

**THE CITY OF SOMERSET, KENTUCKY
AND
THE COMMONWEALTH ATTORNEY OF
THE 28TH JUDICIAL CIRCUIT**

AGREEMENT FOR LOSS PREVENTION SERVICES

THIS AGREEMENT, made and entered into on this 27th day of January, 2014 by and between the **City of Somerset, Kentucky**, a Kentucky municipal corporation having a registered address of 400 East Mt. Vernon Street, Somerset, Kentucky, 42501 (hereinafter referred to as "Local Government"), and the **COMMONWEALTH ATTORNEY, 28TH JUDICIAL CIRCUIT**, having a main address of 126 South Main Street, Suite 110, Somerset, Kentucky, 42501 (hereinafter referred to as "Recipient").

NOW, THEREFORE, in consideration of the foregoing and mutually agreed upon promises, conditions, and covenants hereinafter set forth, and pursuant to any and all grant and/or funding requirements, the parties hereto agree as follows:

I. PERFORMANCE OF SERVICES

A. SERVICES TO BE RENDERED

In order to help protect the safety and welfare of the citizens of the City of Somerset, and of those in Pulaski County, and in order to reduce the economic hardships of the businesses, retail and otherwise, operating in the City of Somerset and surrounding areas by reducing the excessive amount of costs and loss due to theft and deception, the Commonwealth Attorney of the 28th Judicial Circuit, the "Recipient" hereby agrees with the City of Somerset, the Government", to devote a dedicated amount of office and prosecutorial resources to curtail retail theft, loss, and acts of deception occurring in businesses located in the City of Somerset and the County of Pulaski; to assist in public awareness of the dangers and cost of retail theft, loss, and deception; to assist and improve prosecutions relating to the City's regulation of alcohol use and sales, and the resulting attendant crimes that come with the abuse of that product; and finally to provide aid and relief to the Somerset Police Department for the detection, investigation, and prosecution of the described theft, loss, and deception occurring within the City of Somerset and surrounding areas, as well as such offenses which may result in our community due to the presence, use, sale, and abuse of alcohol.

B. SERVICES TO BE RENDERED AT THE COST OF THE RECIPIENT

The Recipient shall furnish all equipment and supplies needed to fulfill this Agreement, including, but not limited to, office supplies, computers and other technology the recipient deems appropriate for the Agreement's purpose, and any other personal property to be used for the operation and/or fulfillment of this Agreement. Any personal property owned or leased by the Recipient in order to fulfill the purposes of this Agreement will be, and shall remain after termination, the property and responsibility of the Recipient. The Recipient shall not burden such personal property with liens, mortgages, or any other instrument without the express written consent of the City of Somerset, separate and apart from this services Agreement.

C. RELATIONSHIP OF PARTIES; SHALL REMAIN SEPARATE ENTITIES

The Recipient shall provide, and be financially responsible for, all such services and employees as are required to operate under this Agreement properly and efficiently, and any and all employees and/or contractors of said Recipient shall be, and shall remain, employees and/or contractors of the Recipient only, and shall not be considered City employees and/or contractors for any purpose, nor

shall the City have any responsibility or agency relationship with such persons and/or entities.

Nothing contained herein, or any document executed in connection herewith, shall be construed to create an employer-employee relationship between the parties. The Recipient is an independent entity and not an employee or agent of the City of Somerset, or any of its subsidiaries or affiliates. Neither the Recipient, nor any employee or agent of the Recipient, shall present to be, or hold himself/herself out to be, an employee of the City of Somerset and shall not have the right or entitlement in or to any benefit programs now or hereafter available to the City's employees as defined by the City and/or by the City's benefit provider, nor shall the City be responsible for any insurance policies which must be incurred to insure liability coverage for fulfilling the purpose of this Agreement, including, but not limited to, Mal-Practice Insurance, and Employee Dishonesty Bonds which may be required under local, state, or federal law.

II. INITIAL AGREEMENT TIME PERIOD; RENEWAL; TERMINATION

1. The initial term of this Agreement shall begin February 1, 2014, and shall extend through February 1, 2015. Thereafter, the Agreement shall automatically renew each annual year for a 12 (Twelve) month period unless either party gives the other party a 60 (Sixty) day written notice of their wishes to terminate the Agreement, said notice to be given 60 (Sixty) days prior to the initial expiration date set forth above. During the initial term period of 3 (Three) years, this Agreement may be terminated by either party only per the terms set forth below in subsections (a.) and (b.), unless otherwise mandated by law. During any automatic renewal periods thereafter following the initial 3 (Three) year term, the Agreement may be terminated for any reason by either party with a 90 (Ninety) day written notice provided to the non-terminating party, to be provided 90 (Ninety) days prior to the termination date of the renewal period.

- a. Termination mandated by law or other legal authority:
During the initial term period, and any renewal period thereafter, the parties agree that they herein reserve the right to terminate the Agreement at any time if either party determines, or the proper legal authorities determine, that the Agreement is out of compliance with local/state/federal governmental regulations and/or law, and that said regulations and/or law cannot be complied with by adapting the Agreement.

- b. Termination due to breach of the Agreement.
Each party further reserves the right to terminate the Agreement at any time if either party is not meeting conditions set forth herein. For any and all breaches which fall under this term of the Agreement, the parties shall follow the terms of this Section including a written notice of 60 (Sixty) days to be provided by the terminating party clearly stating the party's intent to terminate the Agreement and the cause for said intent to terminate. The non-terminating party shall have the opportunity to remedy the alleged breach during said 60 (Sixty) day period to the satisfaction of the terminating party. However, if the non-terminating party fails to remedy the breach during said time period, the lease will terminate.

III. PAYMENT FOR SERVICES PROVIDED

It is expressly agreed and understood that Government shall pay the Recipient \$25,000.00 (Twenty-Five Thousand Dollars and 00/100), the first payment to be made on the ___ day of _____, 2014. Said payment is the full consideration and compensation due under this Agreement, and specifically shall be used for any and all costs associated with providing the services set forth under this Agreement, including, but not limited to, supplementing the income of a minimum of 1 (One) prosecuting attorney of the 28th Judicial Circuit's Commonwealth Attorney's Office, and 1 (One) additional staff member of said office, both to ensure that the scope of services is given the maximum amount of

attention needed to fulfill the purpose of this Agreement. The parties agree that the Recipient shall determine the exact distribution of these funds to the prosecuting attorney's office, staff, expenses, costs, etc. of performing under this Agreement. In order to ensure that the funds are spent on a proper public purpose, said funds paid by the City of Somerset may not be used for any other purpose except to fulfill the terms of this Agreement.

IV. GENERAL TERMS AND CONDITIONS

- A. The parties herein agree that this Agreement shall not assigned or transferred in any manner to any other operating entity, organization, or person without the express written consent of both parties.
- B. No waiver by the Government or the Recipient, of any provision herein, or of a breach of any provision, shall constitute a waiver of any other breach or of any other provision.
- C. If any provision of this Agreement shall be held invalid under the law, such invalidity shall not affect any other provision or provisions hereof which are otherwise valid.
- D. This Agreement shall be governed by, and construed in accordance with the laws of the Commonwealth of Kentucky.
- E. If any legal action is commenced by one party to this Agreement to enforce or defend its rights under this Agreement against the other party, the prevailing party shall have the right to recover from the other party all expenses, including but not limited to reasonable attorney fees and expenses.
- F. All notices hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, return receipt requested, to the parties at their respective addresses as set out below:

The Government:
Edward Girdler, Mayor
City of Somerset
400 East Mt. Vernon Street
Somerset, KY 42501

The Recipient:
Eddy Montgomery
Commonwealth Attorney
126 South Main Street
Somerset, KY 42501

- G. This Agreement represents the full and complete agreement between the parties and the parties agree that any *prior* written or oral agreements are hereby null and void. All amendments or agreements in relation to this Agreement must be made in writing with the express consent of both parties. This Agreement shall be filed if necessary upon execution by all parties with the Pulaski County Clerk's Office, Somerset, Kentucky, 42501.

IN WITNESS WHEREOF, the parties executed this Agreement the day, month, and year above written.

CITY OF SOMERSET, KENTUCKY,

Edward R. Girdler, Mayor

ATTEST:

Clerk of City of Somerset

COMMONWEALTH ATTORNEY
28TH JUDICIAL CIRCUIT

Eddy Montgomery, Commonwealth Attorney