

RESOLUTION NO. ____:2019

WHEREAS, the City of Morehead, Kentucky Board of City Council (hereinafter referred to as "Board"), desires to enter into an agreement with the Rowan County Board of Education for recreational use of the property known as the "Community Park";

NOW, THEREFORE, BE IT RESOLVED by the City of Morehead, Kentucky Board of City Council that the Recreational Use of Surplus School District Property agreement, a copy of which is attached hereto is approved and the Mayor is authorized and directed to execute document on the City of Morehead's behalf.

Passed and adopted by the City Council of the City of Morehead this 14th day of January 2019.

Laura White-Brown, Mayor

ATTEST:

Crissy Cunningham, City Clerk

**RECREATIONAL USE OF SURPLUS
SCHOOL DISTRICT PROPERTY**

This AGREEMENT ("AGREEMENT"), made and entered into effective the date of the last signature herein below, by and between the City of Morehead, Rowan County, Kentucky ("CITY"), and the Board of Education of Rowan County ("BOARD OF EDUCATION"), a public body politic and corporate, sometimes hereinafter also jointly referred to as "PARTIES."

WHEREAS, the BOARD OF EDUCATION desires to provide with the assistance of the City for the benefit of children the opportunity for use of a recreational facility on real estate owned by the BOARD OF EDUCATION;

WHEREAS, the BOARD OF EDUCATION is the owner of contiguous parcels of real property, more fully described herein below ("PREMISES") that is surplus to its needs, consistent with its last School District Facilities Plan, and which real property has been used for children recreational purposes as contemplated by a Real Estate Lease recorded in the Office of the Rowan County Clerk on October 14, 1986, which Real Estate Lease has been now terminated by the parties therein:

TRACT 1

A certain tract of land, lying and being in Rowan County, Kentucky, just North and West of the I-64 Interchange and Kentucky Route 32 and lying and being on said Kentucky Route 32 and particularly described as follows:

BEGINNING at Kentucky Highway Number 32 right of way and Northwest corner of property owned by Kentucky Department of Highways; thence S 28 deg. 00' E. 813.2 feet with Kentucky Department of Highways fence line to L.G. Bishop line and fence; thence S 42 deg. 26' W with L.G. Bishop fence line 100 feet; thence with same S 44 deg. 03' W 90 feet; thence S 50 deg. 08' W 130 feet; thence S 46 deg. 50' W 220 feet; thence S 47 deg. 13' W 71.5 feet; thence S 48 deg. 59' W 117.8 feet; thence S 60 deg. 14' W 80 feet to center of creek; thence a Northwesterly direction with the center line of creek to Kentucky Highway Number 32 right of way; thence N 49 deg. 9' E 335 feet with said right of way; thence N 57 deg. 9' L 130 feet; thence N 66 deg. 09' East 140 feet; thence N 74 deg. 09' East 130 feet; thence N 83 deg. 29' E 200 feet; thence N 86 deg. 09' E 24.8 to point of beginning and containing 18.77 acres, more or less.

THERE IS EXCLUDED from the foregoing a certain tract containing 1.752 acres, conveyed by the Lessor to the Commonwealth of Kentucky, Department of Highways, by deed dated October 15, 1974, and recorded in Deed Book 101, Page 688, Rowan County Records for Deeds.

TRACT II

A certain tract of land, lying and being in Rowan County, Kentucky, just North and West of the I-64 Interchange and Kentucky Route 32 and lying and being on said Kentucky Route 32 and particularly described as follows:

BEGINNING at an iron pin in the right of way at Kentucky Highway 32 and with said right of way proceeding North 68 degrees 02 minutes East 100 feet; thence continuing with said right of way North 74 degrees 05 minutes East 100 feet; thence continuing with said right of way North 81 degrees 09 minutes East 100 feet; thence continuing with said right of way North 85 degrees 52 minutes East 100 feet; thence continuing with said right of way North 87 degrees 46 minutes East 48.23 feet to a corner; thence leaving said right of way in a Southerly direction with the property line of the Kentucky Department of Highways South 28 degrees 00 minutes East 441.42 feet; thence leaving said property line of the Kentucky Department of Highways and continuing in a Southwesterly direction South 50 degrees 13 minutes West 744.55 feet to a point at the bank of the North Fork of Triplett Creek; thence North 23 degrees 02 minutes West 449.07 feet along North Fork of Triplett Creek; thence leaving Triplett Creek North 50 degrees 13 minutes East 310 feet; thence North 39 degrees 47 minutes West 270 feet to the point of BEGINNING. The above tract containing 8 acres as surveyed by Richard S. Staggs, Survey No. 317.

The Lessor specifically reserves a perpetual right-of-way easement 30 feet in width from the school bus garage which is to be constructed to Kentucky Highway 32, providing unrestricted egress and ingress to said highway.

BEING THE SAME real property conveyed to the Lessor herein by deed from City of Morehead, Kentucky, dated March 31, 1983, and recorded in Deed Book 127, Page 326-328, in the office of the Rowan County Court Clerk.

WHEREAS, pursuant to KRS 97.010 and KRS 160.293, the BOARD OF EDUCATION and CITY have determined there would be significant mutual benefit for the PREMISES to continue to be used for children recreational purposes;

WHEREAS, the PARTIES desire to reduce the terms of their agreement to writing.

TO WIT:

NOW THEREFORE, for and in consideration of the mutual promises, promises, and specific conditions precedents, set forth herein, including necessary approval, as required by statutory law, the BOARD OF EDUCATION and CITY do hereby agree as follows:

1. TERM. The term of this Agreement will be through the remainder of the 2018-19 school year, June 30, 2019, but subject to being terminated prior to June 30, 2019, consistent with the provisions for such set out herein below. The term of this AGREEMENT if not terminated prior to June 30, 2019, may be renewed in writing for not exceeding a one (1) school year period at a time by the PARTIES, but subject to the right to termination, with or without cause, and as otherwise set forth in the termination paragraph herein below.

2. RECREATIONAL EQUIPMENT. The CITY covenants and otherwise promises that it will continue to maintain the PREMISES and recreational improvements presently thereon, with such improvements subject to being upgraded for the benefit of students enrolled in the Rowan County Schools, as well as other children. Any and all recreational equipment situated on the PREMISES paid for with CITY funds, whether by grant or otherwise, shall be considered as appurtenances and not deemed to remain with the real estate and subject to removal by the CITY if this AGREEMENT is terminated by either party during the initial term or any agreed upon written renewal for the use of the PREMISES for recreational purposes.

3. PRIORITY USE OF PREMISES. The PARTIES agree that first priority of use of the PREMISES shall be for school related activities, functions, and recreational programs and the scheduling of events for use of the PREMISES shall take this priority of use into consideration.

4. MAINTENANCE AND CLEAN-UP. During the term of this AGREEMENT the CITY agrees to maintain the grounds, including cleanliness, of the PREMISES and all improvements thereon used in conjunction with recreational events and activities in good, safe condition, with periodic inspections thereof as deemed warranted, and repair or replace as necessary.

5. PROHIBITION OF USE OF ALCOHOL, CONTROLLED OR PROHIBITED SUBSTANCE OR TOBACCO (INCLUDING TOBACCO SUBSTITUTE (VAPING)). During the term of this AGREEMENT, the PARTIES each commit to taking all reasonable actions to monitor the PREMISES so as to enforce the prohibition of use on the PREMISES of alcohol, controlled or prohibited substances, or tobacco products of any kind, including the use of any tobacco substitute product, *e.g.* that used for "vaping." The BOARD OF EDUCATION will be responsible for purchasing, installation, and maintenance, of appropriate signage.

6. UNLAWFUL POSSESSION OF A WEAPON ON SCHOOL PROPERTY. It shall be unlawful to possess a weapon on the PREMISES as provided for in KRS 527.070. The BOARD OF EDUCATION shall be responsible for posting, erecting, and maintaining the signage on the PREMISES as required by this statute.

7. CIVILITY. The display of civility shall be required by any participant, user, or individual present for observing any event, function, or other use of the PREMISES.

8. LIABILITY INSURANCE. The CITY covenants and agrees that at all times during the term of this AGREEMENT it will maintain public liability insurance for the purpose of protecting the BOARD OF

EDUCATION from any claims which may be made as a result of injury to any person or property which may occur on the PREMISES, proof of which shall be made available to the BOARD OF EDUCATION prior to the effective date of this AGREEMENT and, subsequently, at any time upon demand. Such insurance shall afford minimum protection of not less than ONE MILLION DOLLARS (\$1,000,000.00) for each occurrence of bodily injury or death and not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for each occurrence of property damage.

The BOARD OF EDUCATION agrees to maintain comprehensive liability insurance during the term of this AGREEMENT with policy limits of ONE MILLION DOLLARS (\$1,000,000.00), combined single limit, including broad form comprehensive general liability, and to deliver to the CITY a certificate of insurance reflecting the coverage prior to the effective date of this AGREEMENT.

9. DAMAGE TO IMPROVEMENTS AND EQUIPMENT. The CITY covenants with the BOARD OF EDUCATION that should any of the improvements or equipment on the PREMISES be damaged by whatever cause for which there is insurance coverage, that the proceeds of the insurance will be used to repair or replace said damage.

10. PRESERVATION OF DEFENSES. The BOARD OF EDUCATION is an agency of the Commonwealth of Kentucky and is vested with governmental and recreational use immunity in all respects relating to this AGREEMENT. The BOARD OF EDUCATION and CITY each agree that neither party waives by entering into this AGREEMENT any rights to use any defense it may have to any claim which may be asserted against any party hereto.

11. NO THIRD PARTY RIGHTS. Nothing in this AGREEMENT is intended by the PARTIES and shall not be construed as creating rights, entitlements, and/or benefits of any kind whatsoever for anyone as a third-party beneficiary.

12. CONFORMITY WITH STATUTES, RULES, REGULATIONS, AND ORDINANCES. During the term of the AGREEMENT, the PARTIES will each take reasonable action to assure the use of the PREMISES are consistent with the provisions of this AGREEMENT as well as any applicable city, county, State, and Federal statute, rules, regulations, and ordinances.

13. NON-DISCRIMINATION. The PARTIES to this AGREEMENT agree to not discriminate against any individual in or relative to the use of the PREMISES at any time on the basis of race, color, national origin, sex, gender, genetic information, age, or disability.

14. PROHIBITION OF PRIVATE USE OF PREMISES. The PARTIES to this AGREEMENT will each take all actions necessary to assure the PREMISES are not used for any purpose other than stated herein, or to any portion of the PREMISES to be converted or utilized in any way for private use without the express written authorization of the BOARD OF EDUCATION.

15. UTILITIES AND SERVICES. During the term of this AGREEMENT, the CITY shall contract for and be solely responsible for payment of any and all utilities and services, specifically but not limited to refuse collection, furnished to the PREMISES.

16. ASSIGNMENT. The City agrees not to assign, rent, or otherwise in any manner permit or authorize the use of all or any portion of the PREMISES without the express written approval of the BOARD OF EDUCATION.

17. TERMINATION. The BOARD OF EDUCATION hereby advises the CITY it has entered into a land sale contract as to the PREMISES. Consequently, the PARTIES agree this AGREEMENT is terminable at any time, by either the CITY or the BOARD OF EDUCATION, with or without cause, upon written notice to the other at least thirty (30) business days prior to the effective date of such termination, but that the AGREEMENT will end not later than June 30, 2019, although is subject to being extended by separate document executed by an authorized agent of each party.

18. GOVERNING LAW. This AGREEMENT shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.

19. SEVERABILITY. If, during the term of this AGREEMENT, it is found that a specific provision or language used is illegal under Federal or State law, the remainder of this AGREEMENT not affected by such ruling or determination shall remain in force.

20. ENTIRE AGREEMENT. This writing reflects the entire agreement between the PARTIES and neither party is relying upon any representations by the other not contained herein. No change or modification of

this AGREEMENT shall be valid or binding upon the PARTIES unless such change or modification shall be in writing and signed by authorized representatives of the PARTIES.

21. NOTICE. Whenever, under the terms hereof, or otherwise, notice of any kind is required or desired, it shall be deemed sufficient only if sent by certified mail, postage prepaid, or hand-delivered, as follows:

To CITY: CITY OF MOREHEAD
c/o Mayor
Morehead, Kentucky 40351

To BOARD OF EDUCATION: BOARD OF EDUCATION OF ROWAN COUNTY
c/o Superintendent
415 West Sun Street
Morehead, Kentucky 40351-1669

22. PARAGRAPH HEADINGS. Paragraph headings have been inserted for convenience or reference only, and if there shall be any conflict between such headings and text of this AGREEMENT, the text shall control.

23. DUPLICATE ORIGINALS. This AGREEMENT may be executed on separate originals, which, when combined, shall constitute a complete AGREEMENT.

24. CONDITION PRECEDENT SIGNATURES. The PARTIES agree and understand this AGREEMENT shall have no force or legal effect until the signatures of the Chief State School Officer and Attorney General of the Commonwealth of Kentucky have each been added to this AGREEMENT.

25. DUTY TO RECORD. It shall be the responsibility of the BOARD OF EDUCATION, upon full execution of this AGREEMENT, to have this then binding upon the PARTIES legal instrument recorded in the Office of the Rowan County Clerk.

IN WITNESS WHEREOF, the CITY OF MOREHEAD and the BOARD OF EDUCATION have hereunto affixed their signatures, with each person signing this AGREEMENT representing and warranting that he/she is duly authorized and has legal capacity to execute this AGREEMENT for their respective party with the effective date of this AGREEMENT being that of the last of the four (4) signatures herein below.

BOARD OF EDUCATION OF ROWAN COUNTY

Signature

Rick Whelan
Printed Name

Board Chairman
Title

01-07-19
Date

John Mayes
Attestation by Secretary to the Board

01-07-19
Date of Board Approval

* * * * *

CITY OF MOREHEAD, KENTUCKY

Signature

Printed Name

Title

Date

* * * * *

HAVE SEEN AND APPROVED:

Chief State School Officer

Date

Attorney General, Commonwealth
of Kentucky

Date

I HEREBY CERTIFY THAT THIS INSTRUMENT
HAS BEEN DRAFTED BY:

Robert L. Chenoweth
114 South Main Street
Lawrenceburg, Kentucky 40342