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**ORDINANCE NO. 14-10**

**CITY OF SOMERSET, KENTUCKY**

**GENERAL OBLIGATION BOND ANTICIPATION NOTES**

**(ENERGY CENTER PROJECT), SERIES 2014**

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## INDEX TO NOTE ORDINANCE

Section 1	Definitions .....	2
Section 2	Words of Masculine Gender; Plural as Well as Singular Form .....	6
Section 3	Authorization of Series 2014 Notes .....	6
Section 4	Interest Payable on Interest Payment Dates .....	6
Section 5	Place of Payment .....	6
Section 6	Principal Amount and Maturities .....	6
Section 7	Redemption Provisions .....	7
Section 8	Tax Levy and Pledge; Sinking Fund .....	7
Section 9	Note Form .....	8
Section 10	Execution of the Notes .....	8
Section 11	Notes Shall Be Fully Registered .....	8
Section 12	Authentication of Notes by Paying Agent .....	8
Section 13	Registration and Payment .....	8
Section 14	Conditions of Sale of Notes .....	8
Section 15	Use of Proceeds of Notes .....	8
Section 16	Compliance with Federal Arbitration Regulations .....	10
Section 17	Bank Eligibility and Rebate Provisions .....	11
Section 18	Creation of Funds .....	12
Section 19	Defeasement .....	13
Section 20	Covenant as to Audits .....	14
Section 21	Default; Remedies .....	14
Section 22	Rights of Noteowners .....	15
Section 23	Ordinance is Contractual With Noteowners .....	16
Section 24	Annual Disclosure Requirements .....	16
Section 25	Merger or Consolidation of Paying Agent .....	17
Section 26	Replacement of Paying Agent .....	17
Section 27	Signatures of Officers .....	18
Section 28	Terms of Notes and this Ordinance May be Revised Before Issuance .....	18
Section 29	Severability Clause .....	18
Section 30	Captions of Clauses .....	18
Section 31	Effective Date of Ordinance; Publication of Summary .....	18
	Certificate of City Clerk .....	19
	Exhibit A - Form of Series 2014 Note	
	Exhibit B - Form of Requisition Certificate	

**ORDINANCE NO. 14-10**

**ORDINANCE OF THE CITY OF SOMERSET, KENTUCKY PROVIDING FOR THE ISSUANCE OF ITS CITY OF SOMERSET, KENTUCKY GENERAL OBLIGATION BOND ANTICIPATION NOTES (ENERGY CENTER PROJECT), SERIES 2014, IN THE PRINCIPAL AMOUNT NOT TO EXCEED \$9,500,000, FOR THE PURPOSE OF PROVIDING INTERIM FINANCING FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE SOMERSET ENERGY CENTER; SETTING FORTH THE TERMS AND CONDITIONS UPON WHICH THE SERIES 2014 NOTES ARE TO BE ISSUED AND OUTSTANDING; AND ORDERING AND PROVIDING FOR THE LEVY OF AN ANNUAL TAX, TO THE EXTENT NECESSARY, IN AN AMOUNT SUFFICIENT TO PAY THE INTEREST ON AND PRINCIPAL OF THE SERIES 2014 NOTES.**

**WHEREAS**, the City Council (the "Council") of the City of Somerset, Kentucky, a municipal corporation of the Commonwealth of Kentucky (the "City") has authorized and provided for the issuance of its general obligation bonds in the aggregate principal amount of \$9,350,000, consisting of \$8,500,000 of Series A Bonds and \$850,000 of Series B Bonds (collectively, the "Bonds"), for the purpose of financing the cost (not otherwise provided) of the construction of the Somerset Energy Center (the "Project") for the City, and said Bonds have been purchased by the United States Department of Agriculture, acting through the Rural Housing Service ("USDA"), and

**WHEREAS**, it is necessary for the City to arrange for short term interim financing during the construction of the Project, which interim financing will be retired from the proceeds of the Bonds once said Project is substantially completed and for that purpose, the City desires to issue its City of Somerset, Kentucky General Obligation Bond Anticipation Notes (Energy Center Project), Series 2014, in the principal amount not to exceed \$9,500,000 (the "Series 2014 Notes"), the payment of the principal thereof and interest thereon is secured by the full faith, credit and resources of the City which is hereby pledged for such purpose; and

**WHEREAS**, the Series 2014 Notes are being issued in pursuant to authority of Chapters 158 and 159 of the Constitution of Kentucky and applicable laws, as amended, including Sections 66.011 through 66.171 and Chapter 58 of the Kentucky Revised Statutes (the "Act"); and

**WHEREAS**, it is the desire and intent of the City at this time to enact this Ordinance which, among other things, authorizes and provides for the issuance and sale of the Series 2014 Notes for the purposes aforesaid and sets forth the restrictions and conditions on which the Series 2014 Notes are to be issued and outstanding;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOMERSET, KENTUCKY, AS FOLLOWS:**

## ARTICLE 1

### DEFINITIONS

**Section 1. Definitions.** As used in this Ordinance, unless the context requires otherwise, the following terms shall have the following respective meanings:

"*Act*" refers to Chapter Sections 66.011 through 66.171, inclusive, and Chapter 58 of the Kentucky Revised Statutes.

"*Bond Counsel*" refers to Rubin & Hays, Kentucky Home Trust Building, 450 South Third Street, Louisville, Kentucky 40202, or any other nationally recognized individual or firm in the field of municipal bond law.

"*Budget Director*" refers to the budget director of the City.

"*Business Day*" means any day other than a Saturday, Sunday or holiday or a day on which banks located in Somerset, Kentucky are required or authorized to close for general banking business or on any day on which the New York Stock Exchange is closed.

"*Capitalized Interest Fund*" refers to the City of Somerset, Kentucky General Obligation Bond Anticipation Notes (Energy Center Project), Series 2014 Capitalized Interest Fund, created in Section 18 of this Ordinance.

"*City*" refers to the City of Somerset, Kentucky.

"*City Attorney*" refers to the City Attorney.

"*City Treasurer*" refers to the Treasurer of the City.

"*Code*" refers to the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"*Construction Fund*" refers to the City of Somerset, Kentucky General Obligation Bond Anticipation Notes (Energy Center Project) Construction Fund, created in Section 18 of this Ordinance.

"*Construction Fund Depository*" refers to a bank or banks designated by the Mayor or Budget Director of the City for the Construction Fund.

"*Costs of Issuance Fund*" refers to the City of Somerset, Kentucky General Obligation Bond Anticipation Notes (Energy Center Project) Costs of Issuance Fund created in Section 18 of this Ordinance.

"*Costs of the Project*" means and includes the following:

- (a) the cost of publishing any proceedings, if any, as may be required by law;
- (b) the fee and out-of-pocket expenses of Bond Counsel, the fee and out-of-pocket expenses of the Paying Agent and its counsel;
- (c) any discount below par, as determined at the sale of the Notes; and
- (d) all other costs and expenses, necessary to be incurred in connection with the renovation, improvement, construction, equipping and/or financing of the Project.

"*Disclosure Certificate*" refers to the Continuing Disclosure Certificate executed by the City and dated as of date of delivery of the Notes.

"*Equipment*" or "*Project Equipment*" refers to machinery, equipment, furniture and fixtures paid for (or reimbursed) out of the proceeds of the Notes, if any, and which Equipment then becomes a part of the Project.

"*Final Maturity Date*" refers to October 1, 2016.

"*Funds*" refers to the Sinking Fund, the Costs of Issuance Fund, the Capitalized Interest Fund and the Construction Fund.

"*Governing Body*" refers to the City Council of the City.

"*Interest Payment Date*" shall mean the 1<sup>st</sup> day of each April and October, beginning April 1, 2015.

"*Mayor*" refers to the duly elected Mayor of the City.

"*Moody's*" means Moody's Investors Service.

"*Note Registrar*" or "*Registrar*" or "*Paying Agent*" or "*Transfer Agent*" refers to the bank which shall constitute the Note Registrar and Paying Agent with respect to the Notes, which bank shall have the duties and responsibilities of (a) issuing semiannual checks in payment of interest requirements as to the Notes, (b) paying the principal of same at maturity or applicable mandatory redemption or optional redemption prior to maturity upon surrender of the Notes, (c) authenticating, issuing and delivering the Notes to the original purchasers of same in accordance with the sale of the Notes, at the direction of the City, (d) maintaining the Note Register, and (e) handling exchanges, cancellations, reissuance, redemption and all apparent duties of a Note Registrar, Paying Agent and Transfer Agent with respect to the Notes, as hereinafter set out. The Note Registrar, Paying Agent and Transfer Agent hereby designated is U.S. Bank National Association, Louisville,

Kentucky. Provided, however, it is understood that the City reserves the right to designate a different Federal Deposit Insurance Corporation instrumentality to perform any and all of such functions of Note Registrar, Paying Agent and Transfer Agent as to the Notes.

"*Noteowner*" or "*Owner*" refers to the registered Owner of any of the Notes.

"*Notes*" refers to the Series 2014 Notes.

"*Outstanding*" or "*Notes Outstanding*" means all Notes which have been authenticated and delivered under this Ordinance, except:

(a) Notes cancelled after purchase in the open market or because of payment at or redemption prior to maturity;

(b) Notes for the payment or redemption of which cash funds and/or noncallable U.S. Obligations have been theretofore deposited with the Noteowner (whether upon or prior to the maturity or redemption date of any such Notes); provided that if such Notes are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Noteowner shall have been made therefor;

(c) Notes paid or deemed to be paid pursuant to Section 19 of this Ordinance; and

(d) Notes in lieu of which others have been authenticated under Section 12 of this Ordinance.

"*Paying Agent*" refers to U.S. Bank National Association, Louisville, Kentucky, which has been designated to serve as Paying Agent under this Ordinance.

"*Paying Agent and Note Registrar Agreement*" refers to the agreement by and between the City and U.S. Bank National Association, Louisville, Kentucky, setting forth the duties and responsibilities of the parties thereto.

"*Permitted Investments*" refers to the following:

(a) U.S. Obligations;

(b) Noncallable direct obligations of the United States of America;

(c) Obligations of, or guaranteed as to timely payment of principal and interest by, the United States of America, or obligations of any of its agencies or instrumentalities;

- (d) Bonds or certificates of indebtedness of the Commonwealth of Kentucky and of its agencies and instrumentalities rated in the top three rating categories by Moody's and S&P;
- (e) Interest bearing deposits in national or state banks chartered in the Commonwealth of Kentucky and insured by Federal Deposit Insurance Corporation where the deposit amount does not exceed the amount so insured; and
- (f) Repurchase agreements for obligations described in (a) or (b) above with national or state banks chartered in Kentucky which have a long term debt rating of "Aa" or better by Moody's and "AA" or better by S&P (so long as an opinion is rendered that the repurchase agreement is a "Repurchase Agreement" as defined in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") and that such bank is subject to FIRREA); provided the term of such repurchase agreement is for one year or less.

"*Project*" refers to the acquisition, construction and equipping of the Somerset Energy Center.

"*Purchasers*" refers to the original purchasers of the Notes, including all members of their purchasing syndicate or group.

"*Record Date*" shall mean with respect to any Interest Payment Date, the close of business on 15 days prior to such Interest Payment Date.

"*Regulations*" refers to the applicable Federal income tax regulations issued by the Department of Treasury of the United States of America interpreting the Code.

"*Required Signatures*" refers to the signatures necessary to be obtained with reference to the approval of the expenditures to be made from the Construction Fund, which required signatures shall consist of the signatures of (a) the Architects, (b) the Mayor or Budget Director or such other City official as may be designated by the Governing Body, and (c) a representative of USDA.

"*S&P*" means Standard & Poor's Rating Services.

"*Series 2014 Notes*" refers to the City of Somerset, Kentucky General Obligation Bond Anticipation Notes (Energy Center Project), Series 2014, in the principal amount not to exceed \$9,500,000.

"*Sinking Fund*" refers to the City of Somerset, Kentucky General Obligation Bond Anticipation Notes (Energy Center Project), Series 2014 Sinking Fund, created in Section 18 of this Ordinance.

"USDA" refers to the United States Department of Agriculture, acting through the Rural Housing Service.

"U. S. Obligations" means bonds or notes which are the direct obligations of the United States of America, or obligations the principal of and interest on which are guaranteed by the United States of America.

**Section 2. Words of Masculine Gender; Plural as Well as Singular Form.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words and terms herein defined shall be equally applicable to the plural as well as to the singular form of any of such words and terms. All words and terms used in this Ordinance have the meaning set forth therein. Unless otherwise indicated, references to Articles or Sections refer to those in this Ordinance.

**Section 3. Authorization of Series 2014 Notes.** In order to provide funds necessary to finance the Project and to defray all costs and expenses incident to the issuance of the Series 2014 Notes, there shall be and there are hereby authorized to be issued the City of Somerset, Kentucky General Obligation Bond Anticipation Notes (Energy Center Project), Series 2014, in the principal amount not to exceed \$9,500,000, to be dated as of the date of issuance, the same to bear interest from the date thereof, payable on each Interest Payment Date until payment in full of the Series 2014 Notes. The Series 2014 Notes shall mature in such principal amounts and bear interest at a rate or rates to be fixed as a result of the private, negotiated sale of said Series 2014 Notes.

**Section 4. Interest Payable on Interest Payment Dates.** The Notes shall bear interest payable as anticipated on each Interest Payment Date.

**Section 5. Place of Payment.** Interest on each Note shall be payable by check or draft mailed to the registered owner thereof at the address shown on the registration books kept by the Paying Agent as registrar. The principal of and premium, if any, on the Notes shall be payable, without exchange or collection charges, in lawful money of the United States of America upon their presentation and surrender as they respectively become due and payable, whether at maturity or by prior redemption, at the principal corporate trust office of the Paying Agent. Both principal and interest on the Notes shall be payable at the main office of the Paying Agent.

**Section 6. Principal Amount and Maturities.** The total principal amount and the maturities of said Notes shall be finally determined by the Mayor or Budget Director in accordance with the provisions of Section 14 hereof; provided that the Notes shall mature no later than the Final Maturity Date.

**Section 7. Redemption Provisions.** (a) *Optional Redemption.* The Notes shall be subject to redemption, in whole or in part, at par, in advance of maturity, on any date, on or after October 1, 2015, (less than all Notes of a single maturity to be selected in such manner as the Paying Agent



may determine) upon payment of 100% of the principal amount to be redeemed plus accrued interest to the date of redemption.

*(b) Notice of Redemption.* The Paying Agent shall, upon being indemnified to its satisfaction, and in the event of an optional redemption upon receiving funds necessary to redeem such Notes, cause notice of the call for any redemption identifying the Notes or portions thereof (integral multiples of \$5,000) to be redeemed to be sent by United States mail, postage prepaid, at least thirty days prior to the date fixed for redemption to the registered owner of each Note to be redeemed at the address shown on the registration books maintained by the Paying Agent as Bond Registrar. Failure to give such notice by mailing or any defect therein in respect of any Note shall not affect the validity of any proceedings for the redemption of any Note.

**Section 8. Tax Levy and Pledge; Sinking Fund.** For the purpose of providing funds required to pay the interest on the Notes as and when the interest becomes due and in order to create a sinking fund to pay and discharge the principal thereof (and premium, if any) as the Notes become due, there shall be and there is hereby levied upon all of the taxable property within the City, in each year that the Notes remain outstanding, a direct annual tax sufficient, to the extent other lawfully available moneys of the City are not provided for that purpose, as mandatorily required by Section 159 of the Kentucky Constitution. The proceeds derived from said special annual tax levied from time to time, together with other lawfully available moneys of the City provided for the purpose, shall be deposited and carried in a special and separate bank account in the name of the City and held apart from all other funds of the City, shall be applied only for the purpose of paying the principal of and interest (and premium, if any) on the Notes, and shall be designated the City's "Sinking Fund". The proceeds of said special annual tax and the balances accumulated from time to time in the Sinking Fund are hereby irrevocably pledged for the purpose of paying the principal of and interest (and premium, if any) on the Notes and shall never be used for any other purpose. The City hereby covenants with the holders of the Notes that it will levy said special annual tax in each year at whatever rates may be necessary from time to time in order to produce the amounts required in each year, to the extent not otherwise provided, to pay the Notes and interest (and premium, if any) when and as they mature or become due.

If principal or interest should fall due in any year at a time when there are insufficient funds on hand, collected by reason of the foregoing special tax levy, such principal and interest shall be paid from other available funds of the City and reimbursement therefor shall be made out of the special tax hereby provided when the same shall have been collected.

All moneys held in the Sinking Fund shall be deposited in a bank or banks which are members of the Federal Deposit Insurance Corporation ("FDIC"), and all such deposits which cause the aggregate deposits of the City in any one bank to be in excess of the amount insured by FDIC shall be continuously secured by a valid pledge of direct obligations of the United States of America having an equivalent market value. All or any part of the Sinking Fund may be invested in Permitted Investments, maturing or being subject to retirement at the option of the holder on such dates as the same may be needed for meeting interest and/or principal payments, and all such investments shall be carried to the credit of the Sinking Fund.

**Section 9. Note Form.** The Notes shall be in substantially the form set forth in Exhibit A attached hereto.

**Section 10. Execution of the Notes.** The Notes shall be executed on behalf of the City and signed with the manual or facsimile signature of the Mayor, with the corporate seal of the City imprinted thereon and attested by the manual or facsimile signature of the City Clerk of the City.

**Section 11. Notes Shall Be Fully Registered.** The Notes shall be fully registered and transferred and assigned in accordance with the written authorized instruction of the registered owner by the Paying Agent. The Paying Agent shall establish and maintain a list of the registered owners of the Notes.

**Section 12. Authentication of Notes by Paying Agent.** The Notes herein authorized shall, upon the signing and execution thereof, be duly authenticated by the Paying Agent, and delivered by it and only such Notes as shall be authenticated by the Paying Agent or by any successor Paying Agent by the signing of the Paying Agent's Certificate of Authentication endorsed thereon shall be secured by this Ordinance and be entitled to any benefit or pledge herein; and such duly executed Certificate shall be conclusive evidence that the Notes so authenticated have been duly issued, are authentic, and are entitled to the benefit of the trust hereby created.

**Section 13. Registration and Payment.** All Notes shall be registered as to both principal and interest on the books of the City maintained at the corporate trust office of the Paying Agent. No transfer of any Notes shall be valid unless made on said books at the request of the registered owner in person or by his attorney duly authorized in writing, and similarly noted on such Note. The Paying Agent, as registrar, shall not be required to transfer or exchange any Note on any date which is after the fifteenth day of the month preceding any interest payment date, or during any period beginning 15 days prior to the selection by the Paying Agent of Notes to be redeemed prior to maturity and ending on the date of mailing of notice of any such redemption. The person in whose name a Note is registered upon the books of the City shall be deemed the owner thereof for all purposes.

**Section 14. Conditions of Sale of Notes.** The Notes shall be sold by private, negotiated sale pursuant to the Section 66.141 of the Act, at such time and in such manner as the Mayor or Budget Director may deem desirable.

**Section 15. Disposition of Proceeds of Sale of Notes.** Whenever the Notes shall have been sold and delivered, the proceeds thereof shall be used as follows:

- (1) to deposit such moneys in the Capitalized Interest Fund necessary to pay the interest payments on the Notes through and including April 1, 2016,
- (2) to deposit such moneys in the Costs of Issuance Fund as are necessary to pay the issuance expenses of the Notes, and

- (3) the entire remaining proceeds of the Notes shall be deposited into the Construction Fund.

Upon receipt of a properly executed form of a Requisition Certificate signed by the Required Signatures, the Construction Fund Depository pay out amounts on deposit in the Construction Fund toward the Costs of the Project, the Construction Fund Depository to make such payments only upon checks drawn upon said Construction Fund Depository by a duly authorized officer of the Construction Fund Depository. The Requisition Certificate is to be in substantially the form set forth as Exhibit B attached hereto.

It shall not be necessary for the Architect to approve the payment of the costs of issuing the Notes, administrative costs and the costs of any Equipment which is not permanently affixed to the real estate.

Such checks shall be fully negotiable, and the Construction Fund Depository shall be authorized to honor and pay the same, providing the Construction Fund Depository has received a completed Requisition Certificate which has been executed with the Required Signatures.

Pending disbursement for the authorized purposes, the proceeds of the Notes shall be subject to a first and paramount lien and charge in favor of the owners of the Notes and for their further security, and shall be invested by the Construction Fund Depository as directed by the Mayor or the Budget Director, who are jointly and severally charged with the responsibility for issuing the Notes, in Permitted Investments.

Interest earned on investments of sums on deposit in the Construction Fund, shall be carried to the credit of the Construction Fund and applied to pay the Costs of the Project.

Whenever the acquisition, construction and equipping of the Project, including all Equipment, is complete, as evidenced by the Certificate of Required Signatures, any surplus then remaining in the Construction Fund shall be transferred to the Sinking Fund, and the next payments for interest and principal shall be reduced by such amount. Any such amount equivalent to 5% or less of the net proceeds of the Notes (after deducting all fees, expenses and discount incident to the issuance of the Notes) may be used (1) to pay or reimburse the costs of additions, extensions and/or improvements to the Project and/or the purchase of Equipment for the Project or (2) to constitute a credit against payments required on the Notes to be made by the City. In the event that an amount in excess of 5% of said net proceeds of the Notes shall be available from sums remaining in the Construction Fund, same shall be applied at the earliest feasible date, as follows:

- (1) to the purchase of Notes in the open market at a price not exceeding the next optional redemption price, plus accrued interest;
- (2) to pay the costs of additions, extensions or improvements to the Project and/or the purchase of Equipment for the Project; and/or

- (3) to be deposited in the Sinking Fund to be invested and the proceeds earmarked to be applied at the earliest permissible optional call date to redeem Notes pursuant to the permissible redemption terms, if such (in the opinion of recognized Bond Counsel) will not cause the Notes to be "arbitrage bonds".

**Section 16. Compliance with Federal Arbitrage Regulations.** The Governing Body covenants that the proceeds of the Notes shall not be invested in investments which will produce a net adjusted yield in excess of the net interest cost (effective yield) of the Notes authorized herein, if such investment would cause such Notes to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code; provided, however, that the funds may be invested to whatever extent and whenever the Code permits same to be invested without causing the Notes to be treated as "arbitrage bonds."

On the basis of known facts and circumstances in existence on the date of adoption of this Ordinance, the Governing Body certifies that it is not expected that the proceeds of the Notes will be used in a manner that would cause the Notes to be "arbitrage bonds." The Governing Body covenants with the purchasers and/or owners of the Notes authorized herein that (a) the Governing Body will make no use of the proceeds of the Notes that, if such use had been reasonably expected on the date of issuance of the Notes, would cause the Notes to be "arbitrage bonds," and (b) that the Governing Body will comply with (1) all of the requirements of Section 148 of the Code; and (2) all of the requirements of the applicable Regulations thereunder, to whatever extent is necessary to assure that the Notes shall not be treated as "arbitrage bonds."

On the basis of known facts and reasonable expectations on the date of enactment of this Ordinance, the Governing Body certifies as follows:

- (a) that there has been no overissuance of the Notes;
- (b) that it is anticipated and covenanted that amounts on deposit in the Sinking Fund will be used within thirteen (13) months from the date of deposit for the payment of principal of and/or interest on the outstanding Notes, and that, except for an amount equal to not more than the greater of (1) one-twelfth (1/12) of debt service requirements on the outstanding Notes for the then ensuing year, or (2) one year's earnings on the Sinking Fund, such Sinking Fund will be depleted annually through such application for current debt service requirements of the outstanding Notes; and
- (c) that the Governing Body has not been advised of any listing or contemplated listing by the Internal Revenue Service determining that the foregoing type of certification with respect to the Governing Body's obligations may not be relied on.

The Governing Body covenants and agrees that in the event it is subsequently determined by the Governing Body upon the advice of nationally recognized Bond Counsel, that the funds created herein are subject to the "rebate requirements" on excess earnings in favor of the United States of America imposed by Section 148(f) of the Code and that such funds in fact generate

earnings from "non-purpose investments" in excess of the amount which said investments would have earned at a rate equal to the "yield" on the Notes, plus any income attributable to such excess, it shall rebate to the United States of America any such excess generated from such investments and remit such excess to the United States of America on or before five (5) years and 60 days from the date of issuance of the Notes, and not later than once every five years thereafter until the final retirement of the Notes; the last installment, to the extent required, to be made no later than sixty (60) days following the complete retirement of the Notes. The Governing Body further covenants to file any and all reports, if any, as may be required to be filed with the United States Government with regard to the liability or non-liability of the Governing Body as to any such rebate requirements and to maintain records in regard thereto for the period of time required by applicable Treasury Regulations.

The Governing Body reserves the right to make any investment permitted by state law if, whenever, and to the extent that Section 148 of the Code or the Treasury Regulations relating thereto shall be repealed, amended or relaxed, or shall be held void by a final decision of a court of competent jurisdiction, but only if any investment made by virtue of such repeal, or relaxation, amendment, or decision would not, in the opinion of recognized Bond Counsel, result in making the interest on the Notes subject to Federal income taxation.

Prior to or at the time of delivery of the Notes, the Mayor and/or the Budget Director are (is) authorized to execute the appropriate certification with reference to the matters referred to above, setting out all known and contemplated facts concerning such anticipated expenditures, and investments, including the execution of necessary and/or desirable certifications of the type contemplated by the applicable arbitrage regulations under the Code, as amended, in order to assure that interest on the Notes will be exempt from all Federal income taxes and that the Notes will not be treated as "arbitrage bonds."

**Section 17. Bank Eligibility and Rebate Provisions.** The City hereby certifies that it does not reasonably anticipate issuing "qualified tax-exempt obligations" during the calendar year in which the Notes are being issued in excess of \$10,000,000, and, therefore, the City does hereby designate the Notes as "qualified tax-exempt obligations" pursuant to the provisions of Section 265(b)(3) of the Code.

The City covenants and agrees that in the event it is subsequently determined by the City, upon advice of nationally recognized bond counsel, that the Sinking Fund, or any other fund established under this Ordinance, is subject to said rebate requirements and does, in fact, generate earnings from "non-purpose investments" in excess of the amount which said investments would have earned at a rate equal to the "yield" on the Notes, plus any income attributable to such excess, there shall be established a separate and special fund with the Paying Agent to be designated as the "City of Somerset, Kentucky General Obligation Bond Anticipation Notes (Energy Center Project) Rebate Fund," which shall be utilized for the collection and payment of any excess generated from investments and the remittance thereof to the United States of America until the final retirement of the Notes; the installment, to the extent required, to be made no later than sixty (60) days following

the date on which funds sufficient for the complete retirement of the Notes are deposited with the Paying Agent or any escrow agent.

**Section 18. Creation of Funds.** (a) There is hereby created the "City of Somerset, Kentucky General Obligation Bond Anticipation Notes (Energy Center Project) Sinking Fund (the "Sinking Fund") to be deposited with the Paying Agent. The Sinking Fund shall be used solely and only and is hereby pledged for the payment of the interest on and principal of the Notes.

Funds on deposit in the Sinking Fund may be invested in accordance with KRS 66.480, in Permitted Investments. All income earned from investment of moneys in the Sinking Fund (including the capitalized interest, if any, deposited therein) shall, as earned, be used to pay principal and interest on the Notes.

No further payments need be made into the Sinking Fund whenever and so long as such amount of the Notes shall have been retired that the amount then held in the Sinking Fund is equal to (or sufficient to defease) the entire amount of the interest and principal (and redemption premium, if any) that will be payable to the Noteholders at the time of the retirement and/or maturity of all the Notes then remaining outstanding.

(b) There is hereby created the "City of Somerset, Kentucky General Obligation Bond Anticipation Notes (Energy Center Project) Capitalized Interest Fund (the "Capitalized Interest Fund"), which shall also be deposited with the Paying Agent into which the funded capitalized interest on the Notes shall be deposited.

(c) There is hereby created the "City of Somerset, Kentucky General Obligation Bond Anticipation Notes (Energy Center Project) Costs of Issuance Fund (the "Costs of Issuance Fund"), which shall also be deposited with the Paying Agent as and when needed, into which Costs of Issuance Fund there shall be set aside and deposited the issuance costs of the Notes. Funds on deposit in the Costs of Issuance Fund shall not be invested.

(d) There is hereby created the "City of Somerset, Kentucky General Obligation Bond Anticipation Notes (Energy Center Project) Construction Fund (the "Construction Fund") to be deposited with the Construction Fund Depository, into which there shall be set aside out of the proceeds of the sale of the Notes the amount remaining for the construction of the Project.

Funds on deposit in the Construction Fund may be invested in accordance with KRS 66.480, in Permitted Investments. All income earned from investment of moneys in the Construction Fund shall be kept in the Construction Fund and used to pay the costs of the Project.

Funds on deposit in the Capitalized Interest Fund may be invested in accordance with KRS 66.480, in Permitted Investments. All income earned from investment of moneys in the Capitalized Interest Fund shall be kept in the Capitalized Interest Fund and used to pay the interest payments on the Notes through and including April 1, 2016.

The investment of funds shall be made by the Construction Fund Depository upon and at the direction of the City or in the absence of such direction, in the money market mutual fund of the Construction Fund Depository which is a Permitted Investment. The investments of funds may be made or transacted by the Construction Fund Depository through the Construction Fund Depository's investment department.

Whenever the acquisition, construction and equipping of the Project is complete, as evidenced by the Certificates of Required Signatures, any surplus then remaining in the Construction Fund shall then be transferred to the Sinking Fund.

**Section 19. Defeasement.** If the City shall pay or cause to be paid, or there shall otherwise be paid as hereinafter set out in this Section, the principal and interest due or to become due thereon, at the times and in the manner provided herein, and all other amounts due to the Paying Agent shall have been paid, and if the City shall keep, perform, and observe all and singular the covenants and promises in the Notes and expressed herein to be kept, performed, and observed by it or on its part, then these presents, and the pledge, lien and other rights hereby granted shall cease, terminate, and be void, and thereupon the Paying Agent shall execute and deliver to the City such instruments, if any, in writing as shall be requisite to cancel the lien hereof, and assign and deliver to the City any pertinent property encumbered hereby which may then be in its possession, except funds, or securities in which such funds are invested, held by the Paying Agent and earmarked for the payment of principal of and interest on the Notes.

All outstanding Notes, shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed above if (a) in case any of said Notes are to be redeemed on any date prior to their maturity, the City shall have given to the Paying Agent in form satisfactory to it irrevocable instructions to give notice of redemption of such Notes on said date as provided herein, (b) there shall have been deposited with the Paying Agent (1) moneys in an amount which shall be sufficient, and/or (2) U. S. Obligations, the principal of which, with or without the interest on such principal, as the case may be, will provide moneys which together with other moneys, if any, deposited with the Paying Agent at the same time, shall be sufficient, to pay when due the principal and the interest due and to become due on the Notes on and prior to the redemption date and/or the maturity date thereof, as the case may be, and (c) in the event any of the Notes are not to be redeemed in accordance with the redemption provisions hereof within the next succeeding 60 days, the City shall have given the Paying Agent, in form satisfactory to it, irrevocable instruction to give, as soon as practicable, in the same manner as a notice of redemption is required to be given herein, a notice to the owners of such Notes that the deposit required by (b) above has been made with the Paying Agent, that said Notes are deemed to have been paid in accordance with this Section, and stating such maturity and/or redemption date upon which moneys are to be available for the payment of the principal of and interest on said Notes.

No investment may be made under this Section which would cause the Notes to become "arbitrage bonds" within the meaning of Section 148 of the Code or the applicable Regulations thereunder.

**Section 20. Covenant as to Audits.** The City agrees that so long as any of the Notes are outstanding it will, as soon as may be feasible after the close of each fiscal year, in any event, not later than 120 days thereafter, cause unaudited financial statements of the financial affairs of the City to be made available to the original purchaser of the Notes.

It will properly mail or cause to be mailed, upon request, to the original purchaser of the Notes, a copy of such unaudited financial report. It will furnish or cause to be furnished, on or before 120 days after the close of each fiscal year, a copy of such unaudited financial report to any owner of said Notes who shall request same in writing.

All expenses incurred in causing such financial reports to be made and copies distributed, shall constitute proper expenses incident to the issuance of the Notes and shall be paid by the City as an expense of the Notes in addition to the amounts otherwise required to be paid hereunder.

**Section 21. Default; Remedies.** The following shall be considered an "Event of Default" under this Ordinance:

- (1) there shall be any default in the payment of the principal of or the interest on the Notes, when due, or
- (2) the insolvency of, or the filing of a petition in bankruptcy by or against the City, or
- (3) the City shall fail or refuse to comply with the provisions of the Act, or shall default in the performance or observance of any other of the covenants, agreements or conditions on its part contained in this Ordinance, any authorizing ordinance of the City, or the Notes, or the City shall default in the performance or observance of any covenant, other than payment of rental agreements or conditions on its part contained in the Ordinance, and such failure, refusal or default shall continue for a period of forty-five (45) days after written notice thereof by owners of not less than five percent (5%) in principal amount of the outstanding Notes.

Upon the happening and continuance of any Event of Default, the Noteowner may proceed to protect and enforce its rights by such of the following remedies, being advised by counsel, shall deem most effectual to protect and enforce such rights:

- (a) by mandamus or other suit, action or proceeding at law or in equity, to enforce all rights of the Noteowners, including the right to require the City to enforce fully this Ordinance and to charge, collect and fully account for the City revenues and to require the City to carry out any and all other covenants or agreements with the Noteowners and to perform its duties under the Act;
- (b) by bringing suit upon the Notes;



(c) by action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the owners of the Notes;

(d) by declaring all Notes due and payable, and if all defaults shall be made good, then, with the written consent of the owners of not less than fifty percent (50%) in principal amount of the outstanding Notes, by annulling such declaration and its consequences;

(e) in the event that all Notes are declared due and payable, by selling Permitted Investments of the City (to the extent not theretofore set aside for redemption of Notes for which call has been made), and enforcing all courses in action of the City to the fullest legal extent in the name of the City for the use and benefit of the owners of the Notes.

The City expressly waives any right to claim a trespass in connection with any such action.

In the event of default, each defaulted Note shall continue to bear interest after maturity at the interest rate applicable to such respective Notes until the necessary funds are made available for the payment thereof.

In case of any action or any proceedings in any court to collect any sums payable or secured by this Ordinance or to protect the lien herein of the Purchasers, or in any other case permitted by law in which attorneys' fees may be collected from the City or charged upon the proceeds of any permanent financing, bond and/or notes issued for the purpose of paying the principal of or interest on the Notes, the City agrees to pay reasonable attorneys' fees incurred by the Purchasers.

**Section 22. Rights of Noteowners.** Notwithstanding any other provisions herein contained, the owners of the Notes shall have all of the rights provided for thereunder to require the City to levy such taxes as provided for in the Act, within any limitations imposed by law, in order that all of the interest on and the principal of such Notes shall be paid in full.

Such owners of such Notes shall be secured to the full extent provided by law by a pledge of the tax and other revenues of the City in accordance with the terms of the Act.

**Section 23. Ordinance is Contractual With Noteowners.** The provisions of this Ordinance and of any authorized supplemental ordinance entered into prior to the delivery and payment of the Notes to the successful purchaser(s), shall constitute a contract between the City and the owners of any Notes, no change in the provisions of this Ordinance or of any supplemental ordinance shall be made in any manner except as herein provided until such time as all of the Notes and the interest thereon have been paid in full; provided:

(a) the City may adopt a supplemental ordinance for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective or inconsistent provisions contained herein or in any proceedings pertaining hereto, provided no change may be made which would impair the security or interests of the Noteowners in any way, without (1) the consent in writing of the original successful purchaser of the Notes, if the Notes have not yet

been delivered or (2) the consent of 75% in amount of the owners of the outstanding Notes, if the Notes have been delivered; and

(b) the owners of seventy-five percent (75%) in principal amount of the Notes at any time outstanding shall have the right to consent to, and approve the adoption of ordinances, resolutions or other proceedings, modifying or amending any of the terms or provisions contained in this Ordinance; provided, however, that no such modifications or amendments shall be made which will permit: (1) an extension of the maturity of any of the Notes, or any parity notes, or (2) a reduction in the principal of any Note and/or Notes or the redemption premium or the rate of interest thereon, or (3) a preference or priority of any Note or parity notes over any other note or notes, or (4) a reduction in the percentage of the aggregate principal amount of the Notes required to consent to any modification or amendment, or (5) impair in any way the rights of the owners of the Notes.

**Section 24. Annual Disclosure Requirements.** In accordance with the requirements of Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission (the "Commission"), the City agrees to execute a Disclosure Certificate.

Financial information regarding the City can be obtained from the Budget Director of the City, Somerset City Hall, Somerset, Kentucky 42501, telephone: (606) 679-6366.

The obligations of the City described in the Disclosure Certificate will remain in effect only for such period that (1) the Notes are outstanding in accordance with their terms and (2) that the City remains an obligated person with respect to the Notes within the meaning of the Rule. The City reserves the right to terminate its obligation to provide notices of material events, as set forth above, if and when the City no longer remains an obligated person with respect to the Notes within the meaning of the Rule. The City acknowledges that its undertaking pursuant to the Rule described under this Section is intended to be for the benefit of the Noteowners (including holders of beneficial interests in the Notes).

In the event of a failure of the City to comply with any provision of this Section, any Noteowner may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under this Section. A default under this Section shall not be deemed an Event of Default under this Ordinance, and the sole remedy under this Section, in the event of any failure of the City to comply with this Section, shall be an action to compel performance.

Notwithstanding any other provision of this Ordinance, this Section may be amended, if the City receives an opinion of independent legal counsel to the effect that:

- (i) such amendment is made in connection with a change in circumstances that arises from a change in legal requirements, a change in law or a change in the types of activities in which the City is engaged;

- (ii) this Section as so amended, would have complied with the requirements of the Rule at the time of the primary offering of the Notes, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and
- (iii) such amendment does not materially impair the interests of the Noteowners.

**Section 25. Merger or Consolidation of Paying Agent.** Any corporation or association into which the Paying Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become successor Paying Agent hereunder and vested with all the trusts, powers, discretion, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed, or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**Section 26. Replacement of Paying Agent.** In case the Paying Agent hereunder shall resign or be removed, or be dissolved, or otherwise become incapable of acting hereunder, a successor may be appointed by the owners of a majority in principal amount of the Notes hereby secured and then outstanding by an instrument or concurrent instruments in writing, signed by such owners, or their duly authorized agents, provided that in any such event, the City may appoint a temporary Paying Agent, which may immediately act until a permanent successor Paying Agent is appointed. No successor Paying Agent shall act without signing a written acceptance of the appointment. Such successor Paying Agent shall be entitled to receive an instrument from the Paying Agent transferring the trust, but shall be fully authorized to act without such instrument.

Any Paying Agent appointed under the provisions of this Section as successor to the Paying Agent appointed at the issuance of the Notes shall be a trust company or bank having the powers of a trust company within or outside the Commonwealth of Kentucky having capital and surplus aggregating at least Ten Million Dollars (\$10,000,000) if there be such a trust company or bank, willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Ordinance.

**Section 27. Signatures of Officers.** If any of the officers whose signatures or facsimile signatures appear on any of the Notes cease to be such officers before delivery of the Notes, such signatures shall nevertheless be valid for all purposes the same as if said officers had remained in office until delivery, as provided in KRS 61.390.

**Section 28. Terms of Notes and this Ordinance May be Revised Before Issuance.** The City reserves the right, prior to the issuance of the Notes, to amend this Ordinance as to the date, amount, maturities, redemption premiums and other provisions of the Notes, consistent with market conditions and other pertinent factors at the time of such issuance.

**Section 29. Severability Clause.** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

**Section 30. Captions of Clauses.** The captions and headings of this Ordinance are for convenience only and are not to be construed as part of this instrument nor as defining or limiting in any way the scope or intent of the provisions hereof.

**Section 31. Effective Date of Ordinance; Publication of Summary.** This Ordinance shall be introduced at a meeting of the Governing Body and shall remain on file for public inspection in the office of the City Clerk until the next following regular, adjourned regular or called, special session of the Governing Body, in the completed form in which it shall be put on its final enactment. If enacted, this Ordinance shall be in full force and effect immediately, and a Notice of Enactment and Summary of the provisions of this Ordinance, in the form submitted to the Governing Body, and approved hereby, shall be published as required by law.

Introduced and given first reading by the City Council on September 22, 2014.

Given second reading and enacted by the City Council on October 13, 2014.

CITY OF SOMERSET, KENTUCKY

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Mayor

Attest:

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City Clerk

CERTIFICATE OF CITY CLERK

I, the undersigned, certify that I am the duly qualified and acting City Clerk of the City of Somerset, Kentucky, that the foregoing Ordinance is a true and correct copy of an Ordinance authorizing the issuance of the City of Somerset, Kentucky General Obligation Bond Anticipation Notes (Energy Center Project), Series 2014, which Ordinance was duly enacted by the City Council of said City, signed by the Mayor of said City, and attested under Seal by me as City Clerk at a properly convened meeting of the City Council held on October 13, 2014, as shown by the official records of the City in my custody and under my control, that said Ordinance has been ordered to be published by title and summary as required by law, and that said Ordinance has been recorded in the official Ordinance Book of the City.

IN TESTIMONY WHEREOF, witness my signature as City Clerk and the official seal of said City this October 13, 2014.

---

City Clerk

(Seal of City)

**EXHIBIT A**

**UNITED STATES OF AMERICA  
COMMONWEALTH OF KENTUCKY  
CITY OF SOMERSET, KENTUCKY GENERAL OBLIGATION BOND  
ANTICIPATION NOTES (ENERGY CENTER PROJECT), SERIES 2014**

**NO. BAN-**

<b>Interest Rate</b>	<b>Maturity Date</b>	<b>Dated as of</b>
<b>As set forth herein</b>	<b>October 1, 2016</b>	_____, <b>2014</b>

KNOW ALL PERSONS BY THESE PRESENTS:

That the City of Somerset, Kentucky (the "City"), a municipal corporation of the Commonwealth of Kentucky, acknowledges itself to owe and for value received, hereby promises to pay to the order of

the sum of

on the Maturity Date set forth above and to pay interest on said sum, at the Interest Rate set forth herein, per annum, from the date hereof, payable on the 1<sup>st</sup> day of each April and October, beginning April 1, 2015, except as the provisions hereinafter set forth as to prior redemption may be and become applicable hereto, such interest as may accrue on and prior to the maturity of this Note, to be paid by check or by draft to the registered owner hereof, both principal and interest being payable, without deduction for exchange or collection charges, in lawful money of the United States of America, at U.S. Bank National Association, Louisville, Kentucky (the "Paying Agent").

This Note is one of a series of Notes in the aggregate principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), of like tenor and effect (except possibly as to numbering, maturities, interest rates, and provisions as to prior redemption), and this Note and the issue of which it forms a part (hereinafter sometimes collectively referred to as the "Notes"), are authorized and issued under an Ordinance (the "Ordinance") enacted by the City on October 13, 2014, for the purpose of providing interim financing of the costs of the acquisition, construction and equipping of the Somerset Energy Center (the "Project"), pursuant to and in full compliance with the laws of the Commonwealth of Kentucky.

The Notes constitute general obligations of the City and the full faith, credit and taxing power of the City is irrevocably pledged to the prompt payment of the principal of, premium, if any, and interest on the Notes when the same become due. Reference is hereby made to the Ordinance for a more particular description of the terms and conditions under which the Notes are issued, a more specific identification of the Project, the revenues pledged for the payment of the Notes, the nature and extent of the security, the rights and duties of the City and the rights of the owners of the Notes with respect to such security.

The Notes shall be subject to redemption, in whole or in part, at par, in advance of maturity, on any date, on or after October 1, 2015, (less than all Notes of a single maturity to be selected in such manner as the Paying Agent may determine) upon payment of 100% of the principal amount to be redeemed plus accrued interest to the date of redemption.

The City shall cause notice of the call for any redemption identifying the Notes or portions thereof (integral multiples of \$5,000) to be redeemed to be sent by United States mail, postage prepaid, at least three days prior to the date fixed for redemption to the registered owner of each Note to be redeemed at the address shown on the registration books maintained by the City. Failure to give such notice by mailing or any defect therein in respect of any Note shall not effect the validity of any proceedings for the redemption of any Note.

All of the Notes as to which the City reserves and exercises the right of redemption and as to which notice as aforesaid shall have been given, and for the retirement of which, upon the terms aforesaid, funds are duly provided, will cease to bear interest on the redemption date. Notice of such redemption may be waived with the written consent of the owner of the Note called for redemption.

The Paying Agent shall, upon being indemnified to its satisfaction, and in the event of an optional redemption upon receiving funds necessary to redeem such Notes, cause notice of the call for any redemption identifying the Notes or portions thereof (integral multiples of \$5,000) to be redeemed to be sent by United States mail, postage prepaid, at least thirty days prior to the date fixed for redemption to the registered owner of each Note to be redeemed at the address shown on the registration books maintained by the Paying Agent as Note Registrar. Failure to give such notice by mailing or any defect therein in respect of any Note shall not affect the validity of any proceedings for the redemption of any Note.

For the purpose of providing funds required to pay the principal of and interest on (and premium, if any) the Notes as and when the same become due, there shall be levied upon all of the taxable property within the City, in each year that the Notes remain outstanding, a direct annual tax sufficient, to the extent other lawfully available moneys of the City are not provided for that purpose, as mandatorily required by Section 159 of the Kentucky Constitution. The proceeds derived from said special annual tax levied from time to time, together with other lawfully available moneys of the City provided for the purpose, shall be deposited and carried in a special and separate bank account in the name of the City and held apart from all other funds of the City, shall be applied only for the purpose of paying the principal of and interest (and premium, if any) on the Notes, and shall be designated the City's "Sinking Fund". The proceeds of said special annual tax and the

balances accumulated from time to time in the Sinking Fund are irrevocably pledged for the purpose of paying the principal of and interest (and premium, if any) on the Notes and shall never be used for any other purpose.

In the Ordinance, the City has covenanted with the holders of the Notes that it will levy said special annual tax in each year at whatever rates may be necessary from time to time in order to produce the amounts required in each year, to the extent not otherwise provided, to pay the principal of and interest (and premium, if any) on the Notes when and as they mature or become due.

If principal or interest should fall due in any year at a time when there are insufficient funds on hand, collected by reason of the foregoing special tax levy, such principal and interest shall be paid from other available funds of the City and reimbursement therefor shall be made out of the special tax provided in the Ordinance when the same shall have been collected.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Note, do exist, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Note, together with all other obligations of the City, does not exceed the debt incurring authority and capacity of this City; and the City, so long as the Notes remain outstanding, shall perform all duties imposed upon it by the Ordinance.

IN WITNESS WHEREOF, the City of Somerset, Kentucky has caused this Note to be executed on its behalf with the duly authorized signature of its Mayor and its corporate seal to be imprinted hereon, attested by the signature of the City Clerk, and this Note is to be dated as of the date set forth above.

CITY OF SOMERSET, KENTUCKY

By: \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
City Clerk



ASSIGNMENT

For value received, the undersigned hereby sells, assigns, and transfers unto \_\_\_\_\_ the within Note and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer said Note on the books kept for registration and transfer of this Note, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_

Signature Guaranteed By:

Social Security Number or  
other taxpayer  
identification number:

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT B**

**REQUISITION CERTIFICATE**

Re: City of Somerset, Kentucky General Obligation Bond Anticipation Notes (Energy Center Project), Series 2014

The undersigned hereby certify as follows:

1. That they are the signatories required for construction and/or administrative draws pursuant to the Bond Ordinance enacted by the City of Somerset, Kentucky (the "City").

2. That the named firms and/or persons set forth on Exhibit A attached hereto are now entitled to the aggregate sum of \$\_\_\_\_\_, itemized as set forth in said Exhibit A and as per approved invoices attached hereto:

3. That upon said amount being lent to said City and/or obtained by said City from the proceeds of the Notes and/or other sources, the undersigned approve such expenditure and the payment of said amounts to said firms and/or persons, either directly or from amounts deposit in the "City of Somerset, Kentucky General Obligation Bond Anticipation Notes Construction Account".

4. That we hereby certify that we have carefully inspected the work and, as a result of our inspection and to the best of our knowledge and belief, the amounts shown in this Requisition Certificate are correct and the work has been performed in accordance with the agreements between the City and the parties requesting payment.

IN TESTIMONY WHEREOF, witness the signature of the undersigned, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

City Of Somerset, Kentucky \_\_\_\_\_, Architects

By \_\_\_\_\_ By \_\_\_\_\_

Approved on \_\_\_\_\_ Approved on \_\_\_\_\_

Amount expended heretofore \$ \_\_\_\_\_

Amount approved herein \_\_\_\_\_

Total \_\_\_\_\_

**EXHIBIT A TO REQUISITION CERTIFICATE**

Name of Entity/Person

Amount