MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF LAKELAND AND THE LAKELAND SCHOOL SYSTEM
FOR THE USE OF ATHLETIC FIELDS

This Memorandum of Understanding, dated this ____ day of February, 2020, is by and between the City of Lakeland, Tennessee (the “City”) and the Lakeland School System (the “School System”).

WHEREAS, the City and School System entered into a Memorandum of Understanding for the funding and construction of high school facilities in Lakeland to educate Lakeland students in grades nine through twelve;

WHEREAS, the School System recently received a generous donation of real property which provides new convenient access to the school property from Old Brownsville Road;

WHEREAS, the City and School System believe that the recently donated real property and funding secured through interim financing as part of the USDA project provide an opportunity to enhance the overall educational experience for Lakeland students while providing opportunities to enhance the City’s Parks and Recreation programs;

WHEREAS, the City and the School System desire to construct five (5) multi-purpose grass athletic fields, a new asphalt drive connecting to Old Brownsville Road, a one-hundred fifty (150) spot paved parking lot, a concessions stand/restroom facility and lighting covering four (4) of the five (5) grass athletic fields and the parking lot (hereinafter “High School Multi-Use Fields”);

WHEREAS, the City and the School System enter into this Memorandum of Understanding to memorialize their agreement for the funding, construction, and use of the High School Multi-Use Fields.
NOW, THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby confirmed, the parties do covenant and agree as follows:

1. **Athletic fields project description.** The athletic fields project shall include at least five (5) multi-purpose grass athletic fields, a new asphalt drive connecting to Old Brownsville Road, a paved parking lot with no less than one hundred fifty (150) spaces, a concessions stand/restroom facility, and lighting covering four (4) of the five (5) fields, (collectively “the High School Multi-Use Fields”). A preliminary rendering of the High School Multi-Use Fields is attached as Exhibit 1. The Parties agree that the rendering attached as Exhibit 1 is a preliminary design and that the School System, at its sole discretion, may modify or revise the design of the High School Multi-Use Fields. The School System agrees that it will not begin construction or site preparation for the High School Multi-Use Fields without the express consent of the USDA.

2. **Timing and Manner of the City’s one-time payment for construction of the High School Multi-Use Fields.** Within thirty (30) days of the execution of this agreement by both parties, the City agrees to transfer $3,200,000.00 to the School System for the construction of the High School Multi-Use Fields.

3. **Construction timeline and repayment of funding if not timely completed.** The Parties agree that the High School Multi-Use Fields shall be completed and available for use on or before August 1, 2021. If for any reason or no reason at all, the High School Multi-Use Fields are not available for use on or before August 1, 2021, the School System agrees to pay liquidated damages to the City at a rate of $150.00 per day until the High School Multi-Use Fields are available for use by the City. The Parties further agree that the amount of actual damages, if any, incurred by the City in the event that the High School Multi-Use Fields are not available for use
on or before August 1, 2021 is indeterminable or otherwise difficult to ascertain and there is a reasonable relationship between the aforementioned liquidated damages amount and the amount of damages that might reasonably be expected. In the event the School System cannot or does not construct the High School Multi-Use Fields as part of the USDA High School Project, the School System agrees to repay the City $3,200,000.00 at least thirty (30) days prior to the City’s final closing with USDA.

4. **Initial Period of Shared Use of High School Multi-Use Fields.** The City and School System agree that for a period of twelve (12) years, the City shall have exclusive use of the four (4) lighted High School Multi-Use Fields Monday through Friday from 6:30 PM to 10:30 PM and the entirety of each Saturday and Sunday, and that the School System shall have exclusive use of the four (4) lighted High School Multi-Use Fields Monday through Friday from 5:00 AM to 6:15 PM (hereinafter “Initial Period of Shared Use”).

The Initial Period of Shared Use shall begin on August 1, 2021 and terminate on July 31, 2033. In the event that the High School Multi-Use Fields become available to the City prior to August 1, 2021, the Initial Period of Shared Use shall begin on the date that the High School Multi-Use Fields are made available to the City and terminate twelve (12) years from that date.

During the Initial Period of Shared Use, the City shall have the exclusive use of the fifth and unlighted High School Multi-Use Field. The School System shall solely determine which field will be unlighted and used exclusively by the City prior to the start of the Initial Period of Shared Use. During the Initial Period of Shared Use, the School System may request from the City Manager and/or his/her designee, with no less than sixty (60) days’ notice, the exclusive use of all five (5) of the High School Multi-Use Fields for up to five (5) weekends (defined herein as Friday, Saturday, and Sunday) per calendar year to host athletic tournaments. This request will
not be unreasonably denied by the City. The School System acknowledges that this Initial Period of Shared Use is a material inducement for the City providing funds sufficient for the construction of the High School Multi-Use Fields.

5. **Secondary Period of Shared Use of High School Multi-Use Fields.** The City and School System agree that for a period of five (5) years immediately following the Initial Period of Shared Use, the City shall have exclusive use of two (2) of the lighted High School Multi-Use Fields during the same days and hours as the Initial Period of Shared Use and the School System shall have exclusive use of those same two (2) fields during the same days and hours as the Initial Period of Shared Use and exclusive use of other two (2) lighted High School Multi-Use Fields at all times (hereinafter “Secondary Period of Shared Use”).

During the Secondary Period of Shared Use, the City shall have exclusive use of the unlighted High School Multi-Use Field. The School System shall solely determine which of the lighted fields will be used exclusively by the City and the School System prior to the start of the Secondary Period of Shared Use.

At the conclusion of Secondary Period of Shared Use, the City and School System hereby agree to negotiate in good faith to reach an agreement for ongoing use of the High School Multi-Use Fields. If no agreement is reached, then all five of the High School Multi-Use Fields will be under the exclusive use of the School System in the absence of any future agreement between the City and School System.

6. **Utilities and Maintenance Costs.** The Parties agree that the City will be responsible for paying two-thirds (2/3) of the utilities costs and one-half (1/2) of the maintenance costs incurred by the School System for the High School Multi-Use Fields during the Initial Period of Shared Use and the Secondary Period of Shared Use. The School System will provide
an invoice to the City each month showing the City’s percentage of the utility costs (water, electricity, and sewer) and maintenance costs incurred during the prior month. Invoices shall be paid by the City within thirty (30) days of receipt. Should an invoice not be paid by the City within thirty (30) days of receipt, the School System shall, at its sole discretion, have the right to refuse access to the City and/or any other individual or group authorized by the City to use the High School Multi-Use Fields until such unpaid invoice(s) is paid in full. Maintenance costs includes, without limitation, costs and expenses related to the upkeep and/or repair of the grounds, playing surfaces, field equipment, landscaping, parking lot, irrigation system, lighting, and utilities infrastructure of the High School Multi-Use Fields. Maintenance costs related to any concession stand(s) shall be the responsibility of the School System.

7. **Additional Maintenance and Improvements.** The City may provide additional maintenance or improvements to any of the High School Multi-Use Fields with the written permission of the School System. The City shall be responsible for any striping or lining of the fields and the costs thereof necessary for its programs during the Initial Period of Shared Use and the Secondary Period of Shared Use.

8. **Insurance Obligation:** The City shall maintain commercial general liability insurance with the School System named as an additional insured to insure the School System, its Board, employees, and agents against any claims, demands, and expenses arising out of the City’s use of the High School Multi-Use Fields. The City shall provide a copy of the Certificate of Insurance and Additional Insured Endorsement to the School System. The insurance limits shall not be less than $1,000,000 per occurrence and $1,000,000 general aggregate.

9. **Damage to Property.** The City shall be liable for any damage to the High School Multi-Use Fields caused by the City and/or any other individual or group authorized by the City
to use the High School Multi-Use Fields. The City further agrees to return the High School Multi-Use Fields to their normal condition and appearance after use by the City and/or any other individual or group authorized by the City to use the High School Multi-Use Fields. The School System shall notify the City in writing of any damage to the High School Multi-Use Fields caused by the City and/or any other individual or group authorized by the City to use the High School Multi-Use Fields. Should the City fail to pay for the damage within thirty (30) days of receipt of any such notice, the School System shall, at its sole discretion, have the right to refuse access to the City and/or any other individual or group authorized by the City to use the High School Multi-Use Fields until such damage is fully paid for by the City.

10. **Release of Liability.** The City agrees to examine the High School Multi-Use Fields and accept same in the condition they then exist before each use by the City and, further, agrees to release the School System, including without limitation, its Board, employees, and agents from any damage, loss, or injury arising as a result of the City’s use of the High School Multi-Use Fields.

11. **Notice of Dangerous Conditions.** The City agrees to notify in writing the Superintendent of the School System of the discovery of any defective or dangerous condition(s) that exist or develop at or on the High School Multi-Use Fields immediately upon such discovery. In the event that any such defective or dangerous condition(s) is discovered by the City, the City agrees to immediately cease any usage of the High School Multi-Use Fields which could result in personal injury and/or property damage.

12. **Unsafe and Detrimental Field Conditions.** The School System, at its sole discretion, may cancel practices and/or games due to unsafe field conditions or when use of the fields would be detrimental to the quality or maintenance of the High School Multi-Use Fields.
In the event that the School System determines to cancel practices or games, the School System shall notify the City no later than 3:00 p.m. on the day on which practices or games are to be cancelled so that the City may notify any teams, coaches, families, or referees of the cancellations to prevent unnecessary travel when possible. Notwithstanding the foregoing, the School System reserves the right to stop practices or games at any time if the conditions are such that continued play is unsafe and/or detrimental to the High School Multi-Use Fields. Nothing in this section prohibits the City from cancelling or stopping practices or games involving the City or any other individual or group authorized by the City to use the High School Multi-Use Fields.

13. **Force Majeure.** In the event a Party’s compliance with any obligation under this agreement is impractical or impossible due to any emergency, including, but not limited to, flood, earthquake, storm, lightning, fire, acts of God, war, national emergency, civil disturbance or disobedience, riot, sabotage, terrorism, threats of sabotage or terrorism, restraint by court order or order of a public authority, failure of machinery or equipment or any other occurrence beyond the reasonable control of a Party (each such occurrence being an “Event of Force Majeure”), then the time for performance of such obligations shall be extended for a period equal to the duration of the event of Force Majeure.

14. **Alcoholic Beverages, Drugs, and Tobacco Products.** The City agrees that alcoholic beverages, narcotic drugs, tobacco products, and other intoxicants of any kind are not permitted at or on the High School Multi-Use Fields.

15. **Background Checks:** The City hereby acknowledges that it is aware of the provision of Tennessee Code Annotated §49-5-413 requiring the background check of any employee, subcontractor, or referee that works on school grounds at any time when students are present, and prohibiting any person with a history of the criminal offenses cited in the statute
from working on a school campus during such times. The City hereby certifies that it has, and will, at all times comply with the provisions of this statute while utilizing the High School Multi-Use Fields.

16. **Operation of Concessions.** The School System and its designees shall have exclusive use of any concession stands constructed on the property during the term of this agreement.

17. **Term of Memorandum of Understanding.** The term of this Memorandum of Understanding shall commence on the date of this Memorandum of Understanding, and shall continue until such time as the obligations contained herein are fully satisfied.

18. **General Provisions.**

   A. This Memorandum of Understanding is complete and contains the entire understanding between the parties relating to the subject matter contained herein.

   B. The parties may only amend or terminate this Memorandum of Understanding in writing signed by both parties.

   C. The parties agree to operate in good faith to implement the objectives of this Memorandum of Understanding.

   D. This Memorandum of Law shall be governed by and construed in accordance with the laws of the State of Tennessee.

**IN WITNESS WHEREOF**, the City of Lakeland, Tennessee and the Lakeland School System have executed this Memorandum of Understanding as of the first day above written.

**SIGNATURES ON FOLLOWING PAGE**
CITY OF LAKELAND, TENNESSEE

Shane Horn, City Manager
City of Lakeland, Tennessee

Mike Cunningham, Mayor
Board of Commissioners for the City of
Lakeland, Tennessee

LAKELAND SCHOOL SYSTEM

Dr. W. Edward Horrell, III, Superintendent
Lakeland School System

Kevin Floyd, Chairman
Board of Education for
the Lakeland School System