

**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 Morehead State University for the use and operation of Laughlin Health Building and Parking for the benefit of the citizens of Rowan County and the City of Morehead;

**NOW, THEREFORE, BE IT RESOLVED** by the City of Morehead, Kentucky Board of City Council that the Memorandum of Agreement between Morehead State University and City of Morehead, Kentucky regarding the use, and operation of Laughlin Health Building and parking, a copy of which is attached hereto is approved and the Mayor is authorized and directed to execute said document on the City of Morehead's behalf.

Passed and adopted by the City Council of the City of Morehead this 8<sup>th</sup> day of April 2019.

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Laura White Brown, Mayor

ATTEST:

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Crissy Cunningham, City Clerk

## MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between Morehead State University, whose address is 150 University Boulevard, Morehead, Kentucky (hereinafter, "MSU"), and City of Morehead, whose address is 314 Bridge Street, Morehead, Kentucky 40351 (hereinafter, "City").

WITNESSETH: The parties for the considerations hereinafter mentioned, covenant and agree as follows:

### 1. Premises

- a. It is agreed that the following areas in the Laughlin Health Building will be used by the City to serve as a Parks & Recreation Center, consisting of 59,234 square feet, hereinafter called the "Premises". A copy of the floorplan is included as Attachment 1.
- b. It is agreed that the remaining rooms will be retained by MSU, consisting of 12,512 square feet. These rooms include:

<u>Room Number</u>	<u>Square Footage</u>
Rooms 100 & 101	3,394
Rooms 110 & 111	5,184
Room 109	1,198
Room 200D	203
Breezeway between Laughlin and Wetherby Gymnasium	2,533

- c. MSU may utilize instructional classrooms and recreation instructional areas per approval of City and in alignment with City Fee Schedule.

### 2. Term

- a. The term of this Agreement shall be from May 1, 2019, until June 30, 2021.
- b. This Agreement may be automatically extended for two 24-month periods under the same conditions as set forth herein. No extension shall prolong the period of occupancy of the Premises beyond June 30, 2024, except by negotiating and entering into a new Memorandum of Agreement.

### 3. Termination

Either party shall have the right to terminate this Agreement at any time upon at least thirty (30) days' written notice, time to be computed from the date of mailing notice.

### 4. Base Payment

The City shall pay to MSU \$25,000 per year, to be paid bimonthly.

### 5. Invoices

- a. MSU shall invoice the City every 60 days for the Base Payment, Utilities (as outlined in Paragraph 14), and Parking (as outlined in Paragraph 11). The City shall pay the invoice within 30 days of the date of mailing.
- b. All invoices shall be sent to the City of Morehead at 314 Bridge Street, Morehead, KY 40351.

### 6. Permitted Use

The City shall operate the Premises for recreational, educational, and community purposes and for no other purpose without MSU's prior written consent.

### 7. Parks & Recreation Center Events

- a. The City shall be responsible for scheduling the use of the facility by their invitees, visitors, guests, participants, or other user of the Parks & Recreation Center (collectively, the “Patrons”).
  - b. The City shall ensure that all events, programs, or other use by Patrons be conducted in a manner to avoid all harm and injury to patrons, the public, employees and any other persons in and around the Premises as well as harm to their property.
  - c. MSU shall not provide police, custodial, or event setup services for events held on the Premises. All shall be the sole responsibility of City.
8. Bowling Alley
- a. The Bowling Alley may be used by the City by scheduling the same through MSU.
  - b. Patrons shall be responsible for payment of the rental fee for the Bowling Alley at the prevailing rate.
  - c. The Bowling Alley shall be available for public use at times designated by MSU.
9. Building Manager
- The City shall employ appropriate staff, assigned to the Premises.
10. Restricted Dates
- a. The City agrees that during MSU’s Move-In, Commencements, Homecoming, and Family Weekend, the City shall close the facility.
  - b. Dates will be provided to the City when they are set.
11. Parking
- a. The City shall have exclusive use of the parking lot (79 spaces) located at 522 East Main Street as a parking area for use by the City and Patrons. In addition to the Base Payment set forth above, in consideration for use of the parking lot, the City will pay MSU \$1,000.00 per month for the period of May 1, 2019 to June 30, 2019; \$12,000.00 for the period of July 1, 2019, to June 30, 2020; \$13,500.00 per year for the period of July 1, 2020, to June 30, 2023; and \$15,000.00 for the period of July 1, 2023, to June 30, 2024, to be billed bimonthly with the Base Payment. Use of this parking lot is subject to lease between MSU and the lot owner.
  - b. MSU will reserve fifteen (15) spaces near the Premises for the exclusive use of the City and Patrons. MSU will remove its reserved and student parking signage.
  - c. The City shall be solely responsible for cleaning the parking areas used by the City and Patrons. Said areas shall be kept in a clean condition, free from hazards.
  - d. The City shall be solely responsible for snow removal in the 522 East Main Street lot. MSU shall be solely responsible for snow removal in all other parking areas and sidewalks. Said areas shall be kept in a safe condition for use.
  - e. The City shall repair any damages to the parking areas resulting from the Use of the Premises by the City or Patrons if a police report evidences the damage resulted from the Use of the Premises by City or Patrons.
  - f. The City shall be responsible for knowing its designated parking areas and educating visitors of the same. MSU will strictly enforce campus parking regulations. Parking in MSU’s US 60 Overflow Parking Lot without a permit is allowed between 5 p.m. and 5 a.m. Monday through Friday and anytime on Saturday and Sunday.
12. Traffic Control
- a. The City shall be responsible for coordinating all parking, towing, and traffic control measures for the use of the Premises and parking areas outlined in paragraph 11(a).
  - b. Any Patrons parking in the wrong lot shall receive tickets.

13. Access & Security

- a. MSU shall re-key the Premises on MSU's Medeco key system and provide the City with keys. MSU shall provide the first set of keys. Any additional keys shall be at the cost of City and obtained through MSU's Office of Facilities Management. If keys are lost, stolen, or otherwise disappear, City shall be financially responsible for rekeying of the Premises and new keys obtained through MSU's Office of Facilities Management.
- b. The City shall be solely responsible for security of the Premises.
- c. MSU shall have access to the hallways of the Premises for its use in maintaining and accessing MSU areas.

14. Utilities

- a. The City shall be responsible for payment of all utilities for the Laughlin Health Building (including water, sewer and natural gas) except as specifically set forth below.
- b. Utility costs will be billed to the City separately on a bimonthly basis with the Base Payment. Payment of invoices shall be due within 30 days of the billing date.
- c. MSU will be responsible for providing steam to the building during the heating season.

15. Phone/Internet

The City shall be responsible for providing phone and internet to the Premises, including installation and maintenance of all equipment, cabling, etc.

16. Custodial

- a. The City is responsible for all custodial services at the Premises, including but not limited to labor, supplies, and custodial equipment. The City shall maintain the Premises in a clean, orderly, and safe manner. Custodial service shall be available on site at all times the Premises is open for use.
- b. The City shall further be responsible for all exterminating and pest control for the Premises. City shall ensure the Premises is kept pest-free.
- c. MSU will provide custodial service for the portion of the building set out in Paragraph 1(b), including but not limited to labor, supplies, and custodial equipment.

17. Maintenance

- a. Unless otherwise specified, the City shall be responsible for all costs associated with maintenance of the Laughlin Health Building including all infrastructure and common areas of the building. This includes but is not limited to repairing, maintaining, or replacing the following: lighting (including replacement of bulbs and repairing and maintaining light fixtures), roof, structural, sprinklers and fire safety systems, air/heat systems, electrical systems and plumbing of the Laughlin Health Building. City shall be responsible for inspections of said systems as may be reasonable.
- b. MSU shall perform internal routine maintenance for the area outlined in Paragraph 1(b).
- c. The City shall maintain all equipment affixed to the building provided by MSU in good condition and will deliver them at the expiration of this Agreement in the same good order and condition as they are in the beginning of this Agreement, except for reasonable wear and tear.

18. Grounds-keeping

MSU shall be responsible for all grounds care, landscaping, and snow removal including sidewalks. Further, MSU shall be responsible for cleaning the exterior of the building. This paragraph does not apply to the 522 East Main parking lot which shall be maintained by the City.

19. Trash Removal

The City will provide their own dumpsters and recycling bins and will empty their dumpsters and recycling bins on a regular basis. MSU will work with the City to designate an appropriate location for the dumpsters and recycling bins.

20. Signage

- a. Subject to MSU's prior written approval, the City shall be permitted to install, at its expense, signage in the interior of the Premises, provided such signage complies with local, state and governmental laws. Upon the expiration or earlier termination of this Lease, the City shall remove all signage from the Premises and restore the location of the signage to its original condition, normal wear and tear excepted.
- b. The City shall be permitted to install an identifying sign outside the Laughlin Health Building. Said sign shall be installed in the ground and shall not be mounted to the exterior of the Laughlin Health Building. The location of the sign shall be mutually agreed upon by all parties and the City shall be responsible for contacting 811 prior to installation and ensuring the signage complies with local, state, and governmental laws.

21. Modifications

All modifications shall be at the cost of the City and with prior written consent of MSU. MSU reserves the right to have modifications removed at the termination of this Agreement, at City's cost.

22. Furniture, Fixtures, & Equipment

The City will provide equipment and furniture for the Premises. Said additions remain the property of the City, unless attached as fixtures, and the City will maintain their own equipment. Any equipment belonging to MSU which is attached to or otherwise a part of the Premises and the building in which it is a part will remain the property of MSU.

23. Insurance

- a. MSU shall maintain property insurance on the Premises (i.e. fire, tornado, etc.).
- b. The City shall carry general liability insurance on the Premises and shall name MSU as an additional insured under the general liability policy and shall provide documentation naming MSU as an additional insured. The minimum amount of said policy shall be \$3,000,000. Said policy shall also provide coverage for sexual abuse, harassment, molestation, etc. The City shall immediately notify MSU of any accident occurring on or near the Premises as well as any other claim (tort or otherwise) as a result of the use of the Premises. Insurance of the City shall be primary.

24. Indemnification

To the extent permitted under Kentucky law, City of Morehead agrees to indemnify and hold harmless MSU and its officers, agents, and employees from any claim, damage, liability, injury, expense, or loss including defense costs and attorney's fees, arising out of the City's performance or use of the Premises under this Agreement or as a consequence of the existence of this Agreement.

25. Vending

MSU shall provide all vending machines at the Premises. MSU Vending shall have access to the Premises for stocking and maintaining machines.

26. Catering

The City may use catering vendors of its choice. The City shall ensure that all caterers comply with federal, state, and local law.

27. Alcohol Policy

Alcohol use in or on the grounds of Premises is prohibited. City shall strictly enforce the total prohibition.

28. Tobacco Free Campus

The Parties agree that the use of tobacco products shall be prohibited within and upon the Laughlin facility building and grounds and all parking areas. The City shall be responsible for ensuring compliance with this policy during any use of the Premises by the City or their invitees, visitors, guests, participants, or other user of the Premises.

29. Weapons Policy

- a. The Morehead State University Deadly Weapons on Campus Policy sets forth the University's prohibitions as it relates to weapons on campus. In Kentucky Revised Statute 237.115, the Kentucky General Assembly explicitly recognizes the authority of MSU to control the possession of deadly weapons on any property owned, leased, or controlled by MSU, including the right to prohibit possession of such weapons by any person or entity using MSU property or premises.
- b. The City shall be responsible for ensuring strict compliance with MSU's weapons policy during any use of the Premises by the City or their invitees, visitors, guests, participants, or other user of the Parks & Recreation Center.

A copy of this policy, PG-62 is included as Attachment 2.

30. Inspection

City acknowledges that, prior to the signing of this Agreement, it has had the opportunity to inspect the Premises, exterior, and infrastructure, and is accepting the same "as is" including any necessary repairs noted during the inspection.

31. Destruction of Premises

If the Premises are destroyed by fire or other casualty, this Agreement shall immediately terminate. In case of partial destruction or damage, so as to render the Premises untenable, MSU may suspend this Agreement by giving written notice to the City within fifteen (15) days after such partial destruction or damage with such suspension lasting until such damage is repaired and Premises are considered tenable.

32. Right of Entry

The City agrees that MSU shall have the right at all reasonable times to enter upon and to inspect the Premises to ascertain that the City is carrying out the terms and conditions and provisions of this Agreement.

33. Assignment/Sublease

- a. The City shall not assign this Agreement without the express written consent of MSU.
- b. The City shall only sublet the Premises per written approval of MSU and City and will not otherwise permit the use of the Premises by anyone other than the City, their employees, agents, and invitees. Sublease, for the purposes of this Agreement, is defined as a contract transferring the right to possession and control of the Premises for a definitive period of time, creating a landlord/tenant relationship. This paragraph shall not include a license, defined as a privilege to go on the Premises for a certain purpose which does not operate to vest the licensee any title, lease or interest in the Premises. Licenses shall not require prior approval of MSU.

34. Trespass

- a. Any individual who has been issued a No Trespass notice by Morehead State University Police Department shall not be permitted on the Premises or the parking areas described in paragraph 11.

- b. MSU or MSUPD will provide City a list of these individuals and update as needed.
  - c. City shall contact MSUPD immediately if an individual on the list attempts to enter or enters the Premises.
35. Notices  
All notices, demands, or requests shall be made in writing, to the addresses listed at the beginning of this Agreement.
36. Amendment  
This Agreement may be amended, in writing, by mutual agreement of both parties.
37. This writing reflects the entire agreement between the parties. No change or modification of this Agreement shall be valid or binding upon the parties hereto, nor shall any waiver of any terms or conditions hereof be deemed a waiver of such terms or conditions in the future, unless such change, modification, or waiver shall be in writing and signed by the parties hereto.
38. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.
39. It is understood and agreed by both parties that if any one of the provisions of this Agreement shall contravene or be invalid under the laws of the applicable governmental body, such contravention or invalidity shall not invalidate the whole Agreement, but it shall be construed as if not containing the particular provisions held to be invalid and the rights and obligations for the parties shall be construed and enforced accordingly.
40. This Agreement shall not be construed to create a general partnership, joint venture, or any other organizational combination of the parties, or to authorize either party to act as an agent for or bind the other party in any manner. MSU and the City shall be and remain independent contractors with respect to the performance of their respective duties and obligations hereunder.
41. The parties agree they will not discriminate in either employment or Premises use and participation or any other aspect of this Agreement because of race, color, creed, sex, religion, age, national origin, disability, sexual orientation, military or veteran status or any other protected class.

**MOREHEAD STATE UNIVERSITY**

**CITY OF MOREHEAD**

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Signature/Date

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

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

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