

MINUTES OF MEETING HELD MAY 9, 2011

The Common Council of the City of Somerset, Kentucky met in a regular session on Monday, May 9, 2011 at 7:00 p.m. with the following present: Mayor Eddie Girdler. Council Members: Mike New, Donna Hunley, John Minton, Jim Mitchell, Pat Bourne, Jerry Burnett, Tom Eastham, Jim Rutherford, Linda Stringer, Jerry Wheeldon, and Mark Beasley. City Attorney Carrie Wiese, and City Clerk David Godsey. Absent: Council Member Jerry Girdler.

Mr. New moved to approve the minutes of the regular meeting held on April 11, 2011, along with the reports as mailed. Mr. Beasley seconded the motion. Upon roll call the following Council Members voted “Aye”: Mr. New, Mrs. Hunley, Mr. Minton, Mr. Mitchell, Mr. Bourne, Mr. Burnett, Mr. Eastham, Mr. Rutherford, Mrs. Stringer, Mr. Wheeldon, and Mr. Beasley.

Mr. Wheeldon moved to approve entering into an Inter-local Agreement with the City of Burnside. Mr. Mitchell seconded the motion. Upon roll call the following Council Members voted “Aye”: Mr. New, Mrs. Hunley, Mr. Minton, Mr. Mitchell, Mr. Bourne, Mr. Burnett, Mr. Eastham, Mr. Rutherford, Mrs. Stringer, Mr. Wheeldon, and Mr. Beasley.

<p style="text-align: center;"><u>INTER-LOCAL AGREEMENT</u></p> <p>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 ____ day of _____, 20____, by and between the City of Somerset, Kentucky (hereinafter referred to as Somerset) and the City of Burnside, Kentucky (hereinafter referred to as Burnside), both incorporated municipalities of Kentucky:</p> <p>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</p> <p>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</p> <p>WHEREAS, Somerset and Burnside share common boundaries and interlocking transportation routes that directly impact the safety and health of citizens in both municipalities; and</p> <p>WHEREAS, the City of Burnside wishes to extend its corporate limits as set forth on the attached survey, incorporated in full herein and known as Exhibit "A"; and</p> <p>WHEREAS, said Territory as described and/or depicted on Exhibit A of which the City of Burnside wishes to annex is not in the corporate limits of the City of Somerset, nor any other incorporated municipality; and</p> <p>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</p> <p>WHEREAS, the City of Somerset enacted an "Intent to Annex" Ordinance, specifically Ordinance Number 10-13, in regards to the same territory which Burnside has annexed, or wishes to annex, said Ordinance attached hereto and incorporated in full herein and known as Exhibit "C"; and</p> <p>WHEREAS, the City of Somerset and the City of Burnside now wish to enter into an Inter-local Agreement as permitted under KRS 81A.427 so that the City of Burnside can continue with their plans to annex the subject Territory and/or ratify any ordinances that have already been enacted regarding the subject corridor/territory;</p> <p>NOW THEREFORE, the City of Somerset and the City of Burnside hereby enter into an Inter-local Agreement allowing Burnside to annex the subject Territory as evidenced by a Resolution</p> <p style="text-align: center;">1</p>	<p>of each City's legislative body, attached hereto and incorporated in full by reference (both attached hereto as Exhibits "D" and "E"), 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 Burnside for annexation of the subject Territory.</p> <p>The parties agree that the terms of this Inter-Local Agreement shall be as follows:</p> <p>I. Powers</p> <p>Pursuant to KRS 65.255, KRS 82.082, and any other applicable law, the City of Burnside shall possess full authority, and all other powers they possess in their own city limits, after annexing the subject Territory, or ratifying previous ordinances regarding said territory, into the City of Burnside corporate limits pursuant to KRS Chapter 81A. However, the City of Burnside 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 and/or water 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 Burnside 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 Burnside 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 Burnside shall cooperate to timely notify each other of the nature of the City of Burnside'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 Burnside 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 Burnside 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 Burnside 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 Burnside pursuant to KRS Chapter 100 or other applicable law. This Inter-Local Agreement does not obligate the City of Burnside, 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.</p> <p style="text-align: center;">2</p>
<p>II. Immunities and Privileges</p> <p>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 Burnside corporate limits. The City of Burnside 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 Burnside 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 Burnside will include the City of Burnside as an additional insured and the City of Somerset will provide the City of Burnside with Certificates evidencing such coverage upon written request. The City of Burnside shall take no responsibility, possession, or ownership for any mains belonging to the City of Somerset which lie within the subject Territory.</p> <p>III. Separation of Entities</p> <p>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. The City of Somerset, the City of Burnside, nor 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.</p> <p>IV. Administration of the Cooperative Undertaking</p> <p>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 Burnside shall be named as co-administrators of the Inter-local 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.</p> <p>V. Termination</p> <p>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.</p> <p style="text-align: center;">3</p>	<p>VI. Compliance with Applicable Law</p> <p>The parties herein state that prior to signing this Agreement on behalf of the City of Somerset and the City of Burnside, 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.</p> <p>VII. Limited Scope of Inter-Local Agreement</p> <p>The City of Burnside 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.</p> <p>VIII. Governing Law/Construction of</p> <p>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.</p> <p>IX. Dispute Resolution</p> <p>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.</p> <p>X. Force and Effect</p> <p>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.</p> <p style="text-align: center;">4</p>

<p>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:</p> <table><tr><td>City of Somerset Mayor Eddie Girdler 400 East Mt. Vernon Street Somerset, KY 42501</td><td>Somerset City Attorney Carrie Wiese 400 East Mt. Vernon Street Somerset, KY 42501</td></tr></table> <p>City of Burnside Mayor Ron Jones 7929 S. Hwy. 27 Burnside, KY 42519</p> <p>Burnside City Attorney Law Office of D. Bruce Orwin 116 North Main, Suite A Somerset, KY 42501</p> <p>[Either party may change its notice addresses via notice to the other party at the above addresses and via the above-designated methods.]</p> <p>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.</p> <p>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.</p> <p>_____s_____</p>	City of Somerset Mayor Eddie Girdler 400 East Mt. Vernon Street Somerset, KY 42501	Somerset City Attorney Carrie Wiese 400 East Mt. Vernon Street Somerset, KY 42501	<p>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.</p> <p>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 ____ day of _____, 2011.</p> <table><tr><td>BY: _____ Eddie Girdler Mayor, City of Somerset</td><td>BY: _____ Ron Jones Mayor, City of Burnside</td></tr></table> <table><tr><td>HAVE SEEN & APPROVED FORM: _____ Carrie Wiese City Attorney - Somerset</td><td>HAVE SEEN AND APPROVED FORM: _____ D. Bruce Orwin City Attorney – Burnside</td></tr></table> <p>_____ _____, Commissioner Department of Local Government Commonwealth of Kentucky</p> <p>Approved by DLG on the ____ day of _____, 20__.</p> <p>_____ _____, Commissioner Department of Local Government Commonwealth of Kentucky</p> <p>6</p>	BY: _____ Eddie Girdler Mayor, City of Somerset	BY: _____ Ron Jones Mayor, City of Burnside	HAVE SEEN & APPROVED FORM: _____ Carrie Wiese City Attorney - Somerset	HAVE SEEN AND APPROVED FORM: _____ D. Bruce Orwin City Attorney – Burnside
City of Somerset Mayor Eddie Girdler 400 East Mt. Vernon Street Somerset, KY 42501	Somerset City Attorney Carrie Wiese 400 East Mt. Vernon Street Somerset, KY 42501						
BY: _____ Eddie Girdler Mayor, City of Somerset	BY: _____ Ron Jones Mayor, City of Burnside						
HAVE SEEN & APPROVED FORM: _____ Carrie Wiese City Attorney - Somerset	HAVE SEEN AND APPROVED FORM: _____ D. Bruce Orwin City Attorney – Burnside						

Mr. Eastham moved to approve the following Resolution executing a long term agreement with wholesale suppliers who provide water to customers within city limits. Mr. Beasley seconded the motion. Upon roll call the following Council Members voted “Aye”: Mr. New, Mrs. Hunley, Mr. Minton, Mr. Mitchell, Mr. Bourne, Mr. Burnett, Mr. Eastham, Mr. Rutherford, Mrs. Stringer, Mr. Wheeldon, and Mr. Beasley.

RESOLUTION

WHEREAS, the City of Somerset has executed long term agreements with wholesale suppliers (two municipalities and two water districts); and

WHEREAS, said wholesale suppliers provide water service to customers who reside or business is located within the city limits of Somerset with rates determined by the wholesale suppliers that are different from those rates set by the City of Somerset; and

WHEREAS, the City of Somerset desires to provide a credit to customers of the wholesale providers who reside or has a business location in Somerset that are not city customers.

NOW THEREFORE, the City Council of the City of Somerset hereby authorizes providing a \$3 per month credit for all residential customers and a \$4 per month credit for all commercial customers that have a business location in the city in which service is provided by a wholesale supplier other than the City of Somerset.

This Resolution will be effective on July 1, 2011 and remain in effect until changes are made by the City Council.

Adopted this 9th day of May, 2011.

MAYOR

ATTEST:

CITY CLERK

There being no further business the meeting adjourned.

APPROVED

MAYOR

ATTEST: _____

CITY CLERK