

## **INTER-LOCAL AGREEMENT**

This Inter-Local Agreement (a/k/a “Agreement”) is hereby made and entered into pursuant to KRS Chapter 65, otherwise known as the “Interlocal Cooperation Act”, and pursuant to KRS 81A.427, this the 14<sup>th</sup> day of March, 2011, by and between the City of Somerset, Kentucky (hereinafter referred to as Somerset) and the City of Ferguson, Kentucky (hereinafter referred to as Ferguson), both incorporated municipalities of Kentucky:

**WHEREAS**, KRS Chapter 65 permits cities to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage, and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

**WHEREAS**, KRS Chapter 65 permits two (2) or more public agencies to enter into agreements with one another for joint or cooperative action pursuant to the provisions of KRS 65.210 to 65.300 after appropriate action by resolution of the governing bodies of the participating public agencies; and

**WHEREAS**, Somerset and Ferguson share common boundaries and interlocking transportation routes that directly impact the safety and health of citizens in both municipalities; and

**WHEREAS**, the City of Ferguson wishes to extend its corporate limits as set forth on the attached survey, incorporated in full herein and known as Exhibit “A”; and

**WHEREAS**, said Territory as described and/or depicted on Exhibit A of which the City of Ferguson wishes to annex is not in the corporate limits of the City of Somerset, nor any other incorporated municipality; and

**WHEREAS**, the City of Somerset exercised its right to object to the described annexation under KRS 81A.427, specifically addressing the water and/or sewer mains which run along the subject Territory as set forth in the attached Municipal Order, incorporated in full herein and known as Exhibit “B”; and

**WHEREAS**, the City of Somerset and the City of Ferguson wish to enter into an Interlocal Agreement as permitted under KRS 81A.427 so that the City of Ferguson can continue with their plans to annex the subject Territory;

**NOW THEREFORE**, the City of Somerset and the City of Ferguson hereby enter into an Interlocal Agreement allowing Ferguson to annex the subject Territory as evidenced by a Resolution of each City’s legislative body, attached hereto and incorporated in full by reference (both attached hereto as Exhibits “C” and “D”), and by the signatures below. The City of Somerset waives objection, protest, remonstrance, or claim or right of any kind pursuant to KRS Chapter 81A or any other law against the City of Ferguson for annexation of the subject Territory.

The parties agree that the terms of this Inter-Local Agreement shall be as follows:

**I. Powers**

Pursuant to KRS 65.255, KRS 82.082, and any other applicable law, the City of Ferguson shall possess full authority, and all other powers they possess in their own city limits, after annexing the subject Territory into the City of Ferguson corporate limits pursuant to KRS Chapter 81A. However, the City of Ferguson herein agrees that the City of Somerset shall have the right to use such reasonable additional land on either side of the above-described strip of land at any time the sanitary sewer main is being constructed, repaired, or reconstructed, and the City of Somerset shall have the right of ingress and egress to and upon and along the subject Territory at such times and at such points as may reasonably be necessary for the construction, maintenance and reconstruction of any mains located in the subject Territory. The City of Ferguson shall have the right to use the surface of the land lying over the mains for any purposes it desires, provided the same does not in any way interfere with Somerset's full, free use of the subject mains herein described, and provided further that no fill, no building or other structure shall be erected upon, across, over or through said Territory without the written consent of the City of Somerset, which shall not be unreasonably withheld, conditioned, or delayed. The foregoing respective rights granted by the City of Ferguson and the City of Somerset are subject to any rights held by other governmental or private persons or entities, and neither City represents or warrants that this Inter-Local Agreement extinguishes any such rights of third parties which may exist by contract or applicable law. The City of Somerset and the City of Ferguson shall cooperate to timely notify each other of the nature of the City of Ferguson's significant use of the surface of the land lying over the mains and of the City of Somerset's construction, significant maintenance and reconstruction of the aforementioned mains. The City of Ferguson and the City of Somerset shall further cooperate with each other to provide available copies of plans for such use, construction, significant maintenance, and/or reconstruction to the other City upon written request. The City of Somerset will provide the City of Ferguson with copies of all existing written easements or similar instruments reflecting its claimed rights to install sewer or water mains in the Territory upon written request, and hereafter provide copies of any subsequently executed easements or similar instruments during the term of this Agreement allowing the City of Somerset or its instrumentalities to install water or sewer mains to the City of Ferguson within 30 days of their complete execution. The City of Somerset's existing and any future mains, appurtenances, and any above-ground pump stations or other utility installations in the Territory shall be subject to any lawful zoning and/or building permit regulations now in effect or in the future enacted by the City of Ferguson pursuant to KRS Chapter 100 or other applicable law. This Inter-Local Agreement does not obligate the City of Ferguson, its City Council, or its Planning Commission, Board of Zoning Adjustment/Appeals, or any building code official to exercise lawful discretion in any particular manner now or in the future or to refrain from amending existing land use or building code ordinances of the City.

**II. Immunities and Privileges**

Pursuant to KRS 65.255 and any other applicable law, the City of Somerset shall have the same immunities and privileges while in the performance of their duties as owners of the water and/or sewer mains referenced in this Agreement although it is anticipated they will soon exist within the City of Ferguson corporate limits. The City of Ferguson shall have immunity and be held harmless and indemnified by the City of Somerset from any claims, losses or damages that result from the location of the mains in the annexed Territory so long as the City of Ferguson is not at

fault for said losses or damages. Any liability insurance of the City of Somerset which covers the aforementioned water and/or sewer mains in the City of Ferguson will include the City of Ferguson as an additional insured and the City of Somerset will provide the City of Ferguson with Certificates evidencing such coverage upon written request. The City of Ferguson shall take no responsibility, possession, or ownership for any mains belonging to the City of Somerset which lie within the subject Territory.

### **III. Separation of Entities**

This Inter-Local Agreement shall not create a separate legal or administrative entity, and each City and its departments and instrumentalities will continue to operate as separate legal entities for all legal purposes including, but not limited to, employment, employee supervision and responsibility, financing, compensation and benefits, and insurance coverage. Neither the City of Somerset, the City of Ferguson, or any other signatory hereto are joint adventurers or partners as a result of this Inter-Local Agreement. This Agreement is entered into pursuant to statutory authority and is not intended to create any third party beneficiaries.

### **IV. Administration of the Cooperative Undertaking**

Pursuant to KRS 65.250 (2)(a), the parties herein state and agree that the Mayor of the City of Somerset, and the Mayor of the City of Ferguson shall be named as co-administrators of the Interlocal Agreement and shall have equal power, duties, and responsibilities in the administration of the Agreement. Each City's Mayor shall be permitted to delegate the administration of this Inter-Local Agreement as permitted by applicable law, and if he/she so chooses, shall give notice to the other party of such. Administration does not include the power to amend or terminate the Agreement without approval of the respective legislative bodies of each party.

### **V. Termination**

This Inter-Local Agreement shall remain in effect until such time as either party submits to the other party, in writing, a 120 day notice, the end of which period shall result in the termination of this Agreement. Should any Court of competent jurisdiction determine the Agreement may not be in effect for such period, it is the intent of the parties that the Agreement remain in effect for the maximum period the Court shall allow. It is further the intent of the parties that the Agreement not be invalidated if the aforementioned specified effective period is not upheld in a final nonappealable order of such Court. No amendments to this Agreement shall be made without the express written consent of the parties, and compliance with all applicable state or local law.

### **VI. Compliance with Applicable Law**

The parties herein state that prior to signing this Agreement on behalf of the City of Somerset and the City of Ferguson, the Agreement has been provided to the Kentucky Department of Local Government as required under KRS Chapter 65, and that said Agreement has been approved by the Department, evidenced by the Commissioner's signature below.

### **VII. Limited Scope of Inter-Local Agreement**

The City of Ferguson and the City of Somerset agree that this Inter-Local Agreement does not limit each of their respective discretion pursuant to KRS Chapter 81A and other law to conduct

annexations, deannexations, and/or transfers of any real property between cities or associated special districts other than as expressly set forth herein. This Agreement only applies to annexation in the Territory and other matters expressly covered herein. This Inter-Local Agreement is the complete written agreement of the parties in regards to Annexation of the subject unincorporated territory and the parties herein state they are not relying on any oral representations or past agreements in regards to said matter.

**VIII. Governing Law/Construction of**

This Inter-Local Agreement shall be interpreted pursuant to the law of the Commonwealth of Kentucky. This Inter-Local Agreement is the product of negotiations between knowledgeable governmental entities represented by counsel and shall not be construed against the party drafting all or part of it or having it drafted by counsel.

**IX. Dispute Resolution**

Should either City which is a party to this Inter-Local Agreement maintain the other party is in breach of this Agreement, it shall provide written notice to the other party, and such other City shall have ten business days to cure such breach without being deemed to be in default under this Agreement or such longer time as is reasonably necessary to cure such default due to a force majeure. Should either City seek to sue the other City for default (i.e. an uncured breach) under this Inter-Local Agreement, each City agrees that it will provide the other with thirty days advance written notice of its intent to sue to allow for potential settlement of any such claim. Should the parties be unable to resolve such claim in the thirty day period, any such litigation shall be filed and maintained in Pulaski County Circuit Court. The parties shall each pay their own attorney fees and costs in any such litigation.

**X. Force and Effect**

Per KRS 65.290 and any other applicable law, this Agreement shall become operative and have full force and effect upon the filing of the signed and approved Agreement with the Pulaski County Clerk's Office, Somerset, Kentucky, and with the Kentucky Secretary of State, Frankfort, Kentucky. Each party shall timely provide the other party to this Agreement a certified copy of its City Council Minutes documenting the authorization of its Mayor to execute this Agreement. The effectiveness of this Inter-Local Agreement is contingent upon its execution being authorized in advance and/or ratified by each respective City Council.

**XI. Notice**

Any written notice made pursuant to this Agreement shall be sent via U.S. Postal Service certified mail, return receipt requested, postage prepaid or, alternatively, via hand delivery, if the receiving party simultaneously acknowledges receipt in writing, to the following addresses:

City of Somerset  
c/o Mayor Eddie Girdler  
400 East Mt. Vernon Street  
Somerset, KY 42501

Somerset City Attorney  
c/o Carrie Wiese  
400 East Mt. Vernon Street  
Somerset, KY 42501

City of Ferguson  
c/o Mayor Allen Dobbs  
P.O. Box 222  
Ferguson, KY 42533

Ferguson City Attorney  
Heidi Schultz Powers  
P.O. Drawer 30  
Somerset, KY 42502

[Either party may change its notice addresses via notice to the other party at the above addresses and via the above-designated methods.]

**XII. Memorandum / Further Documents.**

The parties hereto agree to cooperate to execute a Memorandum of the within Inter-Local Agreement in the form of a notarized recordable instrument for recording with the County Clerk which may include a copy of the within full Inter-Local Agreement as an attachment and which may also reference the real property included within the Territory either by reference to prior Book and Page Numbers of instruments in the County Clerk's Office, one or more Plats, to Ordinances, PVA records, and/or other appropriate indicia of the real property included in the Territory and actually or potentially subject to this Agreement. The purpose of such Memorandum would be to maximize record notice of this Agreement to persons with interest in the real property within the Territory. During the term of this Agreement, the parties shall also timely cooperate to execute such other reasonable documents which may be necessary to effect the intent of this Agreement and which may be provided to public bodies and/or private persons and which shall be public records of each City which is a party to this Agreement. The obligation to sign reasonable documents does not include an obligation to provide financial guarantees or indemnities or execute power of attorney documents or execute pleadings initiating a civil action. Such obligation does include, but is not limited to, an obligation to sign reasonable estoppel documents confirming the other party is not in breach and that the Agreement remains in effect.

**XIII Severability**

This provisions of this Inter-Local Agreement are intended to be severable. It is the intent that the remainder of this Agreement remain in full force and effect if one or more provisions of the Agreement are invalidated by a Court of competent jurisdiction in a final non-appealable judgment.

**XIV. Successors and/or Assigns**

This Inter-Local Agreement shall be binding on successors and/or assigns of the parties whether public or private. However, no assignment of this Inter-Local Agreement shall be effective to relieve the assigning party of its obligations hereunder unless the other party is notified within thirty days in advance of such assignment and such assignment is approved by the other party, which approval is not to be unreasonably delayed, conditioned, or withheld. The sole criteria for approval of assignment shall be the financial condition and expected future ability of the proposed assignee to fulfill the obligations of this Agreement and the legality of the assignment. A party has thirty days to respond in writing and approve or deny a requested assignment.

IN WITNESS WHEREOF, the parties by their respective Mayors, acting in their official capacity, have signed this Inter-Local Agreement with the intent to be bound thereby on this the 14<sup>th</sup> day of March, 2011.

BY: \_\_\_\_\_  
Eddie Girdler  
Mayor, City of Somerset

BY: \_\_\_\_\_  
Allen Dobbs  
Mayor, City of Ferguson

HAVE SEEN & APPROVED FORM:

\_\_\_\_\_  
Carrie Wiese  
City Attorney - Somerset

HAVE SEEN AND APPROVED FORM:

\_\_\_\_\_  
Heidi Schultz Powers  
City Attorney – Ferguson

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Approved by DLG on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Commissioner  
Department of Local Government  
Commonwealth of Kentucky

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY OF SOMERSET, KENTUCKY, AUTHORIZING AND RATIFYING ACTIONS IN THE STRUCTURING, STAFFING, PLANNING AND PREPARATION OF ALL DOCUMENTATION FOR THE ISSUANCE OF CERTAIN GENERAL OBLIGATION BONDS OF THE CITY.

WHEREAS, the Governing Body of the City of Somerset, Kentucky (the "City") has determined that it is necessary, desirable and in the public interest to finance and/or refinance the costs associated with certain public projects (the "Project") through the incurrence of indebtedness by the sale and issuance of the Issuer's "General Obligation Bonds, Series 2011" (the "Bonds"), pursuant to Sections 66.011 through 66.191 of the Kentucky Revised Statutes (the "Act"), for the payment of which the full faith, credit and taxing power of the City will be pledged pursuant to a Bond Ordinance to be considered at a later date.

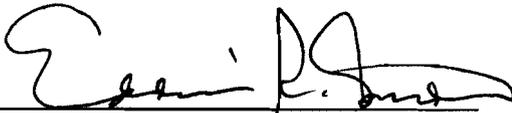
NOW THEREFORE, BE IT RESOLVED BY THE CITY OF SOMERSET, KENTUCKY, AS FOLLOWS:

Section 1. Designation of Bond Counsel and Financial Advisor. The law firm of Wyatt, Tarrant & Combs, LLP is designated as Bond Counsel in connection with the Bonds as contemplated by the engagement letter attached hereto. The firm of Ross, Sinclair & Associates, LLC is designated as Fiscal Agent in connection with the Bonds as contemplated by the proposed Contract of Agreement attached hereto.

Section 2. Conflicts. All resolutions, orders or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed and the provisions of this Resolution shall prevail and be given effect.

Section 3. Effective Date. This Resolution shall take effect from and after its passage, as provided by law.

INTRODUCED AND ADOPTED, at a duly convened meeting of the Governing Body, held on 3/28, 2011 signed by the Mayor of the City, attested by the City Clerk, filed and indexed as provided by law.

By:   
Mayor

Attest:   
City Clerk