

PULASKI COUNTY FISCAL COURT
ORDINANCE NO. 140.1

AN ORDINANCE RELATING TO THE ADOPTION OF THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF SOMERSET, KENTUCKY AND PULASKI COUNTY, KENTUCKY, TO CREATE THE SOMERSET PULASKI ECONOMIC DEVELOPMENT AUTHORITY ("SPEDA") PURSUANT TO KRS 154.50-301 THROUGH 154.50-346.

* * *

WHEREAS, the Inter-local Cooperation Act, codified at Kentucky Revised Statutes ("KRS") 65.210 through 65.300, provides that any power or powers, privileges or authority exercised or capable of exercise by a public agency (including a city, a county or any other political subdivision of the Commonwealth) may be exercised jointly with another public agency under an inter-local cooperation agreement for joint or cooperative action pursuant to the provisions of the Act, and that such public agencies may acquire, construct, maintain, add to and improve the necessary property, real and personal, which is required in order to accomplish the public purposes set forth in such inter-local cooperation agreement; and

WHEREAS, the Act further authorizes the public agencies to create or utilize a "separate legal or administrative entity," which entity may, on behalf of the participating public agencies, have certain powers delegated to it as provided in the inter-local cooperation agreement; and

WHEREAS, pursuant to KRS 154.50-301 through 154.50-346, a governmental agency may create a commercial and industrial development authority, with corporate powers, to act as the agency, instrumentality and constituted authority of such governmental agency in the acquisition and development of industrial sites, parks, and subdivisions (as defined at KRS 154.50-313) for economic development purposes; and

WHEREAS, the City of Somerset, Kentucky (the "City") and Pulaski County, Kentucky (the "County") have agreed it is in their mutual interest to cooperatively pursue economic development opportunities within their jurisdiction; and

WHEREAS, the City and the County are desirous of entering into an inter-local cooperation agreement establishing a commercial and industrial development authority under KRS 154.50-301 through 154.50-346.

NOW, THEREFORE, BE IT ORDAINED BY THE PULASKI COUNTY FISCAL COURT:

1. The County hereby approves that certain Inter-local Cooperation Agreement between the City of Somerset, Kentucky and Pulaski County, Kentucky (the "Agreement"), a copy of which is attached hereto as Exhibit A, relating to the creation of the Somerset Pulaski Economic Development Authority ("SPEDA").
2. County Judge Executive Stephen B. Kelley is hereby authorized and directed to execute the Agreement on behalf of the County.
3. This ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

PULASKI COUNTY, KENTUCKY



STEPHEN B. KELLEY
COUNTY JUDGE-EXECUTIVE

1st Reading:

November 13, 2017

2nd Reading:

December 12, 2017

ATTEST:

Linda Burnett

LINDA BURNETT
COUNTY CLERK

EXHIBIT

"A"

INTERLOCAL COOPERATION AGREEMENT

THIS INTERLOCAL COOPERATION AGREEMENT (this "Agreement") is made and entered into as of this 23rd day of October, 2017, by and between the CITY OF SOMERSET, KENTUCKY (the "City") and PULASKI COUNTY, KENTUCKY (the "County," and collectively with the City, the "Parties" and each, individually, a "Party"), each of which is a political subdivision of the Commonwealth of Kentucky (the "Commonwealth").

WHEREAS, under the Interlocal Cooperation Act (the "Act"), Kentucky Revised Statutes ("KRS") Sections 65.210 to 65.300, inclusive, any power or powers, privileges or authority exercised or capable of exercise by a public agency (including a city, a county or any other political subdivision of the Commonwealth) may be exercised jointly with another public agency under an interlocal cooperation agreement for joint or cooperative action pursuant to the provisions of the Act, and such public agencies may acquire, construct, maintain, add to and improve the necessary property, real and personal, which is required in order to accomplish the public purposes set forth in such interlocal cooperation agreement; and

WHEREAS, the Act further authorizes the public agencies to create or utilize a "separate legal or administrative entity," which entity may, on behalf of the participating public agencies, have certain powers delegated to it as provided in the interlocal cooperation agreement; and

WHEREAS, pursuant to KRS 154.50-301 through 154.50-346, a governmental agency may create a commercial and industrial development authority, with corporate powers, to act as the agency, instrumentality and constituted authority of such governmental agency in the acquisition and development of industrial sites, parks, and subdivisions (as defined at KRS 154.50-313) for economic development purposes; and

WHEREAS, the Parties have agreed it is in their mutual interest to pursue cooperatively economic development opportunities within their jurisdiction in part through the operation of an industrial development authority; and

WHEREAS, the Parties have decided to jointly create a commercial and industrial development authority under KRS 154.50-301 through 154.50-346, which shall be called the Somerset Pulaski Economic Development Authority, Inc. ("SPEDA" or the "Authority"); and

WHEREAS, the Parties now wish to establish their respective rights and duties in connection with the operation of the Authority and the undertaking of joint economic development opportunities within Somerset and Pulaski County, Kentucky.

NOW THEREFORE, be it ordered hereto by the Parties as follows:

SECTION I: EFFECTIVE DATE AND DURATION

1.1 Effective Date. This Agreement shall be effective from and after (i) its execution by each Party, (ii) the approval of this Agreement by the Kentucky Department for Local Government, as required by KRS 65.260(2), and (iii) the filing of a certified copy of this Agreement with the County Clerk of Pulaski County and with the Kentucky Secretary of State, as required by KRS 65.290.

1.2 Duration. This Agreement shall be perpetual in duration and shall continue in full force and effect from and after its effective date unless sooner terminated by the Parties in accordance with the provisions hereof.

SECTION II: PURPOSE, FUNCTIONS, AND POWERS

2.1 Purpose. The City and the County hereby jointly associate for the purpose of promoting economic development within the boundaries of the City and County and creating job opportunities for the citizens of the City and County through, in addition to all other actions that are now and may hereafter be authorized under the laws of the Commonwealth, the creation of the Authority under the Act. Additionally, the City and County jointly associate to create the Authority for the accomplishment of the purposes set out in KRS 154.50-313.

2.2 Functions and Powers. The Authority, and its officers, employees, and agents, shall perform all functions and possess all powers and authorizations, as set out in KRS Chapter 154.50, including specifically KRS 154.50-316(2) & .50-323; 154.50-320; 154.50-336; 154.50-340; 154.50-343; and 154.50-346; and, the Authority shall be subject to the provisions of KRS 154.50-350 which require it to comply with the provisions of KRS 65A.010 – 65A.090.

SECTION III: CREATION OF AUTHORITY

3.1 Creation. The Authority is created for the purposes permitted by KRS 154.50-340, including, without limitation, the acquisition, development and retention of commerce, businesses, and industry in Pulaski County and/or the City of Somerset. The Authority is specifically and expressly created pursuant to the statutory grant found in KRS 154.50-301 through KRS 154.50-346, and it is the Parties' intent that the Authority have all the powers, duties and responsibilities flowing from those statutes. The Authority shall be a body politic, and corporate, with the usual corporate attributes, and in its corporate name may contract and be contracted with and do all things reasonable or necessary for effectively carrying out the duties prescribed in KRS 154.50-301 through KRS 154.50-346. The Authority's Bylaws shall more specifically set out its purposes and limitations.

3.2 Effective Date of Creation of Authority. The effective creation date of the Authority shall be the effective date of this Agreement.

3.3 Composition. The Authority shall be comprised of eight directors (the "Directors") as follows: the Mayor of the City of Somerset and the County Judge/Executive shall each be a director vested with full authority the same as any other director, including, but not limited to, voting; three directors whom shall be chosen by the Mayor and approved by Council Action pursuant to KRS Chapter 83, and three directors whom shall be chosen by the County Judge/Executive and approved by the Fiscal Court pursuant to KRS Chapter 83. (See KRS 154.50-326).

3.4 Compensation. The Directors shall serve without compensation but shall be reimbursed for any actual and necessary expenses incurred by them in the conduct of the affairs of the Authority.

3.5 Directors' Terms. All Directors shall serve for a term of four (4) years each, and until their successors are appointed and qualified. However, initial appointments shall be made so that the directors, other than the Mayor and the County Judge/Executive, shall serve as follows: two (2) Directors are appointed for two (2) years, two (2) Directors are appointed for three (3) years, and two (2) Directors for four (4) years. Upon expiration of these staggered terms, successors shall be appointed for a term of four (4) years. Each Director shall also be eligible for reappointment. The Mayor and County Judge/Executive shall serve as directors for the entirety of their term of office, and thereafter any subsequent terms to which they are elected.

- (i) Any Director, other than the Mayor and the County Judge/Executive, may be replaced by the appointing Party or Parties upon a showing to such Party or Parties of misconduct as a Director or upon conviction of a felony. The Mayor and/or County Judge/Executive shall not be removed/replaced as a Director unless the persons serving in either of the offices vacates or is removed from their official office by an authority permitted to do so and under operation of applicable law. Whomever properly fills any vacant elected office shall also assume the role as Director as referred to in Section 3.3.
- (ii) Any vacancy on the Authority, however occasioned, shall be filled by the same method of the original appointment, and by the same Party or Parties for the remainder of that term, and in accordance with sub-section 3.5 (ii) set forth above.
- (iii) No person shall serve as a director for more than two (2) consecutive terms. Persons having served said limit of two (2) consecutive terms may be eligible once again for appointment to the Authority only after a period of one (1) year has passed during which they have not served as a director on the Authority. The term limits set forth in this subsection (iii) shall not apply to the individual(s) serving in the capacity of Mayor and/or County Judge/Executive.
- (iv) Both the Mayor and the County Judge/Executive shall have the ability to appoint, expressly in writing, a proxy/agent to serve in their position as a director on their behalf, and shall further have the ability to provide any such proxy/agent the authority to cast a vote on their behalf. Any such proxy/agent shall only have authority specifically given to them in writing by the Mayor and/or County Judge/Executive, and said authority shall be revoked at any time by the elected official for which said persons serve as proxy/agent.

SECTION IV: OPERATIONS

4.1 Manner of Financing.

- (i) Contributions. The Authority shall use any property and/or assets contributed to it by the parties to this agreement as it deems appropriate in order to carry out the its powers and duties under applicable law.
- (ii) Appropriations. Each fiscal year, pursuant to the terms set forth in the City and County's separate Interlocal Occupational License Fee Agreement, the County shall appropriate and contribute a sum to the Authority as agreed to in said revenue sharing arrangement, and said contribution may be made in quarterly installments by the County to the Authority. Additionally, either Party may make such additional appropriations or contributions, in cash, of real or personal property, or of in-kind contribution of services to the Authority, in such amount and upon such terms as the contributing Party may determine, and any such additional appropriations or contributions shall be deemed the contribution of the contributing Party (hereafter such additional appropriations/contributions shall be referred to as "Unmatched Contribution"). All funds derived from appropriations made under this Section 4.1(ii) shall be used by the Authority for the purpose of carrying out the duties and powers thereof.
- (iii) Borrowing. The Authority may borrow money on its own credit in anticipation of revenue to be derived from contributions, appropriations or other income. The Authority may pledge the commercial and industrial sites, parks, and subdivisions as security for money borrowed hereunder.
- (iv) Bonds. The Authority is authorized to defray its costs of operations through (i) the issuance of revenue bonds issued under the terms, conditions, and procedures set forth in KRS 103.200 through 103.285, or (ii) the issuance of revenue bonds under the terms, conditions and procedures set forth in KRS Chapter 58 (under said law, the term "governmental agency" means the Authority and the term "public project" means commercial and industrial sites, parks and subdivisions) (collectively, the "Bonds"). Bonds may be secured by a mortgage or other security interest in or lien against the Authority's property and improvements.

4.2 Revenues. The Parties agree that (i) any revenue received by the Authority, including that derived from the sale or lease of land, shall remain with the Authority to be used exclusively for the purposes herein set out and (ii) no part of the revenues, appropriations, contributions or Bond proceeds or the investment income derived therefrom shall inure to the benefit of any representative of either Party or the Authority. All revenues collected by the Authority shall be exempt from Kentucky taxation pursuant to KRS 154.50-343 and from federal income taxation in accordance with the principles applied in Rev. Rul. 71-131, 1971-1 C.B. 28; Rev. Rul. 71-132, 1971-1 C.B. 29; and Rev. Rul. 87-2, 1987-1 C.B. 18.

4.3 Transferred Employees/Authority Employees. In regards to any employees that may be currently participating in the Pulaski County employees' retirement system at the time

this agreement is entered into, and who are thereafter hired by the Authority, shall remain participants in the Pulaski County employees' retirement system for so long as they are employed by the Authority. In regards to any employees that may be currently participating in the City of Somerset's employee retirement system and who are thereafter hired by the Authority shall remain participants in the City of Somerset's system for so long as they are employed by the Authority. Any persons hired by the Authority that are not already participating in the County or City Employment Retirement System, known as CERS, shall participate as a matter of condition of their employment. The Authority will ensure such employees are able to participate by registering as a Special Purpose Governmental Entity if required to do so by law, or if an election of such a declaration is necessary in order for such Authority Employees to be eligible for participation in the Kentucky Retirement System, specifically CERS.

4.4 Property. Title to all property acquired and held by the Authority shall be vested in the Authority and shall be exempt from taxation to the same extent as other property used for public purposes.

- (i) The acquisition of any lands for the purposes of developing commercial or industrial sites, parks, and subdivisions is hereby declared to be a public and governmental function exercised for a public purpose and as a matter of public necessity, and such land and other property, easements, and privileges acquired in the manner and for the purposes enumerated in KRS 12.810 through 152.930 shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

SECTION V: TERMINATION

5.1 Termination. Pursuant to KRS 65.250(1)(e), this Agreement may be terminated and dissolved by either Party upon one hundred and twenty (120) days' written notice, so long as (a) any obligations of either Party under this Agreement have been satisfied, and (b) any financial commitments previously made by either Party to the Authority, or by one Party to the other Party with respect to the funding of the Authority, have been satisfied or the Parties have reached an agreement to satisfy such commitments, unless such commitments are also terminated in accordance with the terms thereof.

5.2 Voluntary Withdrawal. Pursuant to KRS 154.50-330(1), if either Party desires to withdraw from participation in the Authority, no such withdrawing Party shall be entitled to the return of any money or property contributed to the Authority.

5.3 Disposition of Property. Upon termination of this Agreement, all of the then-remaining assets governed by this Agreement shall be distributed and/or transferred in the order of priority as follows:

- (i) First, to creditors, including the Parties, until all of the Authority's debts and liabilities are paid and discharged (or provision is made for payment thereof);

- (ii) Then, should any of the real property contributed to the Authority by either Party, either as an initial contribution set forth on Exhibit B or an Unmatched Contribution made after the effective date hereof, still be titled in the Authority:

[a] The contributing Party may elect to re-take title to such property; provided, however, that if such property has appreciated in value by more than five percent (5%) of its value at the time of contribution to the Authority, the Party re-taking title shall pay to the other Party one-half (1/2) the value of such appreciation according to a new appraisal made within one (1) month of the date of distribution; and

[b] If the contributing Party does not elect to re-take title to such property, the other Party may elect to take title to it but must pay the contributing Party the value of such property as of the date of its initial contribution to the Authority; provided, further, that if such property has appreciated in value by more than five percent (5%) of its value at the time of contribution to the Authority, the Party taking title shall also pay to the contributing Party one-half (1/2) the value of such appreciation according to a new appraisal made within one (1) month of the date of distribution; and

[c] If neither Party elects to take title to such property under this Section 5.3(ii), then the property shall be sold and the proceeds thereof shall be distributed in accordance with Section 5.3(iii);

- (iii) Next, and to the extent there are assets remaining in the Authority, each Party shall receive the value of its initial contributions as set forth on Exhibit B and its Unmatched Contributions made after the effective date hereof, not including the value of any real property deeded back to the contributing Party pursuant to Section 5.3(ii). To the extent that there are insufficient assets remaining in the Authority as of the date of distribution to pay to each Party the value of its initial contributions plus Unmatched Contributions, each Party shall be entitled to receive a proportional amount of the remaining assets determined by multiplying the following ratio times the value of the remaining assets:

Total value of one Party's initial contributed properties as of the date of contribution, plus its Unmatched Contributions, but excluding the value of any real property deeded to that Party pursuant to Section 5.3(ii)[a] or [b]

Divided By

Total value of all contributed properties as of the date of contribution, plus the total value of all Unmatched Contributions, but excluding the value of any real

properties deeded to either Party pursuant to Section 5.3(ii)[a] or [b]

- (iv) Finally, if there are excess assets remaining in the Authority after each Party receives the value of its initial contributions, and its Unmatched Contributions, all remaining assets of the Authority shall be distributed in equal shares to the Parties.

SECTION VI: MISCELLANEOUS

6.1 Discrimination Policy. No person engaged in activities or transactions contemplated in this Agreement shall discriminate against any person on the basis of race, color, religion, sex, ancestry, national origin, sexual orientation, gender identity, or physical or mental disability in connection with any such activities or transactions.

6.2 Limitation of Liability. None of the officials or members of the legislative bodies of the Parties, or any Directors, officers or employees of the Authority, shall be subject to or in any way personally liable for any debt, contract, obligation or expense created or incurred pursuant to this Agreement.

6.3 No Third Party Beneficiaries. Nothing expressed or implied herein is intended or shall be construed to confer upon any person other than the Parties and the Authority, any right, remedy or claim by reason of this Agreement or any term hereof, and all terms contained herein shall be for the sole and exclusive benefit of the Parties, the Authority and their successors and permitted assigns.

6.4 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth, notwithstanding its choice of law rules.

6.5 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) will be excluded from this Agreement and the balance of the Agreement will be interpreted as if such provision were so excluded and will be enforceable in accordance with its terms.

6.6 Entire Agreement; Parties Bound. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and all prior agreements or understandings will be deemed merged herein. This Agreement shall be binding on the Parties and their respective permitted successors and assigns.

6.7 Amendments. No amendments or modifications of this Agreement will be made or deemed to have been made unless in writing and executed by both Parties hereto.

6.8 Waiver. No provision of this Agreement will be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by the Parties hereto. No waiver by either Party hereto of any breach of, or of compliance with, any condition or provision of this Agreement by the other Party will be considered a waiver of any other condition or provision or of the same condition or provision at another time.

6.9 Headings; Construction. The headings contained in this Agreement are for convenience only and will not be deemed a part of this Agreement in construing or interpreting the provisions hereof. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

6.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same document.

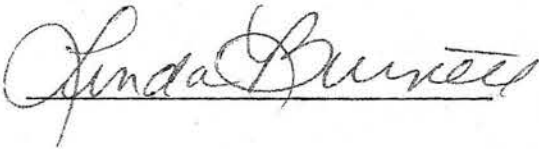
6.11 Recitals. The recitals are true and are a substantive part of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and acknowledged by officers or officials duly authorized by the respective governing bodies of the Parties hereto, as of the date first written above.

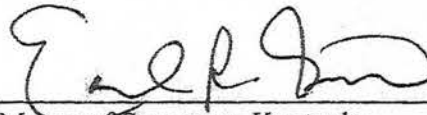


Pulaski County Judge/Executive

Attest:



Attest:



Mayor of Somerset, Kentucky



Approved:

Commissioner
Department of Local Government