

**RESOLUTION No. \_\_\_\_:2018**

**A RESOLUTION APPROVING THE MEMORANDUM OF AGREEMENT BY  
AND BETWEEN THE COMMONWEALTH OF KENTUCKY, DEPARTMENT  
FOR LOCAL GOVERNMENT AND CITY OF MOREHEAD, KENTUCKY  
REGARDING THE DON GREENHILL PARK IMPROVEMENT – LWCF#21-1543**

**WHEREAS**, the City of Morehead, Kentucky was awarded a \$75,000 grant subject to federal funds for the purchase and installation of playground equipment, construction of a dog park and resurfacing of the basketball courts located at the Don Greenhill City Park:

**WHEREAS**, the City desires to enter into a Memorandum of Agreement with the Commonwealth of Kentucky, Department for Local Government with regard to the management and disbursement of grant funds and project specifics;

**NOW, THEREFORE, BE IT RESOLVED** by the City of Morehead, Kentucky Board of City Council that the Memorandum of Agreement between the Commonwealth of Kentucky, Department for Local Government and City of Morehead, Kentucky, a copy of which is attached hereto, is approved and Mayor Trent shall have the authority to execute said Agreement on the City's behalf.

Passed and adopted by the City Council of the City of Morehead this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
James Thomas Trent, Mayor

ATTEST:

\_\_\_\_\_  
Crissy Cunningham, City Clerk

## **Memorandum of Agreement**

### **COMMONWEALTH OF KENTUCKY DEPARTMENT FOR LOCAL GOVERNMENT OFFICE OF FEDERAL GRANTS LAND AND WATER CONSERVATION FUND (LWCF)**

This Memorandum of Agreement (MOA) is entered into, by and between the Commonwealth of Kentucky, Department for Local Government ("the Commonwealth") and City of Morehead ("the Contractor") to establish an agreement for Don Greenhill Park Improvement– LWCF# 21-1543. The initial MOA is effective through May 30, 2020.

#### **Scope of Services:**

##### **1 - OBLIGATIONS OF DLG**

DLG covenants and agrees, conditioned upon the timely performance by the other parties of their respective obligations, to undertake the following obligations:

- A. DLG shall, subject to the availability of the appropriate federal funds for the project, reimburse to the Local Agency an amount not to exceed (\$75,000.00.) The Local Agency shall make full payment for the cost of an item and/or provide documentation for in-kind contributions before submitting a request for reimbursement of eligible project costs. During the term of this Agreement, eligible project costs are identified in Attachment A, Scope of Services and Budget. Reimbursement requests should be made Quarterly. A request for reimbursement may not be submitted to DLG for less than 25 percent of the total eligible project costs. The rate of reimbursement will be 40 percent. The final 25 percent of the LWCF grant will be withheld until the project is completed, inspected, and accepted by DLG staff and representatives of the National Park Service and the required Deed Restriction is recorded.
- B. DLG and NPS may, but are not required to, make periodic inspections of the Project and may send inspection reports to the Local Agency. The Local Agency shall correct deficiencies identified in the inspection report and their correction reported in writing to DLG within two weeks of receipt of the inspection report.
- C. DLG shall cooperate fully with the Local Agency in order to facilitate the obligations set out in this Agreement.

##### **2 - OBLIGATIONS OF THE LOCAL AGENCY**

The Local Agency covenants and agrees to undertake the following obligations:

- A. The Local Agency shall perform and cause to be performed all necessary acts to plan, design and construct the Project in accordance with applicable law and the provisions stated herein.
- B. The Local Agency shall obtain all necessary permits, licenses and approval from the appropriate governmental entities for construction of the Project.
- C. The Local Agency shall comply with all applicable federal and state statutes, executive orders, regulatory requirements, and policies and require all contractors employed by the Local Agency to comply with all applicable federal and state statutes, executive orders, regulatory requirements, and policies. In particular, the Local Agency, and its contractors shall comply with 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and

Local Governments. As evidence of the grant recipient's intention to comply, a Standard Form 424D, Assurances - Construction Programs, shall be signed by the authorized certifying official and made a part of this Agreement. If applicable, the Local Agency shall provide documentation to show compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1990 as amended. This documentation must be submitted before the first request for reimbursement is made. The Local Agency shall use its own procurement procedures that reflect applicable state and local laws for all purchases of goods or services related to the Project. Shall comply with 2 CFR Part 200, 2 CFR Part 182 & 1401, 2 CFR 180-1400, 43 CFR 18, 2 CFR Part 175, 2 CFR Part 25, 2 CFR Part 170.

- D. The Local Agency shall appropriately address any advisory comments that are attached to the Kentucky State Clearinghouse's notification letter relating to the grant recipient's project. If applicable, evidence that the advisory comments have been satisfactorily addressed must be submitted to DLG before any work can begin on this project. Additionally, during the period of performance, the Local Agency shall notify DLG immediately if any significant adverse environmental impacts result from project implementation and shall cease all project activity until an evaluation is made by DLG and its representatives to determine what actions are necessary and appropriate.
- E. The Local Agency shall erect and maintain, in perpetuity, a sign on the Project site acknowledging that the Project was completed with LWCF financial assistance.
- F. The Local Agency shall retain all records relating to the project until DLG audits the records, or for three years after the Project is closed out, whichever occurs first. The records include, but are not limited to, the following:
  - Payroll register by pay period showing names, hours worked, hourly rate, benefits, deductions, gross pay, and net pay.
  - Final cost summary of all payroll registers.
  - Time sheets signed by both employees and their respective supervisors.
  - Invoices for purchased materials.
  - Invoices for all design and construction costs.
  - Each invoice shall have the date paid and check number indicated on it.
  - Cancelled checks or copies thereof.
  - Copies of documents used in procurement (advertisements, plans and specifications, bid tabulations, contracts, and change orders).
  - Statements specifying donations to the project signed by the donor.
- G. A copy of the Local Agency's resolution authorizing the execution of this Agreement is attached hereto and made a part hereof.
- H. The Local Agency shall cooperate fully with DLG and provide any documentation requested by DLG in order to facilitate the obligations set out in this Agreement.
- I. The Local Agency shall submit quarterly progress reports to DLG in the form prescribed by DLG until the Project is closed out by DLG. The reports shall be submitted by the 15th day of the month following the last day of each calendar quarter (i.e., January 15th, April 15th, July 15th, and October 15th). The report shall list, at a minimum, the line items in the cost estimate and the percent of completion as well as any indication of problems or time delays. The final quarterly progress report shall act as the Project Completion Report. The Progress Completion Report must be approved by DLG. Any deficiencies found in the Progress Completion Report shall be remedied by the Local Agency no later than 2 weeks from receipt of notification.

- J. The Local Agency shall execute and record in the public property records of the county clerk's office a limitation of use notice, deed of restriction, or other appropriate document dedicating the property in perpetuity to public outdoor recreation in accordance with the Conditions set forth below. The document shall identify the property by the project boundary map submitted with the application to the Department. The document and the County Clerk's filing certification shall be submitted to DLG along with the Local Agency's first request for reimbursement under this agreement. A permanent trail easement in favor of the DLG must be approved prior to receiving final reimbursement.

The parties to the project agreement specifically recognize that the Land and Water Conservation Fund project creates an obligation to maintain the property described consistent with the Land and Water Conservation Fund Act.

Upon Project completion, the Local Agency shall operate and maintain the Project as follows:

- Facilities shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use.
  - Facilities shall be kept reasonably safe for public use.
  - Facilities shall be kept open for public use at reasonable hours and times of the year for **perpetuity**.
  - Facilities shall be kept open for all persons regardless of race, color, sex, national origin, or disability.
- K. Any unauthorized or improper expenditure of funds, or expenditure of funds other than in accordance with the terms of this Agreement shall be deemed a default of this Agreement by the Local Agency, with the Local Agency returning those funds to DLG, if DLG has made reimbursement to the Local Agency.

### **3 - MUTUALITY OF OBLIGATIONS**

- A. The parties agree that the obligations imposed upon them are for the benefit of the parties and the timely fulfillment of each and every obligation in accordance with this Agreement is necessary. The failure of any party to fulfill its obligations under this Agreement or the failure of any event to occur by a date established by this Agreement shall constitute a breach of it unless the fulfillment of such obligation is waived or modified by written agreement of the parties.
- B. In the event of default by the Local Agency, including the failure to meet any time deadlines or provisions set out in this Agreement, DLG may declare this Agreement void from the beginning without further obligation to the Local Agency and may commence appropriate legal or equitable action to enforce its rights under this Agreement including action for recovery of funds expended hereunder.
- C. Except as may otherwise be provided herein, the parties to this Agreement shall be solely responsible for any costs incurred in fulfilling their obligations under this Agreement and no party shall have any claim against the other party for reimbursement of costs whether or not a party is in default.
- D. Both parties, DLG and the Local Agency, acknowledge that this Agreement is entered into under the provision of KRS 45A.023, and that future Kentucky General Assemblies may discontinue funding in subsequent budgets.

#### **4 - MISCELLANEOUS PROVISIONS**

- 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 hereto. 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 and conditions hereof to produce or account for more than one of such counterparts.
- B. The headings set forth in this Agreement are only for convenience or reference and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.
- C. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successor and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Agreement which assignment shall be prohibited except with the prior written consent of all parties hereto.
- D. No decision-making official or employee of the Local Agency involved in discussions regarding a contract or subcontract in connection with the project shall have any financial or other personal interest in any such contract or subcontract.
- E. No person performing services for the Local Agency in connection with this project shall have a financial or other personal interest in any real property acquired for this project unless such interest is openly disclosed in the Local Agency's public meeting and reflected in the Public Agency's public meeting minutes, and such officer, employee, or person has not participated in the acquisition of said property for or on behalf of the Local Agency.
- F. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, superseded all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.
- G. Time is of the essence in the performance of each of the terms and conditions of this Agreement.
- H. The parties agree that any suit, action or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky or the United States District Court for the Eastern District of Kentucky, Frankfort Division.
- I. The Grantee hereby agrees to adopt the provisions of DLG's Implementation Plan for Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq (nondiscrimination in use of federal funds), a copy of which is available upon request. In lieu of this requirement, the Grantee may adopt its own Title VI Implementation Plan, provided that the Grantee attaches hereto a copy of its Title VI Implementation Plan and any applicable annual updates.

J. All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, and shall be addressed as follows:

If to DLG: Department for Local Government  
1024 Capital Center Drive, Suite 340  
Frankfort, Kentucky 40601  
ATTENTION: Jodie Williams

If to the Local Agency: City of Morehead  
314 Bridge Street  
Morehead, Kentucky 40351  
ATTENTION: Mayor James Thomas Trent

**Cancellation clause:**

Either party may cancel the agreement at any time for cause or may cancel without cause on 30 days' written notice.

**Funding Out Provision:**

The state agency may terminate this agreement if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the agreement. The state agency shall provide the Contractor thirty (30) calendar days written notice of termination of the agreement due to lack of available funding.

**Reduction in Contract Worker Hours:**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the agreement will be reduced by the amount specified in that document.

**Access to Records:**

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030(8) and (10), agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

**Effective Date:**

All Memorandum of Agreements are not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the agreement and until the agreement has been submitted to the government contract review committee. However, in accordance with KRS 45A.700, memoranda of agreement in aggregate amounts of \$50,000 or less are exempt from review by the

committee and need only be filed with the committee within 30 days of their effective date for informational purposes.

KRS 45A.695(7) provides that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

**Violation of tax and employment laws:**

KRS 45A.485 requires the Contractor and all subcontractors performing work under the agreement to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the agreement shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the agreement shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination as described above, or failure to comply with the above statutes for the duration of the agreement shall be grounds for the Commonwealth's cancellation of the agreement and their disqualification from eligibility for future state contracts for a period of two (2) years.

[Check box section below need only be included for Contractors that are quasi-governmental entities or 501(c)3 non-profit entities.]

Contractor must check one:

\_\_\_\_\_ The Contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

\_\_\_\_\_ The Contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). Attached is a list of such determination(s) which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

**Discrimination:**

This section applies only to agreements disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this agreement, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants

are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

3. The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations or orders, this agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

7. The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.



## Approvals

This agreement is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this agreement and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

Department for Local Government:

\_\_\_\_\_  
Sandra K. Dunahoo  
Commissioner, DLG

\_\_\_\_\_  
Date

\_\_\_\_\_  
Greg Ladd, DLG General Council

\_\_\_\_\_  
Date

City of Morehead:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

Approved as to form and legality:

\_\_\_\_\_  
Attorney

# **SCOPE OF WORK**

## **Don Greenhill Park Improvements**

**SCOPE:**      **Purchase and install Playground Equipment, Dog Park, and Basketball Court Surface.**

### **BUDGET:**

Playground Equipment	\$117,416.00
Dog Park	\$15,000.00
Basketball Surface	\$55,000.00
Total Project Costs	\$187,116.00

### **FUNDING:**

LWCF Grant	\$75,000.00
Local Match	\$112,416.00
Total Funds	\$187,116.00