

## DONATION ACCESS AND CONSTRUCTION AGREEMENT

THIS DONATION ACCESS AND CONSTRUCTION AGREEMENT (the "Agreement") made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and among the **Town of Colchester**, a Connecticut municipal corporation with an address of 127 Norwich Avenue, Colchester, Connecticut 06415 (the "Town"), the **Colchester Board of Education**, a local board of education pursuant to the Connecticut General Statutes with an address c/o Town Hall, 127 Norwich Avenue, Colchester, Connecticut 06415 (the "Board"), and **The Cody Camp Memorial Field Foundation, Inc.**, a Connecticut nonstock corporation with an address of 108 Norwich Avenue, Colchester, Connecticut 06415 (the "Foundation"),

### WITNESSETH:

WHEREAS, to honor and preserve the memory of Cody Camp, the Foundation has raised funds and desires to construct two (2) baseball fields (the "Fields") on the campus of Jack Jackter Elementary School (such school and its grounds, together, the "School"); and

WHEREAS, the School is owned by the Town; and

WHEREAS, the School is dedicated for school purposes and is under the control of the Board; and

WHEREAS, the Foundation desires to construct the Fields and donate them to the Town and the Board, and the Town and the Board desire to accept such donation, all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. SUBMISSION OF PLANS.

Prior to the commencement of any work, the Foundation shall submit first schematic and then final drawings and plans for the Fields and a construction schedule (the "Plans"), which Plans shall be subject to the written approval of or modification by the Town and the Board in their sole discretion.

2. CONDITIONS FOR ACCESS.

- (a) The Board will grant the Foundation access to the School grounds for the construction of the Fields at such time that the Foundation demonstrates that it has one hundred percent (100%) of the money necessary to construct the Fields. Prior the Foundation being granted such access for the construction of the Fields, fifty percent (50%) of the money necessary to construct the Fields shall be transferred to the Town to be held in escrow and to be requisitioned by the Foundation only after the Foundation has expended the remaining fifty percent (50%) still in its possession.
- (b) Notwithstanding the foregoing, the Board shall have the right in its sole discretion to approve the scheduling of the construction of the Fields in order to accommodate the activities of the School.
- (c) The Town and the Board shall have the right at any time during the construction of the Fields to inspect the construction being performed on the Fields and to ascertain whether the remaining unexpended funds are sufficient to complete the work. If it is determined that additional funds are needed to complete the construction of the Fields, the Town and the Board may require that the work cease until such time as such funds are contributed to the Foundation. Prior to accepting the completed work, the Town and the Board must agree that the construction of the Fields was performed in accordance with this Agreement.

- (d) During construction and upon completion of all of the improvements set forth herein, all such improvements shall become the property of the Town, free from all liens and charges. The Foundation shall provide appropriate mechanic's lien waivers upon completion to assure such lien free status.

3. TERM.

The construction of the Fields shall begin [ ] and shall be scheduled for completion by [ ] (the "Term"). The Term may be extended as necessary by written notice to the Town and the Board stating the new proposed completion date. In no event shall such Term be extended beyond [ ] without the written consent of the Town and the Board.

4. RESPONSIBILITIES OF THE FOUNDATION.

The Foundation shall be responsible for each of the following:

- (a) Providing the Town and the Board with the Plans subject to the approval of both the Town and the Board as called for in Article 1.
- (b) Obtaining with the cooperation of the Town and the Board any and all governmental land use permits and approvals necessary for the construction of the Fields, which shall include but which shall not be limited to a review in compliance with § 8.24 of the Connecticut General Statutes. Any and all necessary permits and/or approvals shall be obtained at the sole expense of the Foundation.
- (c) The construction of the Fields shall be in accordance with all applicable federal, state and local laws.
- (d) Upon completion of the construction of the Fields, the Foundation shall restore any and all damage to the School grounds caused by the construction of the Fields.

5. PERFORMANCE.

The parties to this Agreement hereby agree and understand that the construction of the Fields on the School premises will be conducted by the Foundation and by volunteers provided by the Foundation. All cost and expense associated with constructing the Fields shall be borne by the Foundation.

6. OWNERSHIP AND USE.

- (a) The parties to this Agreement hereby agree and understand that the construction of the Fields constitute an in kind donation to the Town, and that once the construction of the Fields is complete, the Fields will be owned by the Town under the control of the Board. Upon completion of the construction of the Fields, the Foundation will have no further responsibilities related to the Fields, except as set forth herein. The Town and the Board shall be responsible for the post-construction maintenance of the Fields.
- (b) While the property continues to be used for school purposes, the Board shall have the right to decide in its sole discretion when and under what circumstances and conditions the Fields may be used by the public.

7. INSURANCE.

During the Term, the Foundation shall maintain at its own cost and expense such insurance coverages with such companies, in such amounts and on such forms as are reasonably required by the Town and the Board. All such insurance shall be issued by insurers approved by the Town

and the Board and authorized to do business in the State of Connecticut, shall name the Town and the Board as additional insureds, shall provide for a deductible reasonably satisfactory to the Town and the Board and shall contain a provision whereby each insurer agrees not to cancel such insurance without thirty (30) days' prior written notice to the Town and the Board. To the extent reasonably obtainable, all such insurance shall also contain appropriate endorsements denying the Foundation's insurers the right to subrogation against the Town and the Board and waivers by all such insurers of all rights of recovery against the Town and the Board in connection with any loss or damage by peril included within such insurance coverage. Prior to the commencement of construction of the Fields, the Foundation shall furnish the Town and the Board with a policy evidencing the aforesaid insurance coverage, and renewal policies shall be furnished to the Town and the Board at least thirty (30) days prior to the expiration date of such insurance. The Foundation shall have no right of access to the School for construction of the Fields at any time when either required insurance is not in effect or the Town and the Board are not in receipt of a required policy of insurance.

8. INDEMNIFICATION.

To the maximum extent this Agreement may be made effective according to law, and except to the extent caused by the negligence or willful misconduct of the indemnified party, the Foundation hereby agrees to indemnify and save harmless the Town and the Board from and against all claims of whatever nature arising from or claimed to have arisen from (i) any breach of this Agreement by the Foundation or (ii) any accident, injury or damage whatsoever caused to any person, or to the property of any person, occurring in or about the School in connection with the construction of the Fields including but not limited to acts of the Foundation's invitees, contractors, licensees, agents, servants, independent contractors or employees. This indemnity and hold harmless provision shall include indemnity against all costs, attorneys' fees, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof.

9. DEFAULT; REMEDIES UPON DEFAULT.

- (a) It shall be a default under this Agreement for the Foundation to begin construction of the Fields and not complete the construction of the same strictly in accordance with the terms of this Agreement ("Default").
- (b) In the event of a Default, if the Town is still in possession of the money being provided to it to be held in escrow, the Town and the Board may use such funds for the completion of the construction of the Fields. In addition, upon a Default the Town and/or the Board may exercise any and all remedies available to it pursuant to law and equity.

10. APPROVAL.

This Agreement shall not be effective unless and until written approval is received from both the Colchester Board of Selectmen and the Colchester Board of Education.

11. GENERAL PROVISIONS.

- (a) Naming. The Board shall have the sole right to name the Fields.
- (b) Adjustments. There shall be no concession stands built in connection with the construction of the Fields pursuant to this Agreement. There shall also be no additional parking constructed as a result of the construction of the Fields. All rights of the Foundation to make adjustments to the School property are set forth herein. If the Foundation desires to make further adjustments to the School grounds which are not contemplated by this Agreement, the Foundation must present a written request to the Town and the Board and such request shall be accepted or rejected in the Town's and the Board's sole discretion.

- (c) Waivers. Failure on the part of any party to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be a waiver by such party of any of the rights hereunder. Further, no waiver at any time of any of the provisions hereof by any party shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.
- (d) Counterparts and Originals. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute but one and the same instrument.
- (e) Amendments. This Agreement may be amended or otherwise modified only by an instrument in writing executed by each of the parties.
- (f) Notices. Notices given pursuant to this Agreement shall be in writing, and shall be sent by (a) registered or certified mail, return receipt requested, with postage prepaid, (b) express mail or courier (next day delivery), or (c) personal delivery (receipt acknowledged in writing), addressed as follows:
- (i) if to the Town:  
  
Town of Colchester  
127 Norwich Avenue  
Colchester, Connecticut 06415  
Attn: \_\_\_\_\_
  - (ii) if to the Board:  
  
Colchester Board of Education  
c/o Town Hall  
127 Norwich Avenue  
Colchester, Connecticut 06415  
Attn: \_\_\_\_\_
  - (ii) if to the Foundation:  
  
The Cody Camp Memorial Foundation, Inc.  
108 Norwich Avenue  
Colchester, Connecticut 06415  
Attn: \_\_\_\_\_
- (g) Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut. If any provision of this Agreement, or portions thereof, or the application thereof to any person or circumstance shall to any extent, be deemed invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**[Remainder of Page Intentionally Left Blank; Signature Page Follows]**

IN WITNESS WHEREOF, the parties have hereunto executed this document as of the day and year first above mentioned.

**Town of Colchester**

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**Colchester Board of Education**

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**The Cody Camp Memorial Field Foundation, Inc.**

By: \_\_\_\_\_  
Name:  
Title:  
Date: