

**VOLUNTARY SETTLEMENT OF
ANNEXATION, REVENUE SHARING, AND UTILITY ISSUES
BETWEEN THE TOWN OF HILLSVILLE AND CARROLL COUNTY**

This Agreement (the "Agreement") is made this 14th day of June, 2010, by and between the Town of Hillsville, Virginia (the "Town"), by and through the Town Council for the Town of Hillsville (the "Town Council"), and the County of Carroll, Virginia (the "County"), by and through the Carroll County Board of Supervisors (the "Board of Supervisors") (together, the "Parties"), pursuant to Title 15.2, Chapter 34 (§ 15.2-3400 et seq.) of the Code of Virginia (1950), as amended (the "Code").

RECITALS

1. The Town and the County agree that it is in their best interests to resolve pending litigation between the Parties and to avoid the uncertainty and expense of such proceedings.
2. The Town and the County wish to resolve all disputes between them regarding the provision of wholesale water and sewer services by the Town to the County and the provision of retail water and sewer services to County buildings and facilities located within the Town.
3. The Town and the County also agree that it is in their best interests to resolve other outstanding issues in a cooperative and mutually-beneficial fashion through this Agreement. Specifically, the Parties wish to make provision for (i) the incorporation of certain areas within Town, which will facilitate additional development that will be beneficial to the Parties and their citizens; (ii) the sharing by the Town and the County of

certain tax revenue generated from within such areas; and (iii) the waiver of certain annexation and city status rights.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

Section 1. DEFINITIONS

The Parties agree that the following words, terms and abbreviations as used in this Agreement shall have the following defined meanings:

- 1.1 “Commission” shall mean the Commission on Local Government.
- 1.2 “Special Court” shall mean the special three-judge court appointed by the Supreme Court of Virginia pursuant to Title 15.2, Chapter 30, § 15.2-3000 of the Code, or any successor provisions.
- 1.3 “Lodging tax” shall mean the transient occupancy tax levied by the Town or the County, as authorized by Virginia Code §§ 58.1-3819 through 58.1-3825, or any successor provisions.
- 1.3 “Meals tax” shall mean the food and beverage tax levied by the Town or the County, as authorized by Virginia Code § 58.1-3833 and § 58.1-3834, or any successor provisions.
- 1.4 “Admissions tax” shall mean any tax on admissions to events the Town may impose, as authorized by Virginia Code § 58.1-3840, or any successor provision.

1.5 “BPOL tax” shall mean the business, professional, and/or occupational license tax levied by the Town, as authorized by Virginia Code §§ 58.1-3700 *et seq.*, or any successor provisions.

1.6 “Section” refers to parts of this Agreement unless the context indicates that the reference is to parts of the Virginia Code.

Section 2. BOUNDARY ADJUSTMENTS

2.1 Boundary Adjustment Areas. The Town and the County agree that the boundary line of the Town shall be adjusted by incorporating certain territory (“Boundary Adjustment Area A”) lying to the west of the Town and containing approximately 604 acres. The Town and the County agree that the boundary line of the Town shall also be adjusted by incorporating certain territory (“Boundary Adjustment Area B”) lying to the south of the Town along Howlett Street and containing approximately 6.8 acres. Boundary Adjustment Area A and Boundary Adjustment Area B are depicted generally on the map attached as Exhibit 1 and are described by metes and bounds on the attached Exhibit 2.

2.2 Effective Date of Boundary Adjustments. Unless otherwise agreed to by the Town and the County, the incorporation of Boundary Adjustment Area A and Boundary Adjustment Area B into the Town, as provided in section 2.1 of this Agreement, shall be effective as of midnight on June 30 following the Special Court’s entry of its order affirming, validating, and giving full force and effect to this Agreement.

2.3 Survey of Boundary Adjustment Areas. The Town shall have a survey plat prepared depicting Boundary Adjustment Area A and Boundary Adjustment Area B, which, upon review and approval by the County, shall be submitted to the Special Court for

inclusion in the order affirming, validating, and giving full force and effect to this Agreement.

2.4 Extension of Municipal Services. Following the effective date of the boundary adjustments provided by section 2.1 of this Agreement, the Town shall, subject to the rights reserved to the Carroll County Public Service Authority (the "County PSA"), extend its then-existing governmental services (including, for example, police protection, solid waste collection, and zoning controls) to the Boundary Adjustment Areas on the same basis and at the same level as such services now are or hereafter may be provided to areas within the Town's current corporate limits where like conditions exist.

2.5 Tax Rates Applicable to Boundary Adjustment Areas. The Town shall impose the same tax rates within the Boundary Adjustment Areas as are applicable in the rest of the Town, unless otherwise agreed by the Parties and permitted by Virginia law.

2.6 Boundary Adjustment Initiated by County. If the County desires to incorporate into the Town, at a later date, any portion of property currently owned by the County and contiguous to the Boundary Adjustment Areas, the Town will join in that request by entering into a separate agreement, pursuant to Title 15.2, Chapter 31, Article 2, of the Code, or any successor provisions, to relocate such property into the Town's corporate limits. The Town shall cooperate with the County in undertaking all procedures required to secure court approval of such an additional boundary adjustment. The County shall pay all costs incurred or associated with such an agreement and with court approval of the boundary adjustment.

Section 3. WAIVER OF ANNEXATION AND CITY STATUS RIGHTS

3.1 Waiver of Annexation Rights. During the 40-year period following the entry of the order of the Special Court affirming, validating, and giving full force and effect to this Agreement, the Town shall not, either directly or indirectly, file any annexation notice with the Commission or institute any court action for annexation against the County, pursuant to Title 15.2, Chapter 32, Article 1, of the Code, or any successor provisions, seeking to annex any area of the County outside the Boundary Adjustment Areas. This waiver of annexation rights shall not bar the Town from annexing any other area of the County with the County's consent. In the event the Town annexes any other area with the County's consent during the 40-year period, the area incorporated into the Town shall be subject to the same revenue sharing obligations as are set forth in section 4 of this Agreement.

3.2 Waiver of City Status Rights. During the 40-year period following the entry of the order of the Special Court affirming, validating, and giving full force and effect to this Agreement, the Town shall not file any city status notice against the County with the Commission or institute any court action for transition to city status against the County, pursuant to Title 15.2, Chapter 38 of the Code.

Section 4. REVENUE SHARING.

4.1 Sharing of Meals and Lodging Taxes in Boundary Adjustment Area A. Following the effective date of incorporation of Boundary Adjustment Area A into the Town, as set forth in section 2 of this Agreement, the Town shall pay the County a share of the meals and lodging tax revenues collected by the Town from all businesses subject to such Town taxes within Boundary Adjustment Area A. Specifically, the Town shall pay to the

County, at or before the end of each quarter of the Town's fiscal year, one-half of all meals and lodging tax revenues collected by the Town during the preceding 90 days within Boundary Adjustment Area A.

4.2 Admissions Tax. If the Town imposes an admissions tax at any time following the effective date of the incorporation of Boundary Adjustment Area A, the Town will also pay the County one-half of the revenues collected from such admissions taxes on the same basis as described above for meals and lodging tax revenues. However, this Agreement does not require the Town to impose an admissions tax.

4.3 Other Taxes Not Included in Revenue Sharing. The Town will retain all revenue collected from other Town taxes imposed within Boundary Adjustment Area A, including but not limited to all Town BPOL taxes.

4.4 Duration of Revenue Sharing Obligation. The Town's obligation to share tax revenue, as set forth in this Agreement, shall continue for an initial term of 25 years from the effective date of the incorporation of Boundary Adjustment Area A into the Town. Unless the Parties agree to modify section 4 or to terminate this Agreement, the Town's obligation to share such tax revenue shall automatically renew for successive 25-year periods thereafter. Not more than one year, and not less than nine months, prior to the end of each 25-year period, the Parties shall begin good faith negotiations regarding any modifications either or both may desire to make to the revenue sharing provisions of this Agreement.

4.5 Revenue Sharing in 1995 Agreement. The Town and the County are also parties to a Voluntary Settlement Agreement (the "1995 Agreement") made and entered into on September 28, 1995, and affirmed and validated by a final order of a Special Court entered on November 30, 1995, pursuant to former Chapter 26.1:1 of Title 15.1 of the Code

of Virginia. A copy of the text of the 1995 Agreement and the metes and bounds description of an area defined as the "Interstate Area" is attached hereto as Exhibit 3. Pursuant to the 1995 Agreement, the County is obligated to share with the Town meals and lodging tax revenues collected by the County within the Interstate Area, which overlaps with, but is not entirely contained within, Boundary Adjustment Area A. To the extent the Interstate Area under the 1995 Agreement remains outside Boundary Adjustment Area A and is not incorporated into the Town, the provisions of the 1995 Agreement shall continue in effect, and the County shall continue to make payments to the Town of meals and lodging tax revenues collected from those portions of the Interstate Area not contained within Boundary Adjustment Area A, in accordance with the 1995 Agreement. The County's revenue sharing obligations under the 1995 Agreement will continue in effect as to the entire Interstate Area until the effective date of the incorporation of Boundary Adjustment Area A into the Town. Further, to the extent the County has not made payments to the Town for its share of meals and lodging tax revenues collected by businesses in the Interstate Area prior to the effective date of the incorporation of Boundary Adjustment Area A, the County shall be obligated to make such payments after the effective date of the incorporation of Boundary Adjustment Area A.

Section 5. WATER AND SEWER SERVICES

5.1 Effect of Agreement on 1986 Contract. The Town and the County are parties to a Contract for Water and Sewer Service (the "1986 Contract"), made and entered into on April 23, 1986, which is the subject of Carroll County Circuit Court case nos. CL03-074 and CL03-113, and of the County's counterclaims in CL03-075. A copy of the 1986 Contract is

attached hereto as Exhibit 4. Upon entry of the order of the Special Court affirming, validating, and giving full force and effect to this Agreement, all monetary claims and counterclaims by the Parties related to the 1986 Contract or services rendered pursuant to it (regardless of whether such claims sound in contract, tort, or other legal theory or basis) are forgiven, released, and discharged, and the Parties' legal counsel shall cooperate to secure the dismissal with prejudice of case nos. CL03-074 and CL03-113.

5.2 Limited Continuation of 1986 Contract. The Parties recognize that the County no longer desires to transmit wastewater to the Town for treatment pursuant to the 1986 Contract because the County has commenced transmission of wastewater to the City of Galax for treatment. The Parties further recognize that the County intends to cease wholesale purchases of water from the Town, pursuant to the 1986 Contract, in the near future because the County or its Public Service Authority intends to purchase water from a regional water authority. Accordingly, upon entry of the order of the Special Court affirming, validating, and giving full force and effect to this Agreement, the 1986 Contract automatically will terminate and will have no further legal effect. However, during an interim period prior to the commencement of water purchases from the regional water authority, the County shall have the right to continue water purchases from the Town in accordance with the terms of the 1986 Contract, except that the purchase price for such water shall be \$4.70 per thousand gallons. If the Town increases its in-town water rates for all customers in its commercial class, it may increase the rate for water sold to the County by a proportionate amount. For example, if the Town increases its in-town commercial rates by ten percent, it may increase its rate for purchases by the County by ten percent.

5.3 Effect of Agreement on 1953 Contract. The Town and the County were, or are, parties to a May 4, 1953 Agreement that provides for sewer services to County public buildings located within the Town and that is the subject of Carroll County Circuit Court case no. CL03-075. Upon entry of the order of the Special Court affirming, validating, and giving full force and effect to this Agreement, the 1953 Contract automatically will terminate and will have no further legal effect, without any requirement for a payment of \$90,000 by the Town to the County. Further, upon entry of the order of the Special Court affirming, validating, and giving full force and effect to this Agreement, the monetary claims asserted by the Town pursuant to the 1953 Contract are forgiven, released, and discharged, and the Parties' legal counsel shall cooperate to secure the dismissal with prejudice of case no. CL03-075.

5.4 Effect on 2004 Interim Agreement. The Town and the County are parties to a March 25, 2004 interim agreement (the "2004 Interim Agreement") regarding negotiations as to a proposed joint public service authority and regarding certain water and sewer service and the rates for such service. A copy of the 2004 Interim Agreement is attached as Exhibit 5. Upon entry of the order of the Special Court affirming, validating, and giving full force and effect to this Agreement, the 2004 Interim Agreement automatically will terminate and will have no further legal effect, and all monetary claims that the Town or the County may have related to the 2004 Interim Agreement or services rendered pursuant to it (regardless of whether such claims sound in contract, tort, or other legal theory or basis) are forgiven, released, and discharged.

5.5 Future Water and Sewer Service to County Public Buildings in Town. The Town will provide water and sewer service to the County public buildings (whether

governmental, school, or otherwise) located within the boundaries of the Town on the same basis and at the same rates as applied by the Town to its in-town commercial customers. The water and sewer services provided to the County pursuant to this section shall be subject to future Town-wide commercial rate adjustments.

5.6 Water and Sewer Service within Boundary Adjustment Area A. The County PSA shall have an exclusive right to provide water and sewer services within Boundary Adjustment Area A and to own and maintain all lines and other equipment necessary to provide such services. However, if the County PSA should decline to provide such services to any part of Boundary Adjustment Area A, the Town may elect to do so. Further, the Town may own and operate such water and sewer lines and facilities within Boundary Adjustment Area A as may be used to provide water and sewer services to its customers located outside Boundary Adjustment Area A. The Parties will engage in good faith negotiations to resolve any disputes that may arise related to this section.

5.7 Sewer Service East of Town. The Town and the County PSA are parties to an agreement, made and entered into as of June 13, 1989, regarding sewer services to certain areas on the east side of Town (the "1989 Sewer Agreement"), a copy of which is attached as Exhibit 6. Upon entry of the order of the Special Court affirming, validating, and giving full force and effect to this Agreement, the 1989 Sewer Agreement will not terminate, and the provision of sewer services will continue pursuant to that 1989 Sewer Agreement.

5.8 Wholesale Water Service South of Town. The Town will engage in good faith negotiations with the County PSA regarding the provision of wholesale water service in areas south of the Town not within Boundary Adjustment Area A. This Agreement is not

contingent on the Town and the County PSA reaching agreement as to any such water service arrangements.

Section 6. COMMISSION AND COURT APPROVAL

6.1 Commission Review. The Town and the County promptly shall initiate the steps required by Title 15.2, Chapter 34 of the Virginia Code to obtain review of this Agreement by the Commission. The Parties shall cooperate in providing all information and documents required by the rules of the Commission.

6.2 Court Approval. Following issuance of the report of findings and recommendations by the Commission, the Town and the County jointly shall initiate a proceeding to obtain court affirmation and approval of this Agreement, as required by Title 15.2, Chapter 34, of the Virginia Code.

6.3 Termination for Court Failure to Approve. If the Special Court fails to approve and give full force and effect to this Agreement without modification, it shall terminate immediately, unless the Parties waive termination by mutually agreeing to the modifications requested by the Special Court in a written document, duly executed by the Parties' authorized representatives.

Section 7. MISCELLANEOUS PROVISIONS

7.1 Continuation of 1995 Agreement. Except as to the provisions for revenue sharing of certain tax revenues collected within Boundary Adjustment Area A, this Agreement shall not repeal or terminate the provisions of the 1995 Voluntary Settlement Agreement between the Town and County referenced in section 4.5 of this Agreement.

7.2 Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of the Parties, and each of their future governing bodies, and any successor(s) thereto upon its approval by the Special Court.

7.3 Entire Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. This Agreement constitutes the entire understanding between the Parties. Except as to the provisions of section 2 (Boundary Adjustments) and section 3 (Waiver of Annexation and City Status Rights), this Agreement may be amended, modified or supplemented, either in whole or in part, by a written document executed by duly authorized representatives of the Parties, without further court approval. The Parties have each received their own independent legal advice regarding this Agreement and enter into it on a voluntary and fully informed basis, without reliance on any provisions of law, representations, or statements not memorialized in this Agreement.

7.4 Court Enforcement. The terms and conditions of this Agreement shall be enforceable by the Special Court affirming and giving full force and effect to its provisions, or any successor court appointed pursuant to Title 15.2, Chapter 30 of the Code.

7.5 Attorneys' Fees. The Parties agree that the Town and the County shall each be responsible for paying their own attorneys' fees and other costs associated with the preparation of this Agreement and the submission of the Agreement to the Commission and the Special Court.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the following duly authorized representatives.

TOWN OF HILLSVILLE,
VIRGINIA

By: William Tate
Mayor

Attest: Nickie R. Joyce
Clerk

Date: 6-14-10

COUNTY OF CARROLL,
VIRGINIA

By: Walter Hunt
Chair, Board of Supervisors

Attest: Benny Lewis
Clerk

Date: 6-14-2010