

LICENSE and USE **AGREEMENT**

THIS CONSTRUCTION LICENSE (this "License") **AND USE AGREEMENT** (this "Use Agreement") is made effective as of the _ day of _____, 2023 (the "Effective Date"), by and between the BALDWIN COUNTY BOARD OF EDUCATION, an agency of the State of Alabama ("Licensor" or the "Board") and the CITY OF FOLEY, ALABAMA an Alabama municipal corporation ("Licensee" or the "City"), (jointly referred to as the "Parties.").

WHEREAS, Licensor owns that certain real property more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Land"), for purposes of construction by Licensor of athletic field improvements on certain facilities owned by the Board (the "School Facilities"); and

WHEREAS, Licensee desires to provide enhancement to the School Facilities through the improvement by Licensee (through its contractors) of certain athletic fields, currently used as the football practice facilities, (the "Athletic Fields"), in the location generally as shown on **Exhibit B** attached hereto and made a part hereof (the "Fields Location").

WHEREAS, Licensee further desires to be able to use the Athletic Fields for City recreational leagues and purposes.

WHEREAS, in exchange of the Licensee's willingness to contribute financially to improve School Facilities, the Parties further desire to enter into this Use Agreement establishing the terms and conditions regarding the City's use of the Athletic Fields.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth herein, the parties hereto do hereby agree as follows:

I. LICENSE

- a. Right to Construct Improvements on Athletic Fields. Licensor grants to Licensee, its contractors, subcontractors, architects, engineers, materialmen, employees, agents and officers (collectively, the "Licensee Parties") the right and license to construct the Athletic Fields at the Fields Location generally in accordance with any proposed scope, plans, drawings, and specifications set forth on **Exhibit C** attached hereto and made a part hereof. Licensee shall have the right to make changes from time to time to such plans (including change orders throughout the construction process); provided, however, if any such changes would materially change the character or dimensions of the Athletic Fields, Licensee shall first obtain the approval of Licensor, which approval will not be unreasonably withheld. Licensee agrees to comply with all applicable laws, rules and regulations concerning the construction of the Athletic Fields. Prior to beginning construction, Licensee agrees to provide to Licensor a supplement to **Exhibit C** with a scope of work to include fixture specifications and bulb types once lighting has been installed as-built drawings should be provided to the Licensor.
- b. Access. Licensor grants to the Licensee Parties all rights of ingress and egress to, from and across the Land, including without limitation, the right to use the parking lots, drive aisles, driveways, sidewalks, walkways, and other similar facilities that are reasonably necessary for access to and from the Fields Location and for the construction of the Athletic Fields. Licensor

grants to the Licensee parties the right to locate and use a "construction staging areas" on the Land in the area shown on **Exhibit D** attached hereto and made a part hereof, which shall include the right to store equipment, vehicles, stockpiles, waste bins, and other construction-related materials during the construction project. Provided, however, in connection with the exercise of the Licensee Parties' rights of ingress, egress and staging granted hereunder, Licensee agrees to use commercially reasonable efforts to minimize interference with the operations of Licensor at the School Facilities located adjacent to the Fields Location.

- c. Term. The term of this License shall commence as of the Effective Date, and shall continue for a period of the earlier to occur of two (2) years or the date that the Athletic Fields are fully complete (including satisfaction of all "punch list" items), and a certificate of occupancy is issued (the "Completion Date").
- d. Utilities. Licensor agrees to cooperate with Licensee in obtaining all necessary utility access and hookups necessary for the construction and ultimate use of the Athletic Fields. The charges for such utilities will be borne by Licensor.
- e. Permits. Licensor agrees to cooperate with Licensee in obtaining all necessary permits and licenses necessary for the construction of the Field House. The charges for such permits and licenses will be borne by Licensee.
- f. Ownership. The Athletic Fields will be deemed owned by the Licensee as construction is ongoing. Upon the Completion Date, title to the Athletic Fields will then be deemed vested in Licensor, and Licensee shall deliver possession and keys to Licensor at such time.
- g. No Warranties/Athletic Fields Taken As Is. As between the Licensor and Licensee, the Athletic Fields will be delivered to Licensor in an "AS IS" condition and WITH ALL FAULTS: No representations or warranties have been made or are made and no responsibility has been or is assumed by Licensee as to the condition of the Athletic Fields or any other fact or condition which has or might affect the Athletic Fields or the condition, repair, value expense of operation of the Athletic Fields. Licensor, by taking possession of the Athletic Fields, shall accept and shall be held to have accepted the Athletic Fields as suitable for its intended use. Licensee shall not be required, after possession of the Athletic Fields has been delivered to Licensor to make any repairs or alterations to the Athletic Fields. However Licensee agrees to procure in the applicable construction documents for the Athletic Fields that the general contractor's warranty shall extend to and be enforceable by Licensor, and that all remaining third party subcontractor/vendor warranties (for matters which are not expressly covered by the general contractor's warranty) shall be assigned to (or otherwise extended to) Licensor to the extent they are assignable.
- h. Liability of Licensor. Licensor shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from the construction activities unless such loss, damage, or injury is a result of the gross negligence or willful misconduct of Licensor.
- i. Insurance. Licensee shall maintain, or caused its contractors to maintain, builder's risk insurance on the Athletic Fields, in the customary form in the vicinity where the Premises is located.

- j. Risk of Loss. Risk of loss for damage or destruction to the Athletic Fields will pass to the Licensor upon the Completion Date.
- k. Coupled with an Interest. The license granted hereunder are coupled with an interest and are not revocable.

2. USE OF FACILITIES BY CITY

- a. Access and Term. As partial consideration for the City's contribution to the improvement of the Athletic Fields, upon completion of construction of the Athletic Fields and for a period of twenty years thereafter, subject to any termination as included herein, the Board grants unto the City the following rights in connection with the use of the Athletic Fields and any open areas or public restrooms adjacent to the Athletic Fields (hereinafter "Athletic Field areas"):
 - i. Daily, until 6:00 p.m. (the "Operational Hours"), the Board shall have primary use and control of the Athletic Field areas. Provided, however, the City may request to schedule use thereof during Operational Hours provided that the proposed use does not interfere with normal educational activities.
 - ii. The schedule for the Athletic Field areas shall be maintained by the School Principal. All scheduling by the City shall be through the City's designee, who shall initially be Mr. David Thompson. The City's designee for scheduling may be changed upon written notification by the Mayor to the School Principal and Superintendent.
 - iii. The City shall provide as much advance notice as reasonably possible, but in no event less than 24-hours' notice of any proposed usage of the premises.
 - iv. After Operational Hours, the Board and the City shall have the ability to schedule use of the premises on a first-come basis. An event shall not be deemed scheduled until entered upon the schedule to be maintained in accordance with subparagraph (ii) above. Those who have activities logged on the school schedule will have priority in use and any school function takes highest priority in scheduling.
 - v. Regardless of timing, the City's use of the premises shall be solely and exclusively for the promotion and advancement of educational, athletic and recreational purposes and any other uses serving a public purpose. The foregoing shall not operate as a prohibition of fundraising efforts of a charitable nature or of charging an admission fee or offering concessions for sale.
 - vi. At all times in use by the City, the premises shall be under the direction, supervision and control of agents and employees of City. During those times when the premises are used by City in accordance herewith, the Board shall not be responsible for supervision of any activities related to the City's use thereof.
 - vii. The City's use of the Athletic Field areas, shall be at no additional cost or expense to the City. Provided, however, following any period of use by the

City, the City shall restore the Athletic Field areas to the condition that existed immediately prior to the use thereof, reasonable wear and tear excepted. The City agrees to be held responsible, however, for any costs incurred by the Board due to damage, the need for excessive clean-up, repair and/or replacement to property in or on the Athletic Field areas. The Board reserves the right to charge the City the customary custodial fees when if the Athletic Field areas are left in such condition that additional cleanup and repair is needed prior to the next scheduled use of the Athletic Fields areas.

- viii. The City's use of the premises shall be in accordance with all applicable policies and procedures of the Board, including, without limitation the Board's prohibition against illegal drugs, alcohol, tobacco and firearms on any of its facilities.
- ix. The City's designated recreational manager shall be provided keys to the premises, if any, and any other information needed (security codes as applicable) to gain access and use.
- x. In accordance with the Board's Facilities Use Agreements for outside entities, children *not* participating in the activities, for which the City has scheduled use of the Athletic Field areas, are not allowed on the Athletic Field areas unless accompanied by a parent who is not participating in the activity.
- xi. During the City's use of the Athletic Field areas, the City and its employees, volunteers, participants, partners, officers, members, agents, contractors, customers, guests, family, heirs, staff, invitees, and spectators (collectively and individually, "Athletic Field areas User Group") are limited to the area(s) rented, the public access ways leading to the Athletic Fields, and the nearest restroom(s) accessible from the outside. To ensure that all other areas stay clean until students arrive, it is imperative that the City only use the area(s) previously approved and designated for use. No one is allowed to walk/roam through the enclosed School Facilities.
- xii. The City acknowledges and agrees that the proposed facility use is not sponsored by or endorsed by the Board, the principal, the local school trustees, the school or any official or employee of the Board.
- xiii. The City understands that the Board may terminate this Usage Agreement immediately and without notice if it is found that the City has failed to comply with the terms of this Agreement and/or failed to follow federal, state, and local government laws and Board policies and procedures, including but not limited to those Board policies and procedures concerning illegal drugs, tobacco, firearms, and alcohol. In the event that the Board terminates this agreement, the Board will provide written notice of said termination to the City by delivering said notice to the Mayor.
- xiv. The City understands that the Board reserves the right to cancel usage of the Athletic Field areas when schools must be closed due to inclement weather or other conditions.

- b. City Insurance. At all times that the City utilizes the Athletic Field areas in accordance with this Use Agreement, it shall maintain, at its sole cost, comprehensive broad-form general liability insurance against claims and liability for personal injury, death and property damage arising from the City's use and occupancy of the Athletic Field areas. The insurance shall be carried by insurance companies authorized to transact business in the State of Alabama, selected by City. In addition, the following conditions shall be met: the insurance provided pursuant to this Paragraph 2b shall be in the amount of no less than \$1,000,000 for property damage, and in the amount no less than \$1,000,000 for one person and \$1,000,000 for one accident for personal injury.
- c. Board Insurance. The Board shall obtain and keep in force "all risk" coverage insurance (including fire insurance) in the customary form in the vicinity where the Athletic Field areas is located for buildings and improvements of similar character, on the Athletic Field areas and all appurtenances thereto, for the full replacement value thereof. To the extent permitted by the Fund, the Board waives any and all rights to recover against the City or any of its officers or employees, for any loss or damage arising from any cause covered by any insurance carried by the Board. The Board shall furnish the City evidence that such policy is in full force and effect, upon request from time to time by the City. Such policy shall contain a customary provision affording the City notice in writing in advance of any cancellation or lapse of coverage.
- d. Maintenance. Under this Use Agreement and except as otherwise identified above under the License, the City will, at its sole cost and expense, maintain the Athletic Field areas and make repairs, restorations and replacements to the Athletic Field areas, if any, including the heating systems, ventilating, systems air conditioning systems, mechanical systems, electrical systems, plumbing systems, speaker systems, signs, fire sprinklers (including heads and pipes), structural systems, roof, walls, ceilings, windows, doors, plate glass, lateral supports, foundations, restrooms, parking areas, sidewalks, gutters, downspouts, drains, sewer and storm water pipes, utility lines and pipes, entrance areas, dumpster areas, indoor and outdoor lighting, lawns, shrubbery and other landscaping, and all fixtures and appurtenances to the Athletic Field areas as and when needed to preserve them in the same general condition as they were in as of the date of substantial completion thereof, normal wear and tear, casualty and condemnation excepted, and regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or noncapital. All repairs, restorations, and replacements will be in quality and class equal to or better than the original work or installations. In furtherance thereof, the City shall maintain the Athletic Field areas in a clean and attractive condition. The Board agrees to keep the parking areas and sidewalks clean and in good repair, and the City will provide routine maintenance and ground service for the Athletic Field areas.
- e. Utilities. The Board shall ensure that any applicable water, sewer, electricity, gas and utility services are available to the Athletic Field areas, and shall be responsible for the payment of the utility charges therefor, regardless of usage of the Athletic Field areas by the City.
- f. Damage. If the Athletic Field areas are damaged or destroyed by fire, wind, hurricane or other casualty or Act of God, the Board shall restore the Athletic Field areas to substantially the same condition as before the damage occurred as soon as practicable.

g. Alterations and Improvements. The Board will not make any alterations or improvements to the Athletic Field areas without the City's prior written consent, which consent will not be unreasonably withheld; provided, however, the City's prior written consent will not be necessary for any alterations or improvements which are anticipated to cost less than \$50,000 and would not affect the load-bearing structural components of the Athletic Field areas.

h. Termination. This Usage Agreement shall commence upon completion of the Athletic Fields improvements ("competition date") and shall continue in full force and effect for a period of twenty years, except based on previously identified reasons for termination by the Board as well as the City shall have the right to terminate this Usage Agreement upon providing written notice of termination to the Board at any time after the City has completed the identified improvements.

3. COUNTERPARTS. This License and Use Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

4. RECORDING. Either party may record this License and Usage Agreement at its expense.

5. CONDITIONS. It is expressly understood and agreed that this Usage Agreement is conditioned upon receipt of and/or approval by the City and the Board of the following:

- a. this License and Usage Agreement;
- b. completion of the construction project identified herein on the Athletic Fields ("completion date").

Approval of the License and Usage Agreement by the Board must occur, in meeting assembled, and must be evidenced by the adoption of an agenda item submitted by the Superintendent to that effect.

6. APPLICABLE LAW. This Agreement shall be construed under and in accordance with the laws of the State of Alabama. All obligations of the parties created hereunder are performable in Baldwin County, Alabama.

7. SEVERABILITY. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

8. MISCELLANEOUS. This License and Usage Agreement contains the entire understanding between the parties, and supersedes any prior or contemporaneous oral or written agreements or representations. No amendment to this License and Usage Agreement shall be binding unless same is in writing and signed by both parties. The captions or paragraph headings are for convenient reference only and shall not be used in the interpretation of this License and Usage Agreement. Faxed copies or photocopies of signed documents shall have the same force and effect as originals.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Licensor and Licensee have caused this License and Use Agreement to be duly executed by its duly authorized representative effective as of the Effective Date.

LICENSEE:

CITY OF FOLEY, ALABAMA

By: _____
Ralph Hellmich Its Mayor

LICENSOR:

BALDWIN COUNTY BOARD OF EDUCATION

By: _____
Eddie Tyler, Its Superintendent

[ACKNOWLEDGMENTS ON FOLLOWING PAGE]

STATE OF ALABAMA)
BALDWIN COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Ralph Hellmich, whose name as Mayor of the CITY OF FOLEY, ALABAMA, an Alabama municipal corporation, is signed to the foregoing License and Use Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said License and Use Agreement, he, as such Mayor and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal, this the__ day of _____,2023.

[SEAL]

Notary Public
My Commission Expires:_____

STATE OF ALABAMA)
BALDWIN COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Carl Edward Tyler, whose name as the Superintendent of the BALDWIN COUNTY BOARD OF EDUCATION, an agency of the State of Alabama, is signed to the foregoing License and Use Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said License and Use Agreement, he, as such Superintendent and with full authority, executed the same voluntarily for and as the act of said board of education.

Given under my hand and official seal, this the ____ day of _____, 2023.

[SEAL]

Notary Public
My Commission Expires:_____

EXHIBIT A

Description of Land

PIN	82834
PARCEL	61-03-05-1-001-010.000
Account Number	47279
Owner	Baldwin County Board of Education

Legal Description

79 AC (C) W1/2 of NE1/4 of SEC 5 LESS AND EXEMPT: FM NE COR OF W1/2 OF NE1/4 OF SEC 5, RUN TH S 1490', TH W 50' TO POB, T H S 50', TH W 50', TH N 50', TH E 50' TO POB LYING IN CITY OF FOLEY SEC 5-T8Z-R4E RP360 PG1962

EXEMPT CODE	S
TAX DISTRICT	Foley

FOLEY HIGH TRACK FIELDS

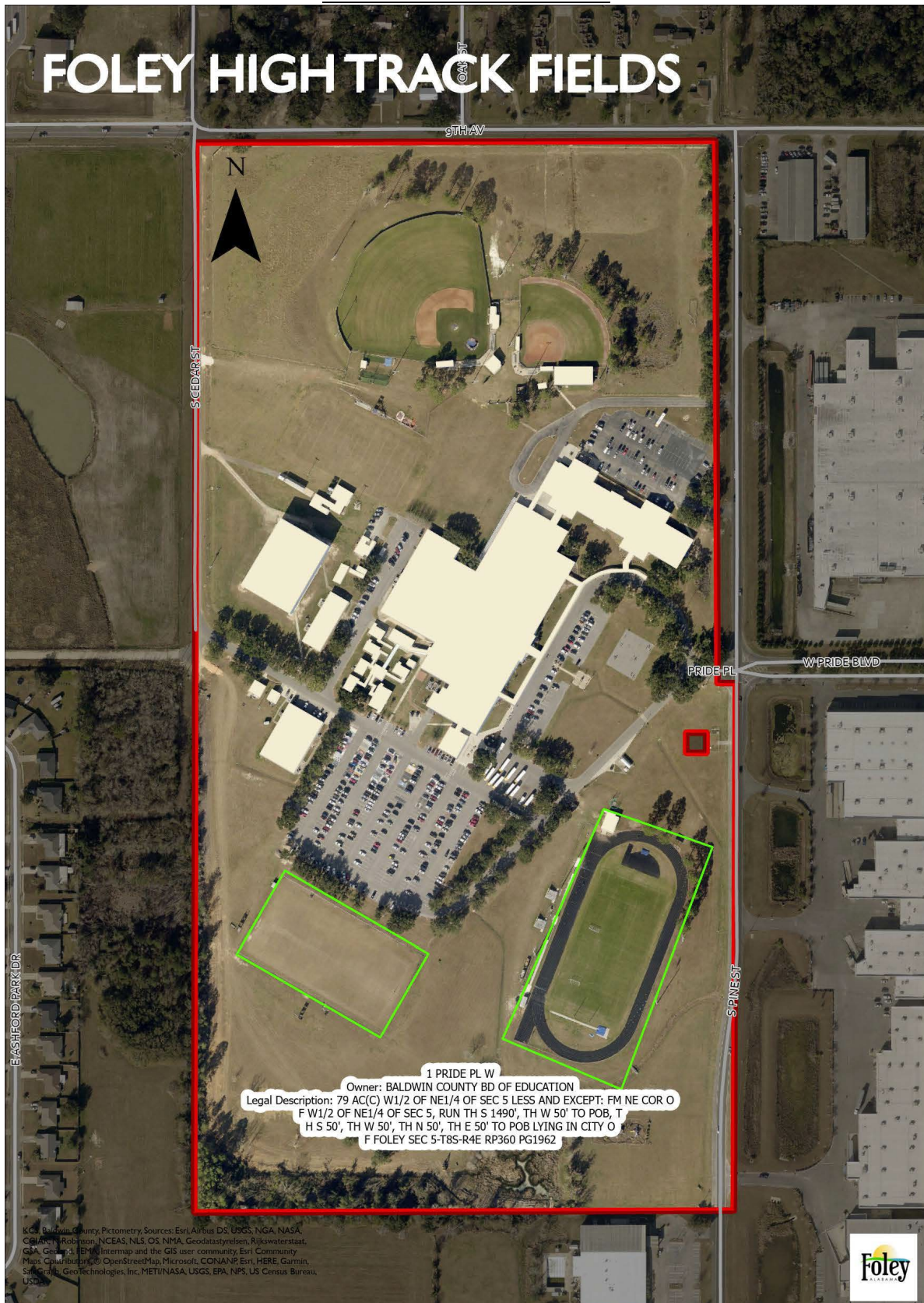


EXHIBIT C

Plans and Specifications

City of Foley will provide lighting for the football practice field as well as two (2) bleachers for event seating.

Specifications for the bleachers (est. \$100,000) are:

- DLWE 10-21, ALL ALUMINUM ELEVATED WELDED ANGLE FRAME BLEACHER,
- NET SEATING FOR APPROX. 92 PER UNIT WITH TWO WHEELCHAIR CUTOUTS
- 32" ELEVATION/ 78" WIDE FRONT WALKWAY
- FIRST SEAT 17" ABOVE WALKWAY: 8" RISE/24" TREAD DEPTH
- 2X10 ANODIZED ALUMINUM SEATS
- DOUBLE FOOTBOARDS ON ALL ROWS, 2-2X10
- 1X6 RISER ON ALL ROWS WITH 2X10 RISER LAST ROW ONLY
- THERE IS ONE 4'-0" VERTICAL AISLE WITH HANDRAIL AND CONTRASTING NOSING ON ALL AISLE STEPS
- GUARDRAIL SYSTEM CONSISTS OF GALVANIZED CHAIN LINK FENCE ON BACK, FRONT AND BOTH SIDES OF THE UNIT
- MEANS OF EGRESS IS BY STAIRS OFF ONE END OF THE FRONT WALKWAY AND A RAMP OFF THE OTHER END
- THERE ARE CUTOUTS FOR TWOWHEELCHAIRS FOR HANDICAP ACCESSIBILITY
- INSTALLED ON CONCRETE PAD

Specifications for the MUSCO lighting (est. \$350,000) are:

- MUSCO Sports Lighting
- Pre-cast concrete bases, galvanized steel poles
- Remote electrical component enclosures and pole length wire harnesses
- Factory aimed and assembled luminaires
- UL listed as a complete system
- On Field Performance – control to benefit players, fans, and TV cameras
- Guaranteed light levels of 30 foot candles
- Control-Link® system with contactors for remote on/off control and performance monitoring with 24/7 customer support
- Environmental Light Control – control for neighbors and the environment
- Reduction of spill light and glare by 50% or more
- Always Ready to Play – control assuring the results you expect
- Reduction of energy and maintenance costs by 40% to 85% over typical 1500W HID equipment
- Product assurance and warranty program that includes materials and onsite labor, eliminating 100% of your maintenance costs for 25 years.
- Structural code and wind speed = IBC 2015, 160 mi/h, and exposure: Importance Factor C

EXHIBIT D

Staging Area

All Staging will be done off of the playing field, east of each field.