal course of DISTRICT or NVC-DAS operations (to be determined in the DISTRICT's sole discretion): (i) Custodial Services at \$40 per hour, per person; and (ii) public safety/college police at \$60 per hour, per officer.
- 5.3. During BASEBALL's games, BASEBALL shall also provide sufficient personnel to manage and staff the Facilities and shall be solely responsible for compensating such personnel. In advance of any scheduled BASEBALL game, DISTRICT/NVC-DAS shall provide field preparation and site-supervision personnel at \$15-20 per hour, per person. Field preparation and site supervision personnel shall be the District's on-site representative during BASEBALL games and shall prepare the baseball field prior to each scheduled BASEBALL game.

It is estimated that a total of eight (8) hours of field preparation and site supervision will be required before and during each game. DISTRICT/NVC-DAS shall make every effort to maintain the Facilities per the Pacific Association Of Professional Baseball Clubs - Field Maintenance and Equipment Guide, attached hereto as Exhibit B and incorporated by this reference.

- 5.4. The parties understand and agree that BASEBALL's use of the Facilities must be in exchange for the fair rental value of use of the Facilities pursuant to Education Code section 82542 and DISTRICT policy. The DISTRICT will maintain a Fair Market Value Spreadsheet, attached hereto as Exhibit C, to record the costs of improvements and fair market value of marketing provided by BASEBALL and the fair market value of the use of the Facilities, including any costs incurred by BASEBALL under Article V of this Agreement. To the extent that the cost of improvements and fair value of marketing to be provided pursuant to this Agreement are less than the fair market value of use of the Facilities, BASEBALL agrees to reimburse DISTRICT for the difference between (i) the fair value of the use of the Facilities and (ii) costs incurred by BASEBALL under Article V of this Agreement. Reimbursement to the DISTRICT shall be made by BASEBALL within thirty (30) days after receipt of an invoice from the DISTRICT or NVC-DAS, as applicable, for such costs.

## **Article 6. IMPROVEMENTS AND CONDITION OF PREMISES**

- 6.1 DISTRICT or NVC-DAS shall review and approve all scopes of work, plans, and contracts related to the Improvements prior to BASEBALL performing any services related thereto.

- 6.2 For all Improvements, BASEBALL shall act as the supervisor and shall furnish all labor, materials, equipment, plans, tools, supervision, appurtenances, and services, including transportation and utilities, required to perform and satisfactorily complete all work required for the Improvements. All Improvements shall be performed by California licensed contractors.
- 6.3 BASEBALL shall fully complete the Improvements before the expiration of 120 calendar days from the Agreement Effective Date.
- 6.4 BASEBALL shall at all times perform the work of this Agreement in a competent manner and, if not specifically stated, accomplish the work according to the best standards of practice. BASEBALL shall be held strictly responsible for the proper performance of all work covered by this Agreement, including all work performed by independent contractors, subcontractors, and volunteers, if any. All work performed under this Agreement shall comply in every respect to the rules and regulations of all agencies having jurisdiction over the Improvements or any part thereof.
- 6.5 BASEBALL shall at all times take all appropriate measures to ensure the security and safety of DISTRICT students and staff, including, but not limited to, ensuring that all of the BASEBALL's agents, independent contractors, employees, volunteers, subcontractors, and suppliers entering the DISTRICT's property strictly adhere to all applicable DISTRICT policies and procedures.
- 6.6 Nothing contained in this Agreement shall create any contractual relationship between any BASEBALL subcontractor and the DISTRICT. The DISTRICT shall be deemed to be the third-party beneficiary of the contract between BASEBALL and any subcontractor. The DISTRICT reserves the right of approval of all subcontractors proposed for use on the Improvements, and to this end, may require financial, performance, and such additional information as is needed to secure this approval. BASEBALL shall insert appropriate provisions in all subcontracts pertaining to work on the Improvements requiring the subcontractors to be bound by all applicable terms of this Agreement, including, but not limited to, prevailing wage requirements. BASEBALL shall be as fully responsible for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, including any volunteers, as BASEBALL is for the acts and omissions of persons directly employed by BASEBALL.
- 6.7 If applicable, all Improvements covered by this Agreement shall meet all the regulations and approval of the Division of the State Architect and as may be required by federal or state law. It shall be the obligation of BASEBALL in consultation with the DISTRICT to obtain all necessary permits and approvals from appropriate governmental entities for the Improvements.
- 6.8 BASEBALL shall take thorough precautions at all times for the protection of persons and property, and shall be liable for all damages to persons or property, either on or off the site, which occur as a result of BASEBALL or any of its employees, agents, independent contractors, subcontractors, suppliers, or volunteers' prosecution of the Improvements. BASEBALL shall obtain permits for, install and maintain in safe condition barricades, walkways, fences, railings, and whatever other safeguards that may be necessary to protect persons and property from

damage as a result of the work under this Agreement. BASEBALL shall ensure that the Improvement site is properly secured and in a safe condition at the end of each work day.

- 6.9 As applicable, in accordance with Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work under this Agreement. BASEBALL and any subcontractor shall pay workers overtime pay as required by Labor Code section 1815, except for volunteers exempt from prevailing wage requirements in accordance with section 1720.4 of the Labor Code, at a rate not less than the prevailing wage for each craft or classification covering the work actually performed.
- 6.10 The Improvements will be deemed a "public works project" as defined by Labor Code sections 1720 and 1771. In accordance with California Labor Code section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the work. In accordance with California Labor Code section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the work is to be performed. In accordance with California Labor Code section 1773, the DISTRICT has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the work is to be performed for each craft, classification or type of worker needed to perform the Improvements. In accordance with California Labor Code section 1773.02, copies of the prevailing rate of per diem wages are on file at the DISTRICT office and will be made available on request. Throughout the performance of the work, BASEBALL must comply with all provisions of this Agreement and all applicable laws and regulations that apply to wages earned in performance of the work.
- 6.11 The Improvements shall be deemed the DISTRICT's property and shall not be removed without the written consent of the DISTRICT. Upon expiration or termination of this Agreement, the Improvements shall remain on the DISTRICT's premises.
- 6.12 DISTRICT shall have full use and enjoyment of all Improvements.
- 6.13 BASEBALL accepts the Facilities as being clean and in good and safe condition and agrees to return the Facilities to the DISTRICT in the same condition as when received, reasonable wear and tear excepted, upon the completion of BASEBALL's season. BASEBALL further agrees to be personally responsible for any damages or harm sustained to the Facilities, including but not limited to all equipment, in connection with BASEBALL's use of the Facilities, including, without limitation, damages caused by the actions or omissions of BASEBALL, its members, partners, owners, officers, directors, employees, contractors, agents, volunteers, patrons, or guests. Repairs or replacements shall be made to the satisfaction of the DISTRICT.

**Article 7. PROPERTY BROUGHT TO FACILITIES**

7.1. BASEBALL shall be responsible for all property that it places on or in the Facilities. Neither DISTRICT, nor NVC-DAS, assume any responsibility for such property and BASEBALL expressly relieves and discharges DISTRICT and NVC-DAS from any liability for any loss, injury or damage to such property. BASEBALL shall remove all such property from the Facilities at the conclusion of its season. If BASEBALL fails to remove such property, BASEBALL shall pay DISTRICT, or NVC-DAS, as applicable, for expenses incurred in removing or storing such property. In addition, DISTRICT or NVC-DAS may retain, use, or destroy property that is left in or on the Facilities by BASEBALL after the DISTRICT or NVC-DAS provides notice to BASEBALL and BASEBALL has failed to collect or remove such property within two-weeks after such notice.

**Article 8. USE OF NAME AND LOGO**

8.1. District hereby grants BASEBALL a limited, non-exclusive, non-transferable right during the Term to use the Napa Valley College name and logo in any and all media as part of press releases, marketing, advertising and promotional materials in connection with BASEBALL. BASEBALL hereby grants NVC-DAS, on behalf of the District a limited, non-exclusive right during the Term to use the BASEBALL name and logo in any and all media as part of press, releases, marketing, advertising and promotional materials in connection with this Agreement.

**Article 9. INSURANCE, LICENSES, PERMITS**

9.1. BASEBALL agrees, at its sole expense, to procure and maintain during the term of this Agreement, the following insurance with minimum limits equal to the amount indicated below:

- 9.1.1. General Liability Insurance that shall protect BASEBALL, DISTRICT and NVC-DAS from all claims of bodily injury, property damage, personal injury, death, other injury, and medical payments arising from any portion of this Agreement or Baseball's use of the Facilities. BASEBALL shall maintain such General Liability Insurance, with a single combined limit of two million dollars (\$2,000,000.00) per occurrence and aggregate of four million dollars (\$4,000,000.00).
- 9.1.2. Automobile Liability Insurance. Automobile Liability Insurance that shall protect BASEBALL, the DISTRICT and NVC-DAS from all claims of bodily injury, property damage, personal injury, death, other injury, and medical payments arising from any portion of this Agreement or the Event. BASEBALL shall maintain such Automobile Liability Insurance that provides not less than five hundred thousand dollars (\$500,000.00) per occurrence applicable to all owned, non-owned and hired vehicles operated in conjunction with this agreement in, on, or around Napa Valley College's main campus.
- 9.1.3. Workers' Compensation and Employers' Liability Insurance. In accordance with provisions of section 3700 of the California Labor Code, BASEBALL shall be required to secure workers' compensation coverage for its employees in the amount required by law. BASEBALL shall maintain required Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000.00) per occurrence (accident) and one million dollars (\$1,000,000.00) per employee (disease).

- 9.2. Proof of Carriage of Insurance and Endorsements. BASEBALL shall not commence any work under this Agreement until all required insurance has been obtained and certificates indicating the required coverages have been delivered in duplicate to DISTRICT or NVC-DAS and approved by DISTRICT or NVC-DAS. DISTRICT or NVC\_DAS shall review and approve the insurance within five (5) business days after submittal by BASEBALL. Certificates and insurance policies shall not be cancelled or reduced without thirty (30) days' notice to DISTRICT and must contain endorsements stating DISTRICT and NVC-DAS and their respective agents, representatives, employees, trustees, officers, consultants and volunteers are named additional insureds under all policies except Workers' Compensation Insurance. An endorsement will also state the BASEBALL's insurance policies shall be primary to any insurance or self-insurance maintained by the DISTRICT and NVC-DAS. Additionally, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the DISTRICT.
- 9.3. BASEBALL shall ensure that liability insurance carried by BASEBALL includes coverage for any injury or liability arising from "Advertising," defined as the public dissemination of information by BASEBALL, including images or audio that has the purpose of inducing the sale of goods, products or services through BASEBALL activities, which may result in any injury or offenses that take place through the internet or similar electronic means of communications.
- 9.4. BASEBALL shall also maintain or ensure the maintenance of all required licenses, permits, signage, and postings associated with its operations, or the operations of its concessionaires, including those associated with food service, beer and wine service, and employment. The DISTRICT is a drug-free campus and BASEBALL shall comply with the DISTRICT's drug-free campus policy, which includes a prohibition against possession or use of marijuana.

#### **Article 10. INDEMNIFICATION**

- 10.1. BASEBALL and the undersigned agree to defend, indemnify, and hold harmless the DISTRICT, NVC-DAS, and their respective Boards of Trustees and Directors, officers, agents, employees, volunteers, and students, individually, or collectively, from and against all damages, liability, costs, losses, claims, demands, suits, actions, payments, judgments, or causes of action, including legal costs and attorneys' fees, arising out of or in any way related to BASEBALL's use of the Facilities or this Agreement, including but not limited to, liability arising from personal or bodily injuries on or in the Facilities, property damage, advertising, security or police actions or omissions, and inadequate permitting. It is the intent of the parties that BASEBALL shall indemnify DISTRICT and NVC-DAS to the greatest extent permitted by law.
- 10.2. Notwithstanding anything to the contrary contained in this Agreement, BASEBALL shall not be required to indemnify and defend NVC-DAS or DISTRICT to the extent that any claims identified in Section 10.1 against NVC-DAS or the District are attributed in binding arbitration or a court of law directly to:
- 10.2.1. Any grossly negligent or intentional misconduct of any NVC-DAS or District officer, director, employee, student, agent, attorney, representative, volunteer, successor or assign; or

10.2.2. Any violation by NVC-DAS or District, and their officers, directors, employees, students, agents, attorneys, representatives, volunteers, successors or assigns of the laws of the United States or any state of the United States.

10.2.3. If such a finding is made, the indemnification provisions described herein, and each of them, are agreed to by the DISTRICT as indemnitor and BASEBALL as indemnitee.

**Article 11. DISPUTE RESOLUTION**

11.1. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or breach thereof, the parties agree to use their best efforts to settle the dispute, claim, question, or disagreement. To that end, they shall consult and negotiate with each other in good faith and, recognizing their mutual interest, attempt to reach just and equitable solutions satisfactory to both parties. If the parties do not reach such solution within a period of thirty (30) days, then, upon written notification to either party, by either to the other, all disputes, claims, questions, or disagreements will be presented to a mediator selected by both parties. If the parties do not reach solution with the assistance of the mediator within a period of sixty (60) days, as stated in writing by the mediator, all disputes, claims, questions, or disagreements will be formally settled by binding arbitration administered in accordance with Cal. Code Civ. Proc. §§1280-1294.2.

**Article 12. SUPERVISION AND SECURITY**

12.1. BASEBALL shall comply with all NVC-DAS and DISTRICT approved policies and regulations and all applicable federal and state laws, concerning welfare, safety and health of employees, visitors, volunteers and others.

12.2. BASEBALL shall (i) provide security personnel or (ii) contract with the District for security personnel and reimburse District for costs of such security personnel as described herein. Neither DISTRICT nor NVC-DAS has any independent obligation to provide security personnel at BASEBALL games or practices. A pre-season and post-season inspection of the Facilities shall be scheduled with BASEBALL and DISTRICT staff to identify deficiencies and mutually agree on resolution.

**Article 13. MISCELLANEOUS**

13.1. Force Majeure. Neither party shall be liable if the performance of any part or all of this agreement is prevented, delayed, hindered or otherwise made impracticable or impossible by reason of any earthquake, strike, flood, riot, fire, explosion, war, act of God, sabotage, accident or any other casualty or cause beyond either party's control, and which cannot be overcome by reasonable diligence and without unusual expense.

13.2. California Law. This Agreement shall be governed by the rights, duties, and obligations of the Parties which shall be determined and enforced in accordance with the laws of the State of California, with venue in Napa County, and no other place.

13.3. Construction and Enforcement. The article and paragraph headings are used solely for convenience, and shall not be deemed to limit the subject of the articles and paragraphs or be considered in their interpretation. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

13.4. Independent Contractor Status. The parties to this Agreement intend that the relationship between them created by this Agreement is that of an independent contractor, and not an employer/employee. No agent, employee, or servant of BASEBALL shall be deemed to be an employee, agent, or servant of NVC-DAS or DISTRICT, except as expressly acknowledged in writing by NVC-DAS or DISTRICT. No agent, employee or servant of NVC-DAS or DISTRICT shall be deemed to be an employee, agent or servant of BASEBALL, except as expressly acknowledged in writing.

13.5. Integration. This Agreement contains all of the terms and conditions agreed upon by the parties. Any prior or contemporaneous agreements, promises, negotiation, or representations, either oral or written, related to the subject matter of this Agreement, not expressly set forth in this Agreement, shall have no force or effect.

13.6. Modification, Amendment, Waiver. No modification or amendment of any provision of this Agreement shall be effective unless approved in writing and signed by both parties. The failure of a party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of either party thereafter to enforce each and every provision hereof in accordance with its terms.

13.7. Invalidity of Provisions of this Agreement. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions shall not be affected.

13.8. Nondiscrimination. BASEBALL covenants and agrees that it shall not discriminate against any person or group thereof upon the basis of race, color, religion, sex, ancestry, physical handicap, marital status, or national origin in the operation of BASEBALL. BASEBALL shall comply with federal and state laws, rules, and regulations pertaining to nondiscrimination of hiring and employment.

13.9. Non-Assignment. Except as otherwise set forth herein, this Agreement shall not be assigned by either party without the prior written consent of the other party, such consent not to be unreasonably withheld.

13.10. No Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision. Nor shall such waiver constitute a continuing waiver unless otherwise expressed.

13.11. Appendices. Appendices to this Agreement shall become a part of this Agreement and shall be incorporated as of the date both parties agree to the content of the Appendices .

13.12. Attorney's Fees. If any action or proceeding is necessary to enforce the provisions of this Agreement, including any claim or demand, or to interpret this Operational Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which it may otherwise be entitled, whether or not such action or proceeding is prosecuted to judgment.

13.13. Survival. All representations, warranties, and indemnities made herein shall survive termination of this Agreement, including, without limitation, Article 10 of this Agreement. Article 11 and Section 13.11 shall also survive termination of this Agreement.

13.14. Notices. All notices required or permitted by this Agreement shall be in writing and shall either be hand delivered, sent by telecopy or facsimile, sent by U.S. mail, postage prepaid, addressed as set forth on the signature page hereof. A notice shall be effective either when personally delivered, on the date set forth on the receipt of a telecopy or facsimile, or upon the earlier of the date set forth on the receipt of registered or certified mail or on the fifth day after mailing.

Notices shall be delivered to the following individuals on behalf of each party:

For DISTRICT/NVC-DAS:

President Ronald Kraft, Ph.D.  
CC. Carollee Cattolica  
Managing Director of College Foundations/Advancement  
Napa Valley Community College District/DAS  
2277 Napa-Vallejo Highway  
Napa, CA 94558  
707-256-7161

For BASEBALL:

Bruce Johnson, CEO  
Napa Silverados Baseball Club  
1370 Trancas St. #199  
Napa, CA 94559  
707-254-7533

13.15. PABC. The parties understand and acknowledge that the Pacific Association of Professional Baseball Clubs is not a party, surety or guarantor for this Agreement and shall have no obligation or responsibility of any kind whatsoever in connection with this Agreement.

13.16. Each party represents and warrants that the signatories to this Agreement are legally authorized to sign and enter into this Agreement on behalf of the parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement to be effective as of February 9, 2018.

\_\_\_\_\_  
Bruce Johnson, CEO  
Napa Silveradors Baseball Club

\_\_\_\_\_  
Ronald Kraft, Ph.D., President  
Napa Valley Community College District

## Exhibit A

# Marketing and Partnership Information Packet



## Founding Partner Sponsorship Worksheet

Company Name: Napa Valley College

Contact Name:

Email:

Phone:

Ad Materials Contact Name:

Email:

Address:

Phone:

Website:

### Sponsorship Package Founding Partner

Exterior Signage:

2x Outfield Signs 7.5' X 10': \$5000 X 2 = \$10,000

1x Food Area 5.5' X 8" \$2000

1x Entry Area 7.5' X 10' sign \$2000

1x Parking Exit Sign 7.5' X 10' \$2500

Print Presence:

1x Full Page Yearly Program: 5" X 8" \$5000

1x Daily Program ID \$175 X 40 = \$7000

1x Founding Partner mention with logo (where applicable)

Audio Spots:

40 X 2 Daily Home game PA Announcement \$50 X 80 = \$4000

40 X 2 Daily 30 second Radio Spots \$90 X 80 = \$7200

Digital:

yes Website Tiles with Click-thru functionality  
yes Social Media mentions

Other:

4 Season Tickets: \$1600  
2 Game Sponsorship

Total Sponsorship Value: +\$41,300

Total Sponsorship cost: \$25,000

Three year contract for the 2018, 2019 and 2020 seasons

Due Dates:

Sponsorship Agreement Signed: 2/15/18

Sponsorship Agreement Payment: Offset by NVC expenses

Yearly Program Ad Artwork: 3/1/18

Signage Artwork: 3/1/18

Audio Spot Copy: the 20<sup>th</sup> of the month prior to the game month

Website Information: With signed Sponsorship Agreement: 2/15/18

Game Sponsorship Information: 4/1/18

Upon receipt of the signed Sponsorship Agreement, a formal Contract will be drafted for your review and signature. If you have any questions, please contact Bruce Johnston at (707) 254-8377 or [bruce@silveradosbaseball.com](mailto:bruce@silveradosbaseball.com)

Thank you!

Agreed to by \_\_\_\_\_

Date \_\_\_\_\_

## **Exhibit B**

Pacific Association Of Professional Baseball Clubs

Field Maintenance and Equipment Guide



# THE PACIFIC ASSOCIATION OF PROFESSIONAL BASEBALL CLUBS

## FIELD MAINTENANCE AND EQUIPMENT GUIDE

### Preface

The information in this document is provided as a general reference guide for the maintenance of Pacific Association baseball fields. Professional and international baseball and softball federations and organizations follow similar guidelines pertaining to the dimensions and needs for field development. The information provided in this document should be used only as a resource in the development of league playing fields; this information does not represent the only means and methods of field development. This document is a summary comparison of field establishment processes. These findings may illustrate potential solutions for construction, maintenance and safety for the field of play; however, all areas regarding potential field development may not be identified in this document. Please note that certain local laws and standards may apply to the construction and maintenance of athletic fields. Therefore, the guidelines found in this document do not imply that a specific field does not comply with Pacific Association facility standards.

### Section I - Field Maintenance

#### Developing a Field Maintenance Plan

Providing adequate field maintenance is the key to a safe and quality baseball facilities. Significant time and resources are required to maintain a field properly. Developing a feasible field maintenance plan is a very important part of any baseball program.

**Planning:** To develop a field maintenance plan, determining answers to the following questions during the planning stage of a renovation or new construction project is critical:

What organization will be responsible for maintaining the field?  
What experience, expertise and equipment are available?  
What is the annual field maintenance budget?  
What are the funding sources to sustain the annual budget?  
Will the field be used for other sports or events?  
How many games will be played per day, week, month and year?

**Staffing:** While professional fields are often maintained by a full-time staff, recreational and youth fields often require team or volunteer help. Providing basic field maintenance checklists to coaches, players and volunteers can ensure proper maintenance of the field. Once a checklist is developed, it can be posted in each dugout for the reference of all coaches and players.

**Budget:** The average, annual field maintenance budget for a professional field can range from \$50,000-200,000. Similarly, maintenance budgets for recreational and school fields will vary widely. Important budget considerations include: competitive level of use, condition of the field, type of field (i.e. natural or sand-based, type of grass, artificial turf), use of the field for other activities and the availability of field lighting. To develop an annual budget, investigate similar, well-maintained fields in the community and inquire about the maintenance budget, equipment and staffing.

### **Suggested Maintenance Equipment**

Many pieces of equipment are considered necessary to provide adequate field maintenance. This list provides a snap shot of the tools and equipment used by groundskeepers for the maintenance of a field.

#### **Tools and Equipment**

- Batter's box, baseline chalker
- Base hole covers
- Batter's box and catcher's box outline frames
- Push broom
- Drags (assorted)
- Edge cutter
- Line marker
- Mound and hitting mats
- Rakes (assorted)
- Shovels
- Small backpack-style sprayer
- String line
- Tamp
- Tarpaulins (optional)
- Watering equipment - hoses, spray nozzles, sprinkling (watering) can
- Wheelbarrow

- Gator/Tractor

### **Materials**

- Calcined clay - granulated
- Diamond dust - ground calcined clay - for drying wet balls
- Fertilizers
- Herbicides and pesticides
- Line marking material
- Stockpile of mound clay – approx. 2 tons per field
- Stockpile of soils for fill and topdressing – approx. 25 tons per field

### **Mowing**

The mowing of the infield and outfield turf should be completed based on the grass growing heights. A rule of thumb is mow no more than one-third of the blade of grass at any given time. Mowing the grass more than one-third at a time can result in discoloration or “scalping” of the turf, or cutting the turf too low.

The following chart provides the suggested heights of common types of grasses:

- Bluegrass 1-1 ½ in.
- Tall fescue 2 in.
- Zoysia ½ - 1 in.
- Bermuda ½ - 1 in.

### **Turf Mowing Maintenance**

There are two types of mowers available to cut the field: 1) rotary, and 2) reel mowers. The most common type of mower is a rotary mower. Rotary mowers are used primarily on residential lawns. Reel mowers are more specialized and are used on higher maintenance facilities like golf courses and athletic fields. These mowers require additional training to operate properly. Reel mowers are used to provide better quality cutting and allows very low cutting heights. These mowers also have striping capabilities, as shown in the photo above. The number of times per week the field is mowed will vary depending on the budget, weather and fertility program. Baseball fields are mowed every day to once a week, depending on the specific needs and standards of the facility.

When mowing a baseball field, keep in mind the following items:

- It is important to train employees on equipment to reduce the potential for damage and ensure safety.
- Check oils and lubricate the equipment prior to mowing. Proper equipment maintenance is critical.
- Always use sharp blades and/or adjust reels prior to every mowing.

- If the mower makes turns on the skinned areas and warning track, remove any clippings on those areas.
- Mowing the field when wet is not recommended and should be avoided whenever possible.

### **Maintaining the Base Paths**

It is best to maintain as much of the base paths by hand as possible. Use a drag that is narrower than the width of the base paths. Make sure that the drag does not overlap the grass area to prevent the formation of a “lip” or ridge at the edge of the grass. Prior to raking the base path, remove any white chalk material with a shovel. This will keep the clay more stable and not cause a hump, or raised area, down in the middle of the baseline. Rakes should also be used on the base paths. When raking the base paths, do not rake across the path, but go up and down the baseline. Raking across the path can cause a low spot to develop down the middle of the path. Weeds in the base paths should be removed by hand.

When raking the base paths, do not rake across the path. Rake up and down along the length of the path.

### **Maintaining the Infield Skin**

The following is a suggested method to properly maintain the skinned areas of the infield:

1. Rake excess dirt from underneath each base area to make it level.
2. Remove any debris, including grass clippings, rocks, weeds, etc.
3. Water the skinned area to allow the infield to be nail dragged. If the skinned area is already moist, this step can be skipped.
4. Nail drag the infield.
5. Add soil conditioner (shown above) and spread with a rake.
6. Screen or drag the infield.
7. Water infield as needed to ensure desired moisture levels.

While maintaining the infield, the drags should be kept at least 6 inches away from the grass so that the loose dirt does not get into the grass thus forming a “lip,” or ridge, in the grass edge. A regular rake should be used along the grass edge. Should dirt get into the grass edge, a stiff brush broom should be used to “sweep out” the dirt back onto the skinned area, removing any grass clippings that may be swept onto the skinned area in the process. Anytime a “lip” begins to develop where the grass and dirt area meet, use a water hose to wash the dirt out of the grass and back onto the skinned area.

To drag the infield skinned area, make a spiralling circle with the drag mat from the infield grass line to the outfield grass, starting at the third base foul line, across the skinned area to the first base foul line. This circular spiral should measure 9-10 ft. in diameter. Edging the field (photo right) should be done on a bi-weekly basis during the growing season. This will greatly reduce built-up edges. Always use a string line when edging the turf.

## **Maintaining the Pitcher's Mound, Home Plate and Bullpen Areas**

During every game, damage occurs to the pitcher's mound and home plate areas. Regular, proper maintenance will reduce time and money needed to rebuild and renovate these areas. It is also critical to maintain these areas properly to reduce the potential for injury.

The following is a suggested method to properly maintain the pitcher's mound and home plate areas on the field and in the bullpen areas:

1. Sweep debris material from the landing area and table of the mound. This allows the packing clay to be exposed. The landing area is the location on which the pitcher steps to pivot and throw. The table is the area at the top of the mound, measuring 36 inches by 5 feet.
2. Tamp any uneven packing clay level prior to watering.
3. Using a small roller can provide consistency in the mound and home plate areas.
4. Lightly moisten the clay to ensure new packing clay will bind to the existing clay.
5. Scuff-up, or loosen, damaged areas with a shovel.
6. Add new packing clay to the damaged areas.
7. Tamp newly installed packing clay into the ground.
8. Rake down the newly repaired areas.
9. Rake all debris from the pitcher's mound.
10. Add soil conditioner (if needed.)
11. Water the entire pitcher's mound.
12. Allow the mound to dry; however, do not allow the packing clay to dry too much to the point of cracking.
13. Once the pitcher's mound is completely prepared for the game, cover it with a tarp to maintain a proper moisture level. Repeat this process for the home plate, mound and in the bullpen areas.

In some cases, clay bricks are used to establish a firm throwing area. These bricks are a very acceptable material because they have not been hardened by heat, like bricks used in construction.

## **Chapter II - Field Equipment**

The following equipment and field elements are necessary to meet the general requirements of the rules of baseball and the minimum standards used by the International Baseball Federation. Numerous variations of equipment are used, but this section may assist the understanding of the level of detail needed at the field to host Pacific Association competitive play.

### **Field Lighting**

Considering that league play is generally conducted at municipal and collegiate-level fields that may have varying degrees of lighting capacity that may or may not comply with the levels of play by other users of the facility. Each level of play requires different levels of lighting

requirements; therefore, several factors should be considered. These factors include the size of the facility, the durability of the lighting system, the age of the facility, the requirements of the applicable governing body (i.e. NCAA, IBAF, Little League, Inc., etc.), the potential for televised games or international play. It is important that these issues are discussed with a field lighting professional during the planning process.

The general lighting guidelines for Pacific Association level of fields is as follows:

Infields: 70 foot candles  
Outfields: 50 foot candles

### **Bases**

Each field will need three bases, three base plugs and a clean-out tool to clear any soils that may enter the base anchors. First, second and third bases are 15 inches square, and cannot be taller than 3 inches. The “Hollywood-Style” base is the accepted base for baseball fields throughout the U.S. This style of base is tough, durable, convenient to handle and can be permanently located on the field. There is no slipping of the base, which makes it very safe. The base can be cleaned and painted prior to each event to provide a professional appearance to the field. This type of base does not require spikes or straps. Strap down bases have been ruled as unsafe in some tournaments.

### **Pitching Rubber**

The pitching rubber, also referred to as a pitcher’s plate, is available in several styles: four-sided, spiked, moveable and stepdown. The official size of the pitching rubber is 26”x 6.”

### **Backstop**

The backstop is constructed with chain link fencing or with nets and cables. The height of the backstop can range between 10-20 feet and is determined by the age groups served and level of competition played at the field. Selecting the proper height and width of the backstop is important to provide adequate player and spectator safety. The backstop should ideally be located 40-60 feet from home plate on regulation baseball fields however an approved Pacific Association field may be 25-35 feet.

Backstop netting, which is preferred for higher level and competitive fields, is suspend between the dugouts and normally covers an area directly behind home plate that is 80 feet wide and 24 feet high.

*The backstop MUST be padded. It is strongly recommended that it be padded from dugout to dugout beginning no higher than one foot off the ground and extending to the top of the wood, cement or brick or six feet from the ground, whichever is shorter. At minimum, six feet either side of the center of a line drawn from the mound through the plate shall be padded to deaden a deflecting ball. Such padding may be accomplished with a minimum of 2” closed cell foam padding.*

## **Dugouts**

Dugouts are used to protect the players from inclement weather and the sun and to provide an area where they can rest while the opposing team is in the field. Typical dugout structures should be designed to hold a roster of 25 players plus coaches. This would require a dugout to be at least 60 feet long.

Some dugouts are totally enclosed while some may have a low fence in front of the dugout, which is highly recommended. This will help to protect the players in the dugout from foul balls and thrown bats. Some dugouts are sunken into the ground by 2-4 steps. This is not required but does provide a more traditional setting. The dugout can be built at field level. The floor of the dugout should be covered with some type of rubber material to provide safe footing to players wearing metal cleats. The installation of bat and helmet racks in the dugout is also helpful to extend the life of the equipment and increase player safety.

## **Coaches' Boxes**

There are two coaches' boxes on the field: one for third base and one for first base. The coaches' boxes are marked with a white line. The first and third base coaches stand in these areas. The box is located 15 feet from the foul line in foul territory. The box is 20 feet long and the sides of the box are 10 feet long. The box is sometimes closed in the back, toward the baseline fencing.

## **Outfield and Baseline Fencing**

Chain link fencing is often used to enclose the "perimeter of the field of play" on youth, school and recreational fields. For higher levels of play, the outfield fencing may be made from metal sheets or wood and is padded with 3-inch thick foam. This provides the player with a sense of security allowing him or her to pursue difficult plays without the threat of being injured. Baseline and outfield fencing is required.

A field that is completely enclosed by fencing also facilitates on-going maintenance by discouraging or limiting the use of the field for activities that may be harmful to the turf. The average height of the perimeter fencing is 8 feet; however, 4-6 foot fencing is often used on recreational fields. The age group served by the field, player safety and field security should be considered when determining the appropriate height of the outfield and baseline fencing. Protective fence cap is also installed on chain link fencing for player safety. This product is made of plastic and is attached to the top of the fence. All unattached or curled chain link fabric should be reattached to the rails or replaced promptly to ensure player safety. A bottom rail on chain link fencing is recommended to secure the fabric of the fencing. Other elements related to the outfield fence include the batter's eye, the warning track and foul poles.

## **Batter's Eye**

One of the key components of the outfield is the size and location of the batter's eye. The batter's eye is what the batter sees behind the pitcher. This area must be one consistent, dark

color, preferably black, and is - 26 - normally 60 feet wide and 30 feet high. It is generally a metal structure covered in wind screen material. The wind screen material is made with a solid mesh-like material which allows some air to flow through it.

### **Warning Track**

The warning track can be made from a variety of materials. It can be made of a rubberized material and poured onto asphalt or constructed using red crushed brick material and or shell rock. The goal is to ensure the warning track material is different in color and texture than the playing field surface. It is also important that the warning track material is a stone or aggregate material that is consistent in size and meets certain specifications. For example, stone used in warning track material should be no larger than 3/8th of an inch, as shown in the photo (left). The depth of the warning track material and the method it is applied will vary depending upon the type of material. On average, approximately 4 inches of material is required over a stable sub base. The warning track is normally 15 feet deep in front of all obstructions.

### **Foul Poles**

Foul poles indicate the foul territory of the outfield field. However, despite the name, a ball hitting a foul pole is considered fair. These poles are normally 30 feet high and have 2-foot wing attached to the fair side of the pole. The proper location of each foul pole is identified by using a transit to find a perfect 90-degree angle with the apex of home plate. Each foul pole will be inside this angle, in the left and right field corners of the field. Poles are located off the field of play and behind the outfield fence. In some cases, the foul poles are a part of the outfield fencing and are padded for player safety.

### **Protective Screens**

The purpose of protection screens is to provide protection to players during training and pre-game practices. Protective screens are not used during the game. The following protective screens are recommended:

1. Pitching protection screens – also known as L-Screens – 1 per field
2. First base protection screen – 1 per field
3. Second base protection screen – 1 per field
4. Ball Shagger screen – 1 per field
5. For batting tunnels, one L-screen per tunnel is recommended.

### **Portable Batting Cage (“Turtle”)**

A portable batting cage structure is required at each home game in the Pacific Association for both the home and visiting teams’ batting practice. The cage is normally 10 feet high, 20 feet wide and 20 feet deep. It is igloo-shaped (or arched) and is constructed with 2- inch aluminum tubing covered with foam padding for safety of the players inside the batting cage. The structure is usually built with three wheels. One wheel swivels to direct the cage and the other two are

stationary. The cage is rolled and positioned very close to the field turf with no more than 3 inches between the lower rail and the grass; therefore, moving it across the field requires a smooth access on and off the field of play.

Exhibit C  
Fair Market Value Spreadsheet

Estimated Fair Market Values Worksheet

EXHIBIT C

DRAFT

2/5/2018

	Unit Value	Quantity	Total	Notes	
<b>NVCCD/DAS</b>					
Facilities Rental	\$100	per hour	310	\$31,000	40 games x 4 hours per game, 75 practices x 2 hours per practice
Site Supervisor	\$20	per hour	310	\$6,200	
College Police	\$60	per hour	160	\$9,600	
75th Anniversary Sponsorship Package	\$10,000	per campaign	1	\$10,000	Sponsorship Package Value \$17,519
		<b>Subtotal</b>		<b>\$56,800</b>	
<b>Napa Silverados</b>					
Improvements to Bleachers	\$30,000	per year	1	\$30,000	\$150,000 estimated total cost amortized over 5 years
Improvements to Press box, Public Address System, Backstop Area, and other Facilities	TBD			TBD	Scope and cost of improvements is in development
Founding Partner Sponsorship Package	25000	per year	1	\$25,000	Sponsorship Package Value \$41,300
		<b>Subtotal</b>		<b>\$55,000</b>	
		<b>Total Owed to District</b>		<b>\$1,800</b>	Spreadsheet to be updated per actuals at the conclusion of 2018 Baseball Season.