

RESOLUTION

No. 2014-090

County of HARDIN

Unincorporated Urban Place of HARDIN COUNTY URBAN AREA

Resolution adopting and approving the execution of a Municipal Aid Co-op Program Contract between the Fiscal Court of said county acting for the Unincorporated Urban Place and the Commonwealth of Kentucky, Transportation Cabinet, Department of Rural and Municipal Aid for the fiscal year beginning July 1, 2014, as provided in the Kentucky Revised Statutes and accepting all of the roads referred to therein as being urban roads which are a part of the Unincorporated Urban Place.

Be it resolved by the Fiscal Court acting for the Unincorporated Urban Place that:

The Fiscal Court acting for the Unincorporated Urban Place does hereby accept all roads referred to in said Contract as being urban roads which are a part of the Unincorporated Urban Place; and

The Fiscal Court acting for the Unincorporated Urban Place 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.

The County Judge/Executive of the county is hereby authorized and directed to sign said Contract, as set forth, on behalf of the Fiscal Court of HARDIN County acting for the Unincorporated Urban Place of HARDIN COUNTY URBAN AREA and the County Clerk of HARDIN County is hereby authorized and directed to certify thereto.

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

<u>AYES</u>	<u>NAYS</u>
King	Wiseman
Judge Berry	Thompson
Easter	Morgan
Goodman	
Williams	
Clem	

COMMONWEALTH OF KENTUCKY) SS:
HARDIN COUNTY)

I, Kenneth L. Tabb, County Clerk of HARDIN County certify that the foregoing is a true copy of the Order above. Given under my hand and seal of office this the 10th day of June 2014.

SIGNED Kenneth L. Tabb, Clerk by S.S. Lutz DC
Kenneth L. Tabb

COUNTY CLERK OF HARDIN COUNTY

MUNICIPAL ROAD AID COOPERATIVE
PROGRAM AGREEMENT

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 Unincorporated Urban Place of HARDIN COUNTY URBAN AREA Kentucky, acting by and through the Fiscal Court of HARDIN County (“Unincorporated Urban Place”).

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 § 138.660(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

WHEREAS, the Unincorporated Urban Place has accepted an invitation from the Department to allow it to participate in a cooperative program to aid the Unincorporated Urban Place 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

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 Unincorporated Urban Place agree as follows:

1. Apportionment of Municipal Road Aid Funds. The Unincorporated Urban Place’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, 2014, this

amount is \$194,384.54 (the “Apportionment”). The Apportionment shall be distributed by the Department to the Unincorporated Urban Place in accordance with the terms of this Agreement.

2. Assignment of the Apportionment. The Unincorporated Urban Place 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 2015.

3. Distribution of Municipal Road Aid Funds. The Unincorporated Urban Place and the Department agree that the Apportionment shall be distributed by the Department to the Unincorporated Urban Place as follows:

a. First Distribution. The Department shall initially distribute to the Unincorporated Urban Place sixty percent (60%) of the Apportionment, less three percent (3%) of the Apportionment set aside for the emergency fund below. This initial amount is \$113,132.00.

b. Second Distribution. The Department shall distribute up to and including an additional thirty-five percent (35%) of the Apportionment to the Unincorporated Urban Place, 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.

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).

4. Emergency Fund. The Unincorporated Urban Place 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 Unincorporated Urban Place, may disburse these funds to the Unincorporated Urban Place for the purpose of it using said funds for emergency roadway and bridge projects designated by the Unincorporated Urban Place and lying within the limits of the Unincorporated Urban Place. If the actual cost of an emergency project is less than the amount of Emergency Funds disbursed by the Department, then the Unincorporated Urban Place 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 Unincorporated Urban Place to pay for materials, labor and equipment necessary for the Unincorporated Urban Place to accomplish construction, reconstruction, and maintenance on urban roads lying within the limits of the Unincorporated Urban Place. This assistance is extended insofar as funds are available from the Apportionment. The Unincorporated Urban Place 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 Unincorporated Urban Place. The Department may assist the Unincorporated Urban Place in fulfilling its needs by disbursing funds to the Unincorporated Urban Place 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 Unincorporated Urban Place 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 Unincorporated Urban Place agrees and certifies that the Apportionment will be expended by the Unincorporated Urban Place solely for the purpose of construction, reconstruction, and maintenance of urban roads as defined in KRS § 177.365(3).

7. Rights of Way. The Unincorporated Urban Place, 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 Unincorporated Urban Place 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 Unincorporated Urban Place contained in this Agreement, (b) any breach of any covenant or other obligation or duty of the Unincorporated Urban Place 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 Unincorporated Urban Place 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 Unincorporated Urban Place. If this Agreement is canceled under this provision, then the Unincorporated Urban Place will receive any unpaid portion of the Apportionment from the Finance and Administration Cabinet.

11. Access to Records. The Unincorporated Urban Place 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 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 Unincorporated Urban Place 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 Unincorporated Urban Place 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 Fiscal Court of the County 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 County Judge/Executive of the County, 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.

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

UNINCORPORATED URBAN PLACE OF HARDIN COUNTY URBAN AREA
HARDIN COUNTY FISCAL COURT

BY:  Date: June 10, 2014
County Judge/Executive Harry L. Berry

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

BY: _____ Date: _____
Commissioner

APPROVED AS TO FORM AND LEGALITY:

BY: _____ Date: _____
Office of Legal Services

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET

BY: _____ Date: _____
Secretary