

MINUTES OF MEETING HELD MAY 14, 2018

The Common Council of the City of Somerset, Kentucky met in a regular meeting on Monday May 14, 2018 at 7:00 p.m. with the following present: Council Members; Jerry Girdler, Mike New, Donna Hunley, John Minton, Jim Mitchell, John Adams, Amanda Bullock, Tom Eastham, David Burdine, Brian Dalton, Jerry Wheeldon, and Jimmy Eastham and Mayor Eddie Girdler and City Clerk Nick Bradley. Absent: City Attorney Carrie Weise

Mr. Wheeldon moved to approve the minutes of the regular meeting held on April 23, 2018 along with reports as mailed. Mr. New seconded the motion. Upon roll call the following Council Members voted "Aye": Mr. Girdler, Mr. New, Mrs. Hunley, Mr. Minton, Mr. Mitchell, Mr. Adams, Mrs. Bullock, Mr. T. Eastham, Mr. Burdine, Mr. Dalton, Mr. Wheeldon, and Mr. J. Eastham.

Mr. Burdine moved to approve the following Resolution No. 18-06: Municipal Road Aid Cooperative Agreement. Mr. New seconded the motion. Upon roll call the following Council Members voted "Aye": Mr. Girdler, Mr. New, Mrs. Hunley, Mr. Minton, Mr. Mitchell, Mr. Adams, Mrs. Bullock, Mr. T. Eastham, Mr. Burdine, Mr. Dalton, Mr. Wheeldon, and Mr. J. Eastham.

<p style="text-align: right;">Res. 18-06</p> <p style="text-align: center;">MUNICIPAL ROAD AID COOPERATIVE PROGRAM AGREEMENT</p> <p>THIS AGREEMENT, entered into as of the date of the signature below of the Secretary of the Transportation Cabinet, is made by and between the Commonwealth of Kentucky, Transportation Cabinet, Department of Rural and Municipal Aid ("the Department"), and the Legislative Body of the Incorporated City of SOMERSET, Kentucky (the "City").</p> <p>WHEREAS, Kentucky Revised Statutes (KRS) § 177.365(1) provides that 7.7% of revenue resulting from the imposition of motor fuel taxes on taxpayers pursuant to KRS § 138.220(1)(2), KRS § 138.600(1)(2), and KRS § 234.320 shall be set aside by the Finance and Administration Cabinet for the construction, reconstruction, and maintenance of urban roads and streets, and for no other purpose ("Municipal Road Aid Funds"); and</p> <p>WHEREAS, the City has accepted an invitation from the Department to allow it to participate in a cooperative program to aid the City in the construction, reconstruction, and maintenance of certain roads and bridges using its share of the Municipal Road Aid Funds apportioned to it by the Department as provided below (the "Cooperative Program"); and</p> <p>NOW THEREFORE, in consideration of the terms and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Department and the City agree as follows:</p> <p>1. Apportionment of Municipal Road Aid Funds. The City's apportionment of Municipal Road Aid Funds shall be based on revenue estimates supplied by the Office of State Budget Director. For the Fiscal Year beginning July 1, 2018, this amount is \$223,850.41 (the "Apportionment"). The Apportionment shall be distributed by the Department to the City in accordance with the terms of this Agreement.</p> <p style="text-align: center;">Page 1 of 8</p>	<p>2. Assignment of the Apportionment. The City hereby assigns all of its right, title and interest in and to the Apportionment to the Transportation Cabinet's Division of Accounts for Fiscal Year 2019.</p> <p>3. Distribution of Municipal Road Aid Funds. The City and the Department agree that the Apportionment shall be distributed by the Department to the City as follows:</p> <p>a. First Distribution. The Department shall initially distribute to the City sixty percent (60%) of the Apportionment, less three percent (3%) of the Apportionment set aside for the emergency fund below. This initial amount is \$130,281.00.</p> <p>b. Second Distribution. The Department shall distribute up to and including an additional thirty percent (30%) of the Apportionment to the City, less three percent (3%) of the Apportionment set aside for the emergency fund below. The amount of the second distribution will depend on how actual revenues compare to revenue estimates.</p> <p>c. Final Distribution. The Department shall allocate and distribute the remaining balance of the Apportionment, less three percent (3%) set aside for the emergency fund below. The Final Distribution shall be based on actual revenues tabulated after the end of the fiscal year (June 30).</p> <p>4. Emergency Fund. The City agrees that three percent (3%) of the Apportionment shall be withheld by the Department in an emergency fund (the "Emergency Fund"). The Emergency Fund shall include three percent (3%) of the total apportionments of all participants in the Cooperative Program, plus any remaining balances from previous fiscal years. The Department, upon written application from a duly authorized representative of the City, may disburse these funds to the City for the purpose of it using said funds for emergency roadway and bridge projects designated by the City and lying within city limits. The Department may disburse</p> <p style="text-align: center;">Page 2 of 8</p>
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up to fifty percent (50%) of the approved funds to the City for the purpose of it using said funds for emergency roadway and bridge projects designated by the City. Following the completion of the project, after final cost documentation has been submitted and processed, the Department will then distribute the determined remaining amount. If the actual cost of an emergency project is less than the amount of Emergency Funds disbursed by the Department, then the City shall reimburse the difference to the Department.

5. Disbursement of Funds. Upon execution of this Agreement, the Department will disburse the foregoing allocated funds directly to the City to pay for materials, labor and equipment necessary for the City to accomplish construction, reconstruction, and maintenance on streets designated by the City and lying within city limits. This assistance is extended insofar as funds are available from the Apportionment. The City shall be responsible for all costs associated with the construction, reconstruction and maintenance of roadways and bridges in excess of the amount of the Apportionment allocated and disbursed by the Department to the City. The Department may assist the City in fulfilling its needs by disbursing funds to the City for materials and work performed by contract, for materials obtained by contract and for the rental or purchase of road maintenance and construction equipment. Any rental rates shall be based on current edition of the "Blue Book for Rental of Equipment" or the Department's official rental rates. The Department may also disburse funds to the City for the hourly rate for personnel who perform the work. This rate may include employee fringe benefits such as leave overlay, retirement, social security, insurance, etc.

6. Use of Municipal Road Aid Funds. The City agrees and certifies that the Apportionment will be expended by the City solely for the purpose of construction, reconstruction, and maintenance of city streets as defined in KRS § 177.365(4).

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7. Rights of Way. The City, if required under applicable law, will acquire any rights-of-way contemplated under this Agreement and assumes responsibility for any claims for damages arising from such acquisitions.

8. Indemnification. The City shall fully indemnify, hold harmless and defend the Department from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorney's fees and costs), whether or not involving a third party claim, which arise out of, relate to or result from (a) any breach of any representation or warranty of the City contained in this Agreement, (b) any breach of any covenant or other obligation or duty of the City under this Agreement or under applicable law, in each case whether or not caused by the negligence of the Department and whether or not the relevant claim has merit.

9. Reimbursement of Losses. The City will reimburse the Department for losses it may sustain arising out of performance of this Agreement. Such loss as sustained by the Department may be charged to the Apportionment in this or future fiscal years.

10. Termination of Agreement. The Department reserves the right to cancel this Agreement at any time deemed to be in the best interest of the Department by giving thirty (30) days written notice of such cancellation to the City. If this Agreement is canceled under this provision, then the City will receive any unpaid portion of the Apportionment from the Finance and Administration Cabinet.

11. Access to Records. The City acknowledges and agrees that pursuant to KRS § 177.369(3) it shall retain all records of the expenditures of the Apportionment for a period of five (5) years and said records, including any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement [records and other prequalification information

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confidentially disclosed as part of the bid process shall not be deemed as directly pertinent and shall be exempt from disclosure as provided in KRS 61.878(1)(c)), shall be subject to audit by the Finance and Administration Cabinet or its duly authorized agent and made accessible by the City to the Finance and Administration Cabinet or its duly authorized agent for said period of time in order to determine the proper expenditure of said money for the purposes required by KRS § 177.365(1). The City also recognizes that any books, documents, papers, records, or other evidence received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS § 61.870 to KRS § 61.884.

12. Authorization. The Legislative Body of the City shall pass a resolution adopting and approving the terms of this Agreement in the form of the resolution attached to this Agreement and made a part hereof. The Chief Executive Officer of the City, and the Commissioner of the Department, or their authorized representatives, insofar as their actions are in accord with the laws of the Commonwealth of Kentucky, shall act for their respective parties on all matters arising under this Agreement.

13. Choice of Law and Venue. All questions as to the execution, validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this Agreement shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the dates listed below.

INCORPORATED CITY OF SOMERSET

BY: 
Chief Executive Officer

Date: 05/14/2018

DEPARTMENT OF RURAL AND MUNICIPAL AID
OFFICE OF RURAL & SECONDARY ROADS

BY: _____
Commissioner

Date: _____

APPROVED AS TO FORM AND LEGALITY.

BY: _____
Office of Legal Services

Date: _____

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET

BY: _____
Secretary

Date: _____

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RESOLUTION

Incorporated City of SOMERSET

Resolution adopting and approving the execution of a Municipal Aid Co-op Program Contract between the Incorporated City and the Commonwealth of Kentucky, Transportation Cabinet, Department of Rural and Municipal Aid for the fiscal year beginning July 1, 2018, as provided in the Kentucky Revised Statutes and accepting all streets referred to therein as being streets which are a part of the Incorporated City.

Be it resolved by the Legislative Body of the Incorporated City that:

The Legislative Body of the Incorporated City does hereby accept all streets referred to in said Contract as being city streets which are a part of the Incorporated City; and

The Legislative Body of the Incorporated City does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in said Contract and does hereby accept said Contract and by such acceptance agrees to all the terms and conditions therein stated; and

The Chief Executive Officer of the said Incorporated City is hereby authorized and directed to sign said Contract as set forth on behalf of the Legislative Body of SOMERSET, and the City Clerk of SOMERSET is hereby authorized and directed to certify thereto.

The vote taken on said Resolution, the result being as follows:

<u>AYES</u>		<u>NAYE</u>
<u>Ms. Girdler</u>	<u>Ms. Burdine</u>	_____
<u>Mr. New</u>	<u>Mr. T. Eastham</u>	_____
<u>Mrs. Hunley</u>	<u>Mr. Burdine</u>	_____
<u>Mr. Minton</u>	<u>Mr. Dalton</u>	_____
<u>Mr. Mitchell</u>	<u>Mr. Adams</u>	_____
<u>Mr. Adams</u>	<u>Mr. J. Eastham</u>	_____

COMMONWEALTH OF KENTUCKY SS:
INCORPORATED CITY OF SOMERSET

I, Nice Debovy, City Clerk of SOMERSET certify that the foregoing is a true copy of the Order above. Given under my hand and seal of office this the 14th day of May, 2018.

SIGNED _____
CLERK OF SOMERSET

Mr. Wheeldon moved to approve the following Ordinance No. 18-09: Makena Development Parcel # 061-0-0-11.1 Zone Change from R1 to B2. Mr. T. Eastham seconded the motion. Upon roll call the following Council Members voted "Aye": Mr. Girdler, Mr. New, Mrs. Hunley, Mr. Minton, Mr. Mitchell, Mr. Adams, Mrs. Bullock, Mr. T. Eastham, Mr. Burdine, Mr. Dalton, Mr. Wheeldon, and Mr. J. Eastham.

ORDINANCE NO. 18-09

AN ORDINANCE AMENDING ORDINANCE NO. 00-18, KNOWN AS THE CITY'S ZONING ORDINANCE, AND ALTERING THE ZONING MAP TO REFLECT SAID AMENDMENT, BASED ON THE FINDINGS OF FACT MADE BY THE PLANNING AND ZONING BOARD, AND BASED ON SAID BOARD'S RECOMMENDATION OF A ZONE CHANGE.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF SOMERSET, KENTUCKY:

That Ordinance No. 00-18, known as the Zoning Ordinance, Somerset, Kentucky, is hereby amended by altering the Zoning Map in the following manner:

- I. By changing a boundary of land owned by Makena Development, LLC, which is presently zoned R1 to B2, having an address located off South Hwy 27, Somerset, KY, and being a part of property known as (TVA Parcel # 061-0-0-11.1, said property being more particularly described in Exhibit "A", attached hereto and incorporated herein in full by reference.
- II. The City Clerk of the City of Somerset, Kentucky is hereby authorized to alter the Zoning Map to reflect said change.
- III. This Ordinance shall be in full force and effect from and after adoption and publication according to law.

FIRST READING April 23, 2018

SECOND READING May 14, 2018

Approved: _____
Mayor

ATTEST:

City Clerk

Mr. Mitchell moved to approve the following Ordinance No. 18-10: Golden Leaf Parcel # 060-6-3-01 from I1 to B3. Mr. Dalton seconded the motion. Upon roll call the following Council Members voted "Aye": Mr. Girdler, Mr. New, Mrs. Hunley, Mr. Minton, Mr. Mitchell, Mr. Adams, Mrs. Bullock, Mr. T. Eastham, Mr. Burdine, Mr. Dalton, Mr. Wheeldon, and Mr. J. Eastham.

ORDINANCE NO. 18-10

AN ORDINANCE AMENDING ORDINANCE NO. 00-18, KNOWN AS THE CITY'S ZONING ORDINANCE, AND ALTERING THE ZONING MAP TO REFLECT SAID AMENDMENT, BASED ON THE FINDINGS OF FACT MADE BY THE PLANNING AND ZONING BOARD, AND BASED ON SAID BOARD'S RECOMMENDATION OF A ZONE CHANGE;

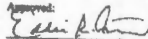
BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF SOMERSET, KENTUCKY:

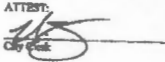
That Ordinance No. 00-18, known as the Zoning Ordinance, Somerset, Kentucky, is hereby amended by altering the Zoning Map in the following manner:

- I. By changing a boundary of land owned by Golden Leaf, LLC, which is presently zoned I1 to B3, having an address located off University Drive, Somerset, KY, and being a part of land known as PVA Parcel # 060-6-3-01, as shown on the attached plat and as stated in the legal description, both set forth as Exhibit "A", which is attached hereto and incorporated herein in full by reference.
- II. The City Clerk of the City of Somerset, Kentucky is hereby authorized to alter the Zoning Map to reflect said change.
- III. This Ordinance shall be in full force and effect from and after adoption and publication according to law.

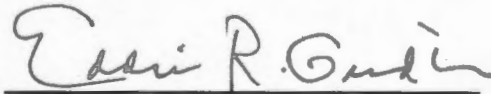
FIRST READING Apr 23 2018

SECOND READING May 14 2018

Approved: 
Mayor

ATTEST: 
CITY CLERK

There being no further business the meeting adjourned.

APPROVED: 
MAYOR

ATTEST: 
CITY CLERK