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Board of Regents, Murray State University

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MINUTES OF THE MEETING OF THE BOARD OF REGENTS  
Murray State University  
October 11, 1991

The Board of Regents of Murray State University met October 11, 1991, in special session in the Board of Regents Room, Wells Hall, on the campus of Murray State University. The meeting was called to order at 9:45 p.m. by Chairman Kerry B. Harvey. Mr. Willie Kendrick, member of the Board of Regents, gave the invocation.

Upon call of the roll, the following members answered present: Mr. C. Dean Akridge; Mr. James O. Butts; Dr. James W. Hammack, Jr.; Mr. Kerry B. Harvey; Mr. Willie R. Kendrick; Mr. Thomas R. Sanders; Mr. Bart Schofield; and Mrs. Virginia N. Strohecker. Absent: Mr. Tom Osborne and Mr. Randy Hutchinson.

Present for the meeting were: Dr. Ronald J. Kurth, President; Mrs. Sandra M. Rogers, Secretary of the Board; Mr. Don Kassing, Treasurer of the Board and Vice President for University Relations and Administrative Services; Dr. James Booth, Provost; Mr. James Overby, General Counsel; Mr. Jim Vaughan, Special Assistant to the President; Mr. Dwain McIntosh; Director, University Information Services; Mr. Ray Conklin, President, Faculty Senate; Senator and Mrs. Greg Higdon; members of the news media and visitors.

Chairman Harvey stated that the one item on the agenda relates to financing of the Regional Special Events Center and asked President Kurth to make that explanation.

President Kurth expressed appreciation for the willingness of the Board members to assemble at such a late hour on Homecoming weekend. The President has been asked by state authorities to sign the necessary contract concerning the sale of bonds in support of the Regional Special Events Center. The commitment of that authority is the responsibility of the Board of Regents, and action is needed to empower the President to sign the contract.

President Kurth further stated that the University has been dealing with a consultant to the state-appointed architect with regard to the manner in which to proceed to acquire the building needed. Murray State's bond authority carries over into July of 1992 and as a result of that the best manner in which to proceed in order to achieve the scope of the building desired is to delay the sale of bonds into 1992, estimated to be on or about May 1. This date was recommended by Senator Greg Higdon.

President Kurth introduced Senator Higdon to address the bond issue.

Senator Higdon informed the Regents that by delaying the sale of the bonds until the next session of the General Assembly the University might be able to get additional funding so the center can be upscaled. However, Senator Higdon cautioned that there are no guarantees. He encouraged the continuation of private fundraising efforts by the University. Senator Higdon indicated that he will be in Frankfort for one more session of the General Assembly.

There being no more questions, Senator Higdon left the meeting.

President Kurth assured the Regents that the delay in the sale of the bonds would be the recommendation from the administration.

Mr. Sanders moved that the Board of Regents authorize the administration to proceed with the plan to work in conjunction with state authorities to sell these bonds some time on or about May 1 of next year and authorize President Kurth to sign the attached contract. Mr. Kendrick seconded the motion.

(See Attachment #1)

Discussion among Board members followed coming to the conclusion that the \$10 million is pretty well guaranteed and that by waiting Murray State will not lose the \$10 million.

Regent Butts inquired as to the game plan for approaching the legislature next year when they are in session and the plans for involving the Board of Regents Governmental Relations Committee.

Chairman Harvey stated that the Committee has not been active as it was created at a time when there was not a vice president in that area. The original plan was that as soon as the new vice president was on board the committee would become active and develop a strategic plan regarding the way in which Murray State would handle its political affairs. As Mr. Don Kassing, Vice President for University Relations and Administrative Services, is now in place, the committee will become active with the first meeting to be scheduled on November 15, 1991.

President Kurth stated that there has been preliminary planning to put a permanent representative of the University in Frankfort for the key period of the legislative assembly and to have that person handle all contacts for Murray State.

Regent Butts stated that this issue is too important to put on the shoulders of one person. He stressed the importance of getting the best people Murray State has and as many as we have with influence and knowledge of Frankfort. He further stated that the Board of Regents Governmental Relations Committee consists of some very knowledgeable people and the Board of Regents should be very involved in letting representatives of government know how we feel and what we think the people of West Kentucky should expect in this area. Regent Butts expressed great concern of having one person with this responsibility.

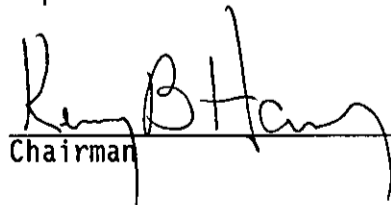
President Kurth stated that the scope of responsibilities for this person were never related to this kind of effort. The scope of his responsibilities were planned as simply to track those things which occur that are of interest to the University.


Chairman Harvey stated that a meeting of the Governmental Relations Committee will be scheduled at the November meeting and responsibilities of the Committee will be discussed at that time. He stressed the advantage of having Regent Virginia Strohecker in Frankfort during the session and her knowledge of state government.

Upon call for question, the following voted: Mr. Akridge, yes; Mr. Butts, yes; Dr. Hammack, yes; Mr. Kendrick, yes; Mr. Sanders, yes; Mr. Schofield, yes; Mrs. Strohecker, yes; and Mr. Harvey, yes. Motion carried.

#### Meeting Adjourned

There being no further business to come before the Board, Dr. Hammack moved and Mr. Kendrick seconded that the meeting be adjourned. Adjournment was at 10:00 p.m.

  
Chairman

  
Secretary

AGREEMENT

THIS AGREEMENT dated as of \_\_\_\_\_, 1991,  
by and among:

STATE PROPERTY & BUILDINGS COMMISSION (the "Commission")  
a Government Agency of the  
Commonwealth of Kentucky  
Capitol Annex Building  
Frankfort, Kentucky 40601

and

CABINET FOR ECONOMIC DEVELOPMENT (the "Cabinet")  
a Government Agency of the  
Commonwealth of Kentucky  
Capital Plaza Tower, 24th Floor  
Frankfort, Kentucky 40601

and

MURRAY STATE UNIVERSITY (the "University")  
Murray, Kentucky 42071

Recital

This Agreement (the "Agreement") provides for a grant in the amount of Ten Million Dollars (\$10,000,000.00) from the Cabinet to the University for costs associated with the construction of a Civic Center to be located on the campus of Murray State University. In order to induce the Cabinet to enter into this Agreement and to make the grant, the University is willing and desires to make the warranties, covenants, and agreements contained and set forth herein.

SECTION 1  
Definitions

As used in this Agreement:

An "Affiliate" of, or a Person "affiliated" with, a specified Person, is a Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified.

"Commonwealth" shall mean the Commonwealth of Kentucky acting by and through the State Property and Buildings Commission of Kentucky, a state governmental organization, Frankfort, Kentucky, and the Cabinet for Economic Development of Kentucky, a de jure agency and department of the Commonwealth of Kentucky.

"Grant" shall mean the grant in the principal amount of Ten Million Dollars (\$10,000,000.00), from the Cabinet to the

University provided in Section 2 of this Agreement.

"Person" shall mean any person, firm, trust, corporation or business organization.

"Project" shall mean (but not limited to) the costs associated with the construction of a Civic Center on the campus of Murray State University to be located in Murray, Calloway County, Kentucky.

## SECTION 2 The Grant

The Cabinet agrees to grant the University bond proceeds in accordance with the terms and conditions of this Agreement:

2.1 Amount. The amount of the Grant shall be Ten Million Dollars (\$10,000,000.00).

2.2 Disbursement. The proceeds of the Grant shall be requisitioned by the University to the Cabinet upon the execution of this Agreement by all parties hereto.

2.3 Use of Proceeds. The University covenants and agrees that bond proceeds shall be requisitioned, used, and applied by the University solely for the purposes of paying Project costs pursuant to this Agreement.

## SECTION 3 Use of Facility

3.1 This Grant evidenced hereby shall be used for the purpose of costs associated with the construction of a Civic Center to be located on the campus of Murray State University in Murray, Calloway County, Kentucky.

3.2 The University shall be responsible for any expenses associated with the operation and maintenance and repair of the Project.

3.3 The University also agrees to adequately insure the Project during the life of the Agreement pursuant to Section 4.

3.4 The University covenants that in the event the Project does not go forward on or before December 31, 1992, the University will repay the Commonwealth the costs of the Economic Development bond proceeds applied to the Project.

## SECTION 4 General Covenants

The University agrees that it shall perform, observe and comply with each of the following:

4.1 Insurance. The University shall maintain insurance as follows:

(a) The University shall continuously at all times during the term of this Agreement maintain insurance such risks as are customarily insured against by businesses of like size and character, paying as the same become due all premiums in respect thereto, including without limitation the following insurance:

(i) Insurance in the amount equal to the full replacement cost (as determined by a recognized appraiser or insurer acceptable to the Cabinet) of the Project against loss or damage with broad form, all risk or extended coverage including damage by fire, lightning, windstorm, explosion, aircraft, smoke, sprinkler leakage, vandalism, malicious mischief and such other risks as are normally included within such coverage (limited only as may be provided in the standard form for such coverage at the time in use in the Commonwealth); and,

(ii) To the extent deemed necessary by laws of the Commonwealth public liability insurance, covering all liabilities incident to the ownership, possession, occupancy, and operation of the Project.

(b) All insurance shall be taken out and maintained with generally recognized responsible insurance companies qualified to do business in the Commonwealth and may be written with deductible amounts comparable to those on similar policies by other businesses of like size and character. The University shall not permit any condition to exist with respect to the Project which would wholly or partially invalidate the insurance thereon. Unless a policy with such an undertaking is unavailable or is available only at a cost which the University determines to be unreasonable, each policy shall contain an undertaking by the insurer that such policy shall not be modified adversely to the interests of the University or cancelled without at least thirty days prior notice to the Cabinet.

4.2 Taxes and Other Obligations. The University shall pay, before any of them becomes in arrears, all taxes, assessments, governmental charges, levies and any other claims (for example, for labor, materials, or supplies), which, if unpaid, might become a lien or charge upon the Project unless the University is contesting the same in good faith.

4.3 Properties. The University shall maintain the Project in good condition, subject only to normal wear and tear, and make all necessary and proper repairs, renewals and replacements.

4.4 Compliance with Law. The University shall comply in all material respects with all valid and applicable statutes, rules and regulations of the United States of America, of the States thereof and their counties, municipalities and other

subdivisions and of any other jurisdiction applicable to them, and the provisions of licenses issued to them, except where compliance (1) in no way affects or impairs the performance by the University of its obligations hereunder, or (2) shall be currently contested in good faith by appropriate proceedings, timely instituted, which shall operate to stay any order with respect to noncompliance.

4.5 Employment. The execution of this Project shall create approximately ten (10) full time equivalent jobs at the project site located in Calloway County, Kentucky, by June, 1993, and maintain on the average said level of employment through June, 1994. Failure to create and maintain said jobs as hereinbefore provided may impose upon the University the duty to pay the sum of \_\_\_\_\_ to the Cabinet for each job not created or maintained, said sum to be applied against outstanding principal. If at any time after June, 1994, it is determined by the Cabinet that the employment conditions contained herein have not been met, then at that time, the Cabinet may assess the University the funds due it. In addition to these jobs, approximately \_\_\_\_\_ temporary construction jobs shall be created.

## SECTION 5 REPRESENTATIONS AND WARRANTIES

The University hereby represents and warrants to the Cabinet as follows:

5.1 Existence. The University is a duly organized and validly existing state agency under the laws of the Commonwealth of Kentucky.

5.2 Right to Act. The University has the legal power, capacity, and right to execute and deliver this Agreement and any other documents and to observe and perform all of the provisions of this Agreement. The University's execution and delivery of this Agreement and the performance or observance by the University of the provisions of this Agreement do not violate any existing laws or otherwise constitute a default or a violation under, or result in the imposition of any lien under, or conflict with, or result in any breach of any of the provisions of, any existing contract or other obligation binding upon it or its property, with or without the passage of time or the giving of notice or both. The official executing and delivering the Agreement on behalf of the University has been duly authorized to do so, and the provisions referred to herein are legal, valid and binding obligations of the University enforceable in accordance with their respective terms.

5.3 Litigation. No litigation or proceeding involving the University is pending or, to the best of the knowledge of the University, threatened in any court or administrative agency,

which if determined adversely to the University could have a material adverse impact on the ability of the University to perform its obligations under this Agreement.

## SECTION 6 Conditions Precedent

6.1 Representations, Warranties, and Covenants. Each and every representation, warranty, and covenant made by or on behalf of the University in its application to the Cabinet or relating to this Agreement or instruments or transactions contemplated thereby shall be true, complete, and correct on and as of the date this Agreement is made.

6.2 Compliance. The University shall have observed or complied with all provisions of this Agreement.

6.3 Counsel Opinion. The University shall have delivered to the Cabinet an opinion of the University's counsel in form and substance satisfactory to the Cabinet and its counsel, as to the effect of subsections 4.1, 4.2, 5.1, 5.2 and 5.3 of this Agreement and with respect to such other matters as the Cabinet may reasonably require. However, University counsel shall not be responsible for issuing any opinion regarding the legality of the bond issue itself. Such opinion shall be rendered to the Cabinet by bond counsel.

## SECTION 7 Interpretation

7.1 No Waivers; Multiple Exercise of Rights. No course of dealing in respect of, nor any omission or delay in the exercise of, any right, power, remedy or privilege by the Cabinet shall operate as a waiver thereof, nor shall any right, power, remedy or privilege of the Cabinet be exclusive of any other right, power remedy or privilege referred to herein or in any related document now or hereafter available at law, in equity, in bankruptcy, by statute or otherwise. Each such right, power, remedy, or privilege may be exercised by the Cabinet and as often and in such order as the Cabinet may deem expedient.

7.2 Time of the Essence. Time shall be of the essence in the performance of all the University's obligations under this Agreement and the other instruments related hereto.

7.3 Binding Effect. The provisions of this Agreement shall bind and benefit the University and the Commonwealth and their respective successors, heirs, personal representatives, and assigns.

7.4 Headings. The headings used in this Agreement are for reference only, and shall not be considered in the interpretation or construction of this Agreement.



7.5 Governing Law. This Agreement and the respective rights and obligations of the parties hereto shall be construed in accordance with and governed by the laws of the Commonwealth of Kentucky.

7.6 Complete Agreement. This Agreement and the other instruments referred to herein contain the entire agreement of the parties pertaining to its subject matter and supersede all prior written and oral agreements pertaining hereto.

7.7 No Assignments or Modifications. The University may not assign its rights under this Agreement without the prior written consent of the Cabinet (which consent shall not be unreasonably withheld). This Agreement may be modified only in a writing executed by the Commission, the Cabinet, and the University and all parties shall be bound by all such modifications.

7.8 Severability. If any part, term or provision of this Agreement is held by any court to be unenforceable or prohibited by any law applicable to this Agreement, the rights and obligations of the parties shall be construed and enforced with that part, term, or provisions limited so as to make it enforceable to the greatest extent allowed by law, or, if it is totally unenforceable, as if this Agreement did not contain that particular part, term or provision.

## SECTION 8 Notices

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficiently given for all purposes if sent by registered mail, postage prepaid and return receipt requested, addressed to the intended recipient at (a) the address set forth in the preamble to this Agreement, or (b) such other address which any party hereto may specify by written notice to the other parties hereto or if given by facsimile and confirmed by mail. All notices required to be given to the University shall be given to all parties.

## SECTION 9 Miscellaneous Provisions

9.1 Term of Agreement. The term of this Agreement shall commence as of the date hereof, and continue until the University shall have performed all its obligations hereunder and completion of the Project.

9.2 Further Assurances. The University shall sign such other documents or instruments as the Cabinet may reasonably request from time to time to more fully create, perfect, continue, maintain, or terminate the rights intended to be granted or created pursuant to this Agreement.

9.3 Incorporation by Reference. All exhibits, schedules, annexes or other attachments to this Agreement are incorporated into the Agreement as if set out in full in the first place that reference is made thereto.

9.4 Multiple Counterparts.

(a) This Agreement may be signed by each party upon a separate copy, and in such case one counterpart of this Agreement shall consist of a sufficient number of such copies to reflect the signature of each party.


(b) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms thereof to produce or account for more than one of such counterparts.

9.5 Waivers by the University. The University hereby waives, to the extent permitted by applicable law, (a) all presentments, demands for performance, notices of nonperformance, protests, notices of protest and notices of dishonor in connection with the Agreement; (b) any requirement of diligence or promptness on the part of the Cabinet in enforcement of its rights under the provisions of this Agreement; and (c) any requirement of marshalling assets or proceeding against persons or assets in any particular order.

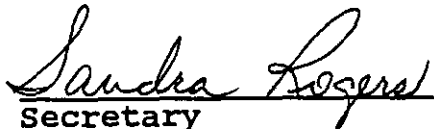
IN WITNESS WHEREOF, the Cabinet, Commission and the University have executed this Agreement as of the day, month and year first above written.

MURRAY STATE UNIVERSITY

BY:

  
\_\_\_\_\_  
RONALD J. KURTH  
PRESIDENT

ATTEST:

  
\_\_\_\_\_  
Secretary

REVIEWED BY:

James O. Overby  
James O. Overby, General Counsel  
Murray State University

State Property and Buildings Commission

Cabinet for Economic Development