

11-9-2002 12:00 AM

2002-11-09

Board of Regents, Murray State University

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MINUTES OF THE SPECIAL MEETING OF THE BOARD OF REGENTS
Murray State University
November 9, 2002

The Board of Regents of Murray State University met on November 9, 2002, in special session in the Murray Room of the Regional Special Events Center on the main campus of Murray State University. The meeting was called to order at 11:40 a.m. by Chair Sid Easley.

Upon roll call, the following members were present: Marilyn Buchanon, Olivia Burr, Lori Dial, Beverly Ford, Wells Lovett (via conference phone), Mike Miller, Jace Rabe, Terry Strieter and Sid Easley. Absent: Elizabeth McCoy and Don Sparks.

Others present were King Alexander, President of the University; Sandra Rogers, Secretary to the Board of Regents; Tom Denton, Treasurer to the Board and Vice President for Finance and Administrative Services; Don Robertson, Vice President for Student Affairs; Jimmy Carter, Vice President for Institutional Advancement; Gary Brockway, Provost and Vice President for Academic Affairs; Dewey Yeatts, Associate Vice President for Facilities Management; members of the faculty, staff, students, news media and visitors.

Memorandum of Agreement for the Student Recreation and Wellness Center, approved

Dr. Alexander informed the Board that the Council on Postsecondary Education (CPE) had unanimously approved the Memorandum of Agreement for the Student Recreation and Wellness Center, as well as the Capital Projects and Bond Oversight Committee, and the City of Murray. The action by the Board is procedural.

Mr. Rabe moved that the Board of Regents, upon the recommendation of the President of the University, (1) approve the Memorandum of Agreement between the University and the City of Murray, Kentucky, which should be substantially in the form attached hereto, (2) authorize, empower and direct the President of the University to do and perform any and all actions necessary to effect the execution and delivery of the Memorandum of Agreement consistent with this resolution, and to exercise and otherwise take all action necessary to implement the provisions of the Memorandum of Agreement, and (3) authorize and ratify any insubstantial revision to the Memorandum considered necessary to effect the execution and delivery of the Memorandum of Agreement.

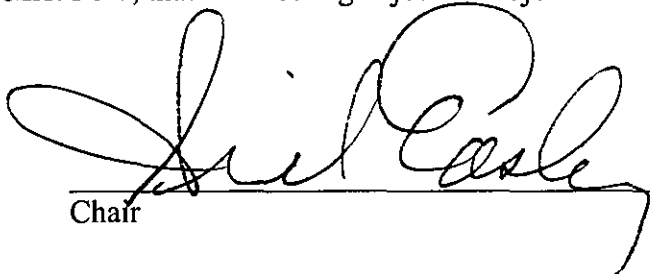
Mr. Miller seconded and the roll was called with the following voting: Mrs. Buchanon, yes; Mrs. Burr, yes; Mrs. Dial, yes; Mrs. Ford, yes; Mr. Lovett, yes; Mr. Miller, yes; Mr. Rabe, yes; Dr. Strieter, yes; and Mr. Easley, yes. Motion carried.

(See Attachment #1)

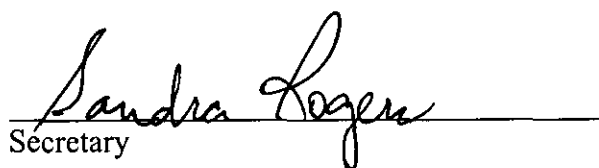
Dr. Alexander showed site designs of the Science Complex and the Student Wellness Center.

Adjournment

Mr. Miller moved, seconded by Mrs. Ford, that the meeting adjourn. Adjournment was at 12:00 p.m.




 Chair



 Secretary

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Secretary



MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** ("Agreement") is entered into on the _____ day of _____, 2002, by and among **MURRAY STATE UNIVERSITY** ("MSU"), acting by and through its Board of Regents, and the **CITY OF MURRAY, KENTUCKY** (the "City"), acting by and through its City Council.

WITNESSETH:

WHEREAS, it has been determined to be in the best interests of the students, faculty and staff of MSU, as well as for the City of Murray, Kentucky to construct a wellness and recreational center on the MSU campus; and

WHEREAS, MSU has received authorization through Governor Patton's fiscal year 2003 spending plan for the construction of a recreation/wellness center ("Wellness Center") at a cost of \$10,000,000, to be funded with restricted funds; and

WHEREAS, MSU has the authority to impose and appropriate fees related to the use of the Wellness Center as restricted funds revenue; and

WHEREAS, MSU owns certain real property on its campus, which is located within the corporate limits of the City, and is described in **EXHIBIT A**, which is a suitable and desirable location for the construction of the Wellness Center; and

WHEREAS, MSU is without the necessary authority to incur debt for the purpose of designing and constructing said Wellness Center as described within this Agreement; and

WHEREAS, the City has agreed, in its sole and absolute discretion, and subject to the provisions of this Agreement, to issue its General Obligation Bonds, Series 2002, (the "Bonds"), in an amount up to Ten Million Dollars (\$10,000,000) to finance the design, construction and equipping of the Wellness Center to be located on the campus of MSU and other additional

expenses to include curbing, sidewalks, steps, drainage and other modifications, all related to the foregoing (collectively the "Project"); and,

WHEREAS, the campus real property, including the Project (collectively the "Property"), shall constitute a public project of the City, acting jointly with MSU, within the meaning of KRS Chapter 58 and KRS 66.011, and shall be operated for the educational, athletic, entertainment and recreational activities and purposes of the students, Faculty and staff of MSU as contemplated by the provisions of this Agreement; and

WHEREAS, the proposed issuance of the Bonds, payment of debt service on such bonds, and the carrying out of the Project, including contracting for services and construction, shall be subject to the terms and provisions of this Agreement and such subsequent agreements as the parties shall enter into.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and the mutual benefits to be derived by the parties hereto, the legal sufficiency of which being acknowledged by MSU and City, it is agreed as follows:

1. **Property.** This Memorandum of Agreement shall apply to all construction and improvements on the Property comprising the Project that are to be funded by the Bonds. The Property and the Project are described in **EXHIBIT A** which is incorporated herein by reference.

2. **Project Authorization.** As a condition to any obligations of the City hereunder to issue the Bonds and to undertake the Project, the Secretary (the "Secretary") of the Finance and Administration Cabinet shall have determined that the Project is authorized and the financing strategy contained in this Agreement shall have been reviewed and approved by the Council on Postsecondary Education ("CPE") and the Capital Projects and Bond Oversight Committee (the "Committee"). MSU shall keep the Secretary, CPE, and the Committee fully informed of the

Project and will provide information, including, but not limited to, a Project update at the completion of design and quarterly construction status reports once construction is underway.

3. **Project Design and Construction.** The Project shall consist of the design, construction and equipping of certain facilities identified and described by MSU that are located on the Property consisting of the design, construction and equipping of the Wellness Center located on the campus of MSU and other additional expenses to include curbing, sidewalks, steps, drainage and other modifications, all related to the foregoing.

4. **Closing And Sale Of Bonds.** After satisfaction of all legal and credit requirements of the City, the City shall cause the Bonds to be issued in an amount sufficient to generate up to Ten Million Dollars (\$10,000,000) of proceeds for use on the Project, in an amount and amortized over a term to be determined by the City with the advice of MSU, but not to exceed 30 years. Upon the issuance of the Bonds the proceeds shall be immediately transferred to MSU and deposited to a dedicated account to be utilized exclusively for the payment of costs of construction, equipment, and furnishings related to the Project, including but not limited to qualifying surveying fees, legal fees, architectural fees, engineering, contractors' costs, design costs, fixtures, furniture and equipment.

5. **Project Administration.** MSU shall serve as the contracting entity for the Project and shall undertake the Project consistent with the contract documents, including but not limited to, the plans and specifications. The City shall have no liability for any costs that exceed the funds available from the Bonds and all costs that exceed funds available from the Bonds shall be the responsibility of MSU. All actions taken in the design and construction of the Project under the provisions of this Agreement shall comply with all applicable federal, state and local laws and regulations.

6. **Covenant to Impose and to Transfer Funds to City.** MSU agrees and covenants to impose and to appropriate throughout the term of the Bonds and to transfer to the City from the restricted fund revenue fees related to the use of the Wellness Center (the "Wellness Center Fees") amounts equal to the debt service payments, including both principal and interest and administrative costs on the Bonds as contemplated by this Agreement, and MSU shall also reimburse the City, from the Wellness Center Fees, all of the direct out of pocket expenses incurred by the City associated with the Bonds under this Agreement (collectively the "Debt Service"). All transfers to the City of the Debt Service payments shall be made on a schedule mutually agreed upon by MSU and the City in order to assure that the Bonds and other expenses are paid in a timely manner. None of the indebtedness can be assigned or transferred, directly or indirectly, to the Commonwealth of Kentucky.

7. **Debt Service Payment and Reserve Fund.** A Debt Service payment and reserve fund (the "Wellness Center Fund") shall be established, funded and maintained by MSU as a dedicated account. All Wellness Center Fees shall be deposited to this account and all payments of Debt Service to the City shall be drawn from this account. Adequate funds shall be deposited to the Wellness Center Fund by MSU to meet the Debt Service payments required by this Agreement and the account shall be funded over ten (10) years to reach an additional reserve amount equal to the highest annual debt service requirement over the term of the Bonds. For each fiscal year of MSU, the additional reserve shall be funded in an amount equal to ten percent (10%) of the highest annual debt service requirement per year until the balance reaches the total amount of the highest annual debt service requirement, at which time there shall be no obligation to further fund this reserve. To the extent that the Wellness Center Fees deposited are in excess of these requirements, MSU may withdraw the amount in excess for its use. To the extent that

the Wellness Center Fees deposited are inadequate to meet these requirements, MSU shall meet the requirements through the deposit of other available funds. At all times during the existence of the Wellness Center Fund, all investment earnings from the account shall be paid over to MSU. The Wellness Center Fund shall terminate at the earlier of the following: (1) full payment of the Bonds, or (2) by mutual agreement of MSU and the City.

8. **Model Procurement Code.** The City and MSU shall adhere to the applicable provisions of the Kentucky Model Procurement Code, KRS Chapter 45A, in the carrying out of the Project.

9. **Prevailing Wage.** All services performed on the Project shall be subject to the applicable provisions of the Kentucky prevailing wage law, KRS 337.505 through 337.550.

10. **Commitment for Revenue.** MSU covenants and agrees to impose and appropriate the Wellness Center Fees at such levels necessary to make the transfers to meet the Debt Service as contemplated by this Agreement throughout the term of the Bonds and until all principal and interest has been paid in full.

11. **Records.** Upon written request, the City and MSU shall provide to each other or to any competent authority of the Commonwealth of Kentucky, including without limitation, the Finance and Administration Cabinet, Legislative Research Commission, or the Auditor of Public Accounts, access to any financial or operating records maintained by or on behalf of the City or MSU relating to the Property.

12. **Repairs, Maintenance and Replacements.** The Property shall be repaired, maintained or replaced by MSU at its sole expense in the following manner:

A. **Maintenance.** MSU shall maintain the Property in good repair and condition and in conformity with all federal, state and local requirements and shall make or cause to be made routine repairs and maintenance.

B. **Repairs.** MSU shall use its best efforts to cause the Property to be maintained in good repair, including but not limited to, cleaning, painting, decorating, plumbing, carpentry, heating, ventilation, air-conditioning, grounds care, and such other maintenance and repair work as may be necessary.

13. **Liability Insurance.** So long as any of the Bonds shall be outstanding and not paid, MSU shall, at its sole expense, maintain comprehensive general liability insurance, including but not limited to coverage for the Property operations, personal injury, broad-form property damage, and bailee liability, for which limits of each of the foregoing coverage parts is to be not less than One Million Dollars (\$1,000,000) for bodily injury and property damage liability. MSU shall name the City as additional insureds on any such policy or policies. MSU, in its sole and absolute discretion, may purchase such policy or policies of liability insurance with deductible provisions of up to One Hundred Fifty Thousand Dollars (\$150,000) per occurrence. MSU shall indemnify and hold harmless the City to the extent of any liability, including attorneys' fees and court costs, resulting from the deductible provisions of any such policy of insurance, to the extent allowed by law. Said insurance will be purchased as a convenience to the parties to this Agreement and in no way serves as a waiver of MSU's sovereign immunity defense. MSU shall require all third party vendors operating on the Property to carry liability insurance with coverage limits as designated by MSU, and to provide MSU with proof of such insurance.

14. **Property Insurance.** MSU shall purchase and maintain, at its sole expense, property insurance coverage, including but not limited to coverage for fire, lightning, windstorm, hail, earthquake, explosion, riot, riot attending a strike, civil commotion, damage from aircraft, smoke and uniform standard coverage and vandalism and malicious mischief endorsements and business interruption insurance coverage and contents thereof for full replacement value of the Wellness Center. Such policy or policies of insurance may be obtained through the State Risk

and Insurance Services of the Department of Insurance for real estate and properties owned by the Commonwealth of Kentucky. MSU and City shall cooperate in a prompt manner in connection with the making of any claims and the collection of any insurance money that may be due and shall execute and deliver such proofs of loss and other instruments that may be required for the purpose of obtaining the recovery of any such insurance monies. Any funds collected from insurance coverage shall be used to make repairs to the Property and, if not used to make repairs, any funds collected shall be applied towards the debt outstanding on the Bonds. Should MSU fail to maintain the insurance coverage required above, the City may, at its discretion, purchase and maintain the required insurance and the cost of such insurance shall be considered part of the next Debt Service Payment.

15. **Facilities Usage Policies.** MSU, in its sole discretion, shall establish policies relating to the use of the Property, including, but not limited to, policies relating to public access, drugs, smoking, weapons, public availability to the property and related policies. All such policies shall comply in all respects with all applicable laws and regulations.

16. **Remedies.** Each party to this Memorandum of Agreement may, in that party's sole discretion, proceed to exercise or enforce any right, power, privilege, remedy or interest that such party may have under this Memorandum of Agreement or applicable law without notice, except as otherwise expressly provided herein, without pursuing, exhausting or otherwise exercising or enforcing any other right, power, privilege, remedy or interest that such party may have against or in respect of any other party or any other person or entity, and without regard to any act or omission of such party, person or other entity.

17. **Compliance with Applicable Laws and Regulations.** MSU and the City each covenant and agree that they, and their respective agents and employees, will comply with all

municipal, county, state, and federal laws, rules, regulations and ordinances applicable to the Property or the work to be performed under this Memorandum of Agreement and they shall obtain all necessary permits, and each shall pay all respective applicable license fees and taxes.

18. **Other Party Rights.** No entity or person other than a party hereto other than bondholders and any person or entity providing credit enhancement will have any right, remedy or claim under or by reason of this Agreement or otherwise be an beneficiary of any rights, remedies, claims or agreements hereunder. MSU, and the City acknowledge and agree this Memorandum of Agreement may be used in any manner by the City in any issuance of the Bonds.

19. **Exhibits Incorporated by Reference.** Any and all exhibits referred to in this Memorandum of Agreement shall be considered incorporated into this Memorandum of Agreement as if copied in full.

20. **Binding Effect.** This Memorandum of Agreement shall be binding upon, and shall inure to the benefit of the parties to this Memorandum of Agreement and their respective successors and assigns.

21. **Entire Agreement.** Other than documents related to the Bonds and other transactions contemplated herein, this Memorandum of Agreement contains the entire understanding of the parties hereto with respect to the subject matter contained herein.

22. **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the Commonwealth of Kentucky.

23. **Authority.** City represents and warrants it is a duly organized city and political subdivision of the Commonwealth of Kentucky. MSU represents and warrants it is a duly organized state chartered university and political subdivision of the Commonwealth of Kentucky.

Each party to this Memorandum of Agreement has full power and authority to enter into this Memorandum of Agreement and to carry out its obligations hereunder. Each party has previously adopted appropriate orders or resolutions approving this Memorandum of Agreement and authorizing its execution. Each party acknowledges that the execution and delivery of this Memorandum of Agreement does not conflict with or result in the breach of the terms of any agreement or instrument by which the party is bound, or conflicts with or results in the violation of any provision of law or regulation applicable to the party. Each party acknowledges that there is no litigation or proceeding pending or threatened against the party or any other person or entity effecting the right of such party to execute or deliver this Memorandum of Agreement or to comply with its obligations under this Memorandum of Agreement.

24. **Headings.** The headings of the sections of this Memorandum of Agreement are inserted solely for convenience of reference and are not part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.

25. **Amendment and Modifications.** Each and every modification to or amendment to this Agreement must be in writing and signed by the parties hereto, or their respective successors and assigns. Each and every waiver of and consent to any departure from and term or provision hereof (except as otherwise provided herein) must be in writing and signed by the party against whom enforcement of the waiver or consent is sought.

26. **Counterparts.** This Memorandum of Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

27. **Time is of the Essence.** Time is of the essence with respect to the obligations of the parties hereto, subject to the reasonable and prudent actions and determinations of the parties.

28. **No Presumption.** Since each party and its counsel have reviewed and negotiated the terms and provisions of this Memorandum of Agreement and have contributed to the drafting of this Memorandum of Agreement, the rule of construction to the effect that any ambiguities are resolved against the drafting party will not be employed in the interpretation of this Memorandum of Agreement. Its terms and provisions will be construed fairly as to all parties hereto and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this Memorandum of Agreement.

29. **Application of Agreement.** The terms of this Memorandum of Agreement shall be applicable for so long as the Bonds shall be outstanding.

30. **Notices.** All notices, requests, consents, and other communications under this Memorandum of Agreement shall be in writing and shall be mailed first class, registered or certified mail, postage prepaid, return receipt requested:

If to MSU:

Dr. F. King Alexander, President
Murray State University
P.O. Box 9
Murray, KY 42071-0009

With Copies to:

Mr. John Rall
General Counsel
Murray State University
100 Pogue Library
Murray, KY 42071

If to City:

City Administrator of the City of Murray
City Hall
207 South Fifth Street
Murray, KY 42071

With Copy to:

James H. Newberry, Jr.
Wyatt, Tarrant & Combs, LLP
Lexington Financial Center
250 West Main Street, Suite 1700
Lexington, KY 40507-1746

or to such other address of which the addressee shall have notified the sender in writing. Said notice or other communication shall be considered received on the date on which it is actually delivered to the Property of the addressee, such date to be conclusively evidenced by the date of the return receipt.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed by their duly authorized representatives on the date set forth opposite their signatures below.

MURRAY STATE UNIVERSITY

BY: _____

TITLE: _____

CITY OF MURRAY, KENTUCKY

BY: _____

TITLE: _____

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF CALLOWAY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2002, by _____, as _____ of Murray State University, created by and operating under the laws of the Commonwealth of Kentucky, on behalf of its Board of Regents.

My commission expires: _____

NOTARY PUBLIC

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF CALLOWAY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2002, by _____, as _____ of City of Murray, Kentucky, on behalf of its City Council.

My commission expires: _____

NOTARY PUBLIC

#56028141 v7