

**MEMORANDUM OF UNDERSTANDING
REGARDING FUNDING OF A PADUCAH-McCRACKEN
COUNTY ATHLETIC COMPLEX**

This Memorandum of Understanding ("MOU") is entered into as of this 9th day of August, 2021 by and between the **CITY OF PADUCAH, KENTUCKY** ("City"), the **COUNTY OF McCRACKEN, KENTUCKY** ("County"), and the **McCRACKEN COUNTY SPORTS TOURISM COMMISSION** ("Commission").

WHEREAS, the City, County, and Commission acknowledge the economic and quality of life benefits that may be achieved from development of a high-quality athletic complex expected to draw visitors to the City and County for sports tournaments and athletic events while also meeting identified sports and recreational needs of local residents; and

WHEREAS, the parties desire to develop a premier athletic complex of the type described as the "Full Build Out" in the Master Plan Report of the McCracken County Sports Tourism Commission dated February 5, 2021 (the "Athletic Complex"); and

WHEREAS, the parties desire to enter into this MOU to establish each party's commitment and duties with regard to the funding of the Athletic Complex;

NOW THEREFORE, the City, County, and Commission agree to the following:

1. Commitment. The City and County each commit in good faith to participate in financing the design, development, construction, operation, and maintenance costs of the Athletic Complex on an equal (i.e., 50-50) basis upon the general terms and conditions set forth herein. This MOU is intended as a high-level statement of the respective commitments of the parties to finance the development and operating costs of the Athletic Complex. The parties commit in good faith and with diligence to negotiate and execute a definitive Interlocal Cooperation Agreement (the "Interlocal Agreement"). The Interlocal Agreement will establish more specifically the terms and conditions under which the Athletic Complex will be designed, constructed, funded, equipped, operated, and maintained and will replace this MOU in its entirety.

2. Real Property. The County will devote to the project the Bluegrass Downs land and facilities along with the tracts and property interests adjoining the Bluegrass Downs land recently acquired by the County. The City will devote to the project the Stuart Nelson Park property located south of the Greenway Trail. The parties agree that the real property interests to be devoted to the project by City and County are equivalent in value. The parties agree that the legacy of Stuart Nelson Park and the life of William Stuart Nelson will be honored in a fitting manner such as is proposed in the aforesaid Master Plan Report as the same may be modified in the Interlocal Agreement.

3. Construction Financing. The City and County agree that costs for designing, developing, constructing, equipping, and commissioning the Athletic Complex ("Construction Costs") shall be shared equally by the City and County, with each party paying fifty (50%) percent of such costs, as follows:

A. The City and County shall each make an initial contribution of cash or the equivalent in the amount of \$12.5 million towards payment of the Construction Costs. These funds shall be made available in accordance with the schedule and upon the terms and conditions as will be set forth in the Interlocal Agreement(ILA). The parties agree that the ILA is to be in place no later than January 1, 2022.

B. Total Construction Costs are presently estimated to be approximately \$17.5 million above and beyond the \$25 million provided for in subsection A of this Section 3. Should the estimate of additional costs exceed \$42.5M the parties shall mutually agree as to increasing the funding or reducing the scope of the project and how.

C. Beginning 12 months prior to the due date of the first payment, and in each subsequent fiscal year thereafter until the debt service on only any bonds issued by City or County over and above the original 12.5 million dollars referenced in Paragraph A above, to finance Construction Costs has been paid in full, the Commission shall set aside and devote eighty (80%) percent of the transient room tax payments actually received by it (the "TRT Receipts") during the fiscal year to the payment of the debt service on said Construction Costs. One-half of the eighty (80%) percent of the TRT Receipts for the year shall be paid directly to the City or to its bond trustee as directed by the City until the City's debt service on financed Construction Costs is paid in full (from whatever sources). One-half of the TRT Receipts for the year shall likewise be paid directly to the County or to its bond trustee as directed by the County until the County's debt service on financed Construction Costs is paid in full (from whatever sources). City and County shall each be solely responsible for payment of the costs of issuance of any municipal bonds.

D. Beginning in the fiscal year in which the Athletic Complex begins operations, any unrestricted operating revenues received by the Commission for the year in excess of the greater of the Commission's actual or budgeted expenses for operation of the Athletic Complex (including reasonable budget reserves for contingencies, capital improvements, and depreciation) (the "Excess Revenues") shall be devoted by the Commission to payment of the City's and County's debt service as provided in the following sentence. One-half of the Excess Revenues for the year shall be paid directly to the City or to its bond trustee as directed by the City until the City's debt service on financed Construction Costs is paid in full (from whatever sources). One-half of the Excess Revenues shall likewise be paid directly to the County or to its bond trustee as directed by the County until the County's debt service on financed Construction Costs is paid in full (from whatever sources).

E. City and County shall each be responsible for arranging for payment of its share of the Construction Costs on a timely basis. The parties pledge to cooperate in good faith in assisting the City and County in their respective efforts to arrange financing for their obligations whether through the issuance of municipal bonds, the obtaining of conventional financing, or the seeking of state or federal grants or private donations.

F. The amount of the annual payment to the City and County under Sections C and D shall not exceed the amount of annual debt service on any bonds issued above the \$12.5 million referred to in Paragraph A above.

4. Support of Operations. In any fiscal year for which unrestricted revenues received by the Commission on account of its operation of the Athletic Complex are insufficient to cover the Commission's expenses attributable to the Athletic Complex (a "Shortfall"), the City and County shall each make up one-half of the Shortfall by making payment directly to the Commission or its designee from general funds of the City or County or other funding source. If the Commission in good faith determines that such a Shortfall will occur during the course of a given fiscal year, the Commission may send notice to the City and County of the estimated amount of the Shortfall and the City and County shall each pay to the Commission one-half of the estimated Shortfall. All payments of any actual or estimated Shortfalls shall be made by the City and County within thirty (30) days of receipt of notice of same. If, at the conclusion of a given fiscal year, the Commission incurred no net Shortfall of unrestricted revenues over expenses attributable to operation of the Athletic Complex, the Commission shall promptly refund to the City and County any amounts paid by each of said parties towards the estimated Shortfall during the course of the fiscal year. For any fiscal year in which the City and County cover a Shortfall, the amounts so paid by City and County shall be reimbursed by the Commission in the manner specified in Section 3 after all debt service for Construction Costs of the City and/or County have been paid in full. The Commission shall provide to City and County any information, records, or documents reasonably requested by them in connection with a notice to cover an actual or estimated Shortfall.

5. Miscellaneous Provisions. The following miscellaneous provisions shall apply:

A. Notices. All notices provided for herein will be in writing and addressed to the parties. Notice shall be effective upon actual receipt of same.

B. Entire Agreement. This MOU expresses the complete agreement of the parties and supersedes all prior written or oral agreements or understandings among the City, County, and Commission with regard to the matters addressed herein. The Interlocal Agreement when executed, will replace this MOU in its entirety..

C. Amendments. This MOU may not be modified or amended unless by a writing signed by each party hereto.

D. Counterparts. This MOU may be executed simultaneously or in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.


E. Relationship of Parties. Neither the execution of this MOU, nor the consummation of the development and operation of the Athletic Complex contemplated hereunder shall create or constitute a partnership, joint venture, or any other form of business organization among the parties. No party hereto shall be an agent, fiduciary or employee of another party, nor shall a party have any power to assume or create any obligation on behalf of any other party.

F. Third Party Beneficiaries. There are no third party beneficiaries to this MOU.

IN WITNESS WHEREOF, the parties have signed this agreement as of the day and date first above written.

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McCRACKEN COUNTY FISCAL COURT

BY: 

TITLE: McCraiden Judge Exec

CITY OF PADUCAH, KENTUCKY

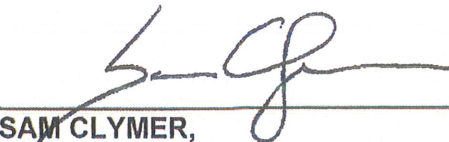
BY: 

TITLE: MAYOR

**McCRACKEN COUNTY SPORTS
TOURISM COMMISSION**

BY: J. Decker

TITLE: Chairman



SAM CLYMER,
McCracken County Attorney