

**COUNTY OF SAN DIEGO
DEPARTMENT OF PARKS AND RECREATION**

**RESERVATION AND
MAINTENANCE AGREEMENT**

This Agreement is executed by and between THE COUNTY OF SAN DIEGO (“County”), a political subdivision of the State of California, and the Julian Union High School District (“School”), a political subdivision of the State of California

WHEREAS, County provides parks for public recreation; and

WHEREAS, School wants to reserve a certain area in Jess Martin Park for League practice and game use at certain times and dates; and

WHEREAS, County is willing to reserve the area for School in accordance with the terms and conditions in this Agreement; and

WHEREAS, the mission of School is to empower their students to shape the future.

NOW, THEREFORE, the parties agree as follows:

1. **RESERVED AREA.** County reserves the area shown on Addendum “A” in Jess Martin Park for School to use. The Reserved Area is reserved for School to use primarily on Monday through Friday, from 2:45 p.m. – 5:30 p.m. during the spring of 2008. It is expected that each season will run from mid-February thru mid-June, with the exception of holidays. School will provide the Director of Parks and Recreation or her designee with at least eight weeks notice of exact days and times for each season and at least four weeks notice for special events or tournaments. County and School agree that School may in the future, if demand exists, extend play to other days in the week and that such use shall be expressly permitted herein.
2. **TERM.** The term of this Agreement is from the date of signing by County, as shown on the last page, and ending five years thereafter. Before the term expires, the parties may agree in writing to extend the term for a maximum of two additional five year periods.
3. **USE.** School may use the Reserved Area for regularly scheduled High School Baseball team practices and games. School shall obtain the prior written approval of the Director of Parks and Recreation or her designee before using the Reserved Area for any other purpose.

4. **PUBLIC USE.** At all times other than those specified in Paragraph 1, the general public may use the Reserved Area.
5. **FEES.** When School is using the Reserved Area during the times specified in Paragraph 1, School may charge participants a reasonable fee to cover School's cost to operate School's programs at this area. However, School shall obtain the prior written approval of the Director of Parks and Recreation or her designated representative before School charges any fees. Fees or charges that preclude low and moderate-income persons from participating will not be approved. All fees that School collects shall be used to maintain the Reserved Area and to operate School's program at the Reserved Area.
6. **BYLAWS.** Allowance to participate in School's baseball program shall be open to anyone meeting the requirements of School's articles, policies and procedures, laws or rules of the State of California. School shall not discriminate against a prospective member because of age, race, color, religion, physical handicap, ancestry, sex, or national origin.
7. **IMPROVEMENTS OR ALTERATIONS.** School shall not make or cause to be made any improvements, changes or alterations in or to the Reserved Area without obtaining the prior written approval of the Director of Parks and Recreation or her designated representative. Upon termination of this Agreement including any extension thereof, School shall promptly remove from the Reserved Area all temporary improvements, changes and alterations made or caused to be made by School. If, 10 days after this Agreement terminates, any such temporary improvements, changes or alterations remain at the Reserved Area; County may dispose of them in accordance with the law and/or return the Reserved Area to its prior condition.
8. **PERSONAL PROPERTY.** Upon termination of this Agreement including any extension thereof, School shall promptly remove all of School's personal property from the Reserved Area. If, 10 days after this Agreement terminates, any personal property belonging to School remains at the Reserved Area, County may dispose of the personal property in accordance with the law.
9. **OPERATION.** School shall operate its Baseball program at the Reserved Area at School's sole expense. County has no obligation to provide any funds to School for its programs.
10. **MAINTENANCE.** School shall pick up all trash and litter in the Reserved Area after each game and practice and deposit the trash and litter in the trash cans in or near the Reserved Area. School shall also prepare the ball field before each game and practice by removing all sticks, rocks, leaves, litter, etc. It is the responsibility

of School to provide dragging of infield, lining, and maintenance of all bases, home plate and pitching mound.

11. **CONCESSIONS RIGHTS.** When using the Reserved Area, School may operate a concession stand for sale of confections, soft drinks, and other food products. If School operates a concession stand, School shall comply with all applicable laws regarding the preparation, handling and sale of food including, but not limited to, the County ordinances and regulations enforced by the County Department of Environmental Health. School shall obtain the prior written approval of the Director of Parks and Recreation or her designated representative for both the design and location of the proposed concession stand. All profits from the concession sales shall be used by School to maintain the Reserved Area and to operate School's programs at the site, or elsewhere as may be approved by County. If these profits are not needed for maintenance and operations expenses, School may make a written proposal to the Director of Parks and Recreation to use the profits for a different purpose. The Director of Parks and Recreation or her designee may approve or disapprove any such proposal. School shall not sell anything in the Reserved Area except confections, soft drinks, gum and other food products at a concession stand. School shall comply with the Department of Parks and Recreation's Vending Machine Contents Policy. 50% or more of the food and beverages that are sold at the concession stand shall meet the nutrition standards outlined in the policy and shall be sold at prices that are equal to or less than those of similar products that do not meet the standards. County will provide the School with a copy of the policy.
12. **ADVERTISING.** School shall not place or cause to be placed in Jess Martin Park (other than in the Reserved Area) any billboards, banners, posters, signs or any other media advertising products, services or anything else unless School obtains the prior written consent of the Director of Parks and Recreation or her designee. Any billboards, banners, posters, or signs erected, installed, placed in violation of this paragraph may be removed and disposed of by the County.
13. **POSSESSORY INTEREST AND TAXES.** Pursuant to Revenue and Taxation Code section 107.6, School is hereby advised that this Agreement may create a taxable possessor interest in School. If a possessor interest is vested in School, School may be subject to real property taxes levied on that interest. School shall pay and discharge before delinquency, all taxes and assessments which may be levied against the property by reason of any interest of School during the term of this Agreement and any extensions thereof.
14. **NON-EXCLUSIVE USE.** School's reservation and use of the Reserved Area under this Agreement shall be non-exclusive and shall not result in any proprietary rights in School. This Agreement does not transfer to School any interest in real

property. County reserves and shall always have the right to enter the Reserved Area at any time for any reason.

15. **COMPLIANCE WITH LAW.** At its sole cost and expense, School shall comply with all laws and regulations now in effect or which may become effective in the future which pertain to School's use of the Reserved Area.
16. **DEFENSE AND INDEMNITY.** To the fullest extent permitted by law, County shall not be liable for, and School shall defend and indemnify County and its officers, agents, employees and volunteers (collectively, "County Parties"), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (collectively, "Claims"), which arise out of or are in any way connected to School's use of the Reserved Area arising either directly or indirectly from any act, error, omission or negligence of School or its members, officers, employees, agents, contractors, licensees or servants, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive, of County Parties. School shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole active negligent act or willful misconduct of County Parties.
17. **INSURANCE.** Without limiting School's defense and indemnification obligations to County, School shall, at its sole expense, provide and maintain during the duration of this Agreement and any extensions thereof and for such other periods as may be required herein, a policy of All-Risk insurance covering the School's personal property on the premises, including fixtures or equipment on the premises owned by the County. The School utilizes a program of self-funding with regard to any liability it may incur for personal injury or property damage arising out of its use of occupancy of the premises.

A. **Deductibles and Self-Insured Retentions.**

Any deductible or self-insured retention must be declared to and approved by the County's Risk Manager. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers; or the School shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

- (1) Subcontractors' Insurance. School shall require that any and all Subcontractors hired by the School are insured in accordance with this Agreement. If any Subcontractors coverage does not comply with the foregoing provisions, School shall defend and indemnify the County from any damage, loss, cost or expense, including attorney fees, incurred by County as a result of Subcontractors failure to maintain required coverage.

- (12) Waiver of Subrogation. School and County release each other, and their respective authorized representatives, from any Claims (as defined in the paragraph titled, "Defense and Indemnity" of the Agreement), but only to the extent that the proceeds received from any policy of insurance carried by County or School, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of insurance provided by School hereunder shall be a standard waiver of rights of Subrogation against County by the insurance company issuing said policy or policies.

County's Insurance Obligations. County maintains a policy of All-Risk Insurance covering the County's personal property on the premises, including any fixtures or equipment on the premises owned by the County. The County utilizes a program of self-funding with regard to any liability it may incur for personal injury or property damage arising out of its use or occupancy of the premises.

18. **EQUAL OPPORTUNITY.** School shall not discriminate against any employee or applicant for employment because of age, race, color, religion, physical handicap, ancestry, sex or national origin. This provision applies, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

19. **AFFIRMATIVE ACTION.** School shall comply with the Affirmative Action Program for Vendor(s) as set forth in County Administrative Code at section 84 and following unless Organization is exempt from the Program.

20. **NON-DISCRIMINATION.** When using the Reserved Area pursuant to this Agreement, School shall not discriminate or permit discrimination in any manner against any person or class of persons because of race, color, creed, national origin, sex, age, handicap or marital status.

21. **AUDIT.** During normal business hours, County or County's representatives or agents may inspect, audit and copy any of School's records related to this Agreement including, but not limited to, records regarding School's finances, by-laws, articles of incorporation, rules and regulations, membership, insurance, concessions, operations, Board meetings, etc. County may conduct an audit of School's records related to this Agreement semi-annually in January and August.
22. **ENTIRE AGREEMENT.** This Agreement contains all representations and the entire understanding of the parties with respect to the subject matter contained herein. All prior correspondence, memoranda, agreements or representations, oral or written, whether or not consistent with this Agreement, are superseded by this Agreement. Neither party is relying on any representation outside of this Agreement. This Agreement may be amended only by written amendment signed by both parties.
23. **PARTIAL INVALIDITY.** If any provision of this Agreement or its application to any person or circumstances, is determined to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and every other provision of this Agreement shall remain valid and in full force and effect.
24. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the parties hereto and on their respective successors and assigns.
25. **ASSIGNMENT.** School shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or notation) without the prior written consent of the County.
26. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of California.
27. **PROVISIONS REQUIRED BY LAW.** Each and every provision of law and clause required by law to be included in this Agreement shall be deemed to be included herein, and this Agreement shall be read and enforced as though each were included. If for any reason any such provision is not included in the Agreement or is not correctly stated, then upon request of either party, the Agreement shall forthwith be amended to make such insertion or correction.
28. **NOTICE.** Any notice required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice or may be served by certified mail, return receipt requested, to the following address listed:

ORGANIZATION:

Julian Union High School District
Tim White, Athletic Director
1656 Hwy 78
P.O. Box 417
Julian, CA 92036
Phone: (760) 765-0606

COUNTY:

Director of Parks and Recreation
Department of Parks and Recreation
9150 Chesapeake Drive. Suite 200
San Diego. CA 92123
Phone: (858) 694-3030
Fax: (858) 495-5841

29. **SPECIAL PROVISIONS.** School shall comply with the following special provisions:

- A. School shall provide the Director or his/her designee with a current list of School's officers and any changes in those officers during term of this Agreement.
- B. When School is using the Reserved Area, School shall promptly report all personal injuries to, and property damage caused by, School's members or the general public that occur in the Reserved Area. For each such incident, School shall file a report with the Director or his/her designee on the form provided by County.
- C. The Director or his/her designee may at any time temporarily suspend School's right to use the Reserved Area for emergency repairs, public health, public safety or other reasons. School shall promptly abide by any such suspension order.
- D. School shall:
 - Provide a safe, positive environment in which the youth may participate;
 - Provide supervision through positive role models who will focus on developing skills, teamwork, sportsmanship and winning and losing graciously;
 - Allow all participants to play regardless of ability;
 - Help build self-confidence and self-esteem while teaching respect for oneself and others;
 - Encourage the making of new friends;

- Continue to improve and enhance the quality of the youth sports experience; and
- Hold parents, coaches and participants accountable for their actions.

If there is any conflict or inconsistency between these special provisions and any other provisions in this Agreement, the special provisions in this paragraph shall take precedence.

30. **DRUGS AND ALCOHOL.** When using or maintaining the Reserved Area, School and its employees, members, and volunteers shall not: (i) be impaired in any way because of being under the influence of alcohol or a drug; (ii) possess an open container of alcohol or consume alcohol; (iii) possess or be under the influence of an illegal drug; or (iv) sell, offer or provide alcohol or a drug to another person.

31. **TERMINATION.**

A. **FOR CAUSE.** County may terminate this Agreement in whole or in part for cause by the Director giving written notification of default and specifying a date not less than fifteen days after the date of the notice by which School may cure the default. If School fails to cure the default by that date, County may terminate this Agreement immediately by the Director notifying School of the termination. Default includes the following:

- (1) School's failure for any reason to fulfill any of its obligations under this Agreement in a timely manner;
- (2) Any use of the Reserved Area by School or its employees, members, volunteers, agents, subcontractors, guests or any person or organization under School's responsibility that the Director of Parks and Recreation determines to be improper; or
- (3) Any conduct by School's employees, members, volunteers, agents, guests or subcontractors that the Director of Parks and Recreation determines to be inappropriate or unacceptable.

32. **NO WAIVER.** The failure of either party to enforce any term, covenant or condition of this Agreement shall not be construed as a waiver of that party's right to subsequently enforce this, or any other term, covenant or condition of this Agreement. No waiver shall be deemed effective unless the waiver is expressly stated in writing and signed by the party waiving the right or benefit.

33. INTERPRETATION. The provisions of this Agreement shall be liberally construed to effectuate its purpose. The language of all parts of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party.

IN WITNESS WHEREOF, County and School have executed this Agreement, effective the date first above written, by their duly authorized agents.

JULIAN UNION HIGH SCHOOL:

COUNTY:

By _____
James Peabody, Principal/Superintendent

By _____
Renée Bahl, Director of
Parks and Recreation Department

Date _____

Date _____