

**VOLUNTARY SETTLEMENT AGREEMENT  
BETWEEN THE CITY OF BRISTOL, VIRGINIA AND WASHINGTON COUNTY, VIRGINIA,  
PURSUANT TO VIRGINIA CODE SECTION 15.2-3400  
(November 2014)**

**THIS VOLUNTARY SETTLEMENT AGREEMENT CONCERNING A DEVELOPMENT OF REGIONAL IMPACT AND REVENUE SHARING (November 2014)** (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, and executed in triplicate originals (each executed copy constituting an original) by and between the **CITY OF BRISTOL, VIRGINIA** (“City”), a municipal corporation of the Commonwealth of Virginia, and the **COUNTY OF WASHINGTON, VIRGINIA** (“County”), a political subdivision of the Commonwealth of Virginia.

**RECITALS**

Whereas, the City and the County mutually desire to enhance retail development opportunities in their respective jurisdictions in response to the State of Tennessee’s Border Region Retail Tourism Development District Act;

Whereas, in furtherance of that desire, the City pursued legislation, now codified within Virginia Code section 58.1-608.3, to provide to the City certain state sales tax revenue remittances in connection with a “development of regional impact” as defined by such Code section;

Whereas, the economic impact on the County of the Tennessee Border Region Retail Tourism Development District Act will be similar to the economic impact on the City;

Whereas, the City has commenced a shopping center development known as The Falls (“Falls Development”) that constitutes a “development of regional impact” pursuant to Virginia Code section 58.1-608.3, in connection with which the City will receive certain state sales tax revenue remittances as provided in such Code section;

Whereas, a controversy currently exists between the City and the County as to (i) the validity of Virginia Code section 58.1-608.3, (ii) the eligibility of the Falls Development to qualify as a “development of regional impact,” and (iii) the timing of state sales tax revenue remittances to be made pursuant to such Code section;

Whereas, the City and the County have determined that it will be in the best interests of their respective jurisdictions and in accord with Virginia Code section 15.2-3400 to enter into this Agreement that provides, among other terms, for (i) revenue and economic growth sharing, (ii) land use arrangements, and (iii) a waiver of certain legal rights, a provision that the parties deem in their best interest pursuant to Virginia Code section 15.2-3400(2); and

Whereas, this Agreement will enhance the opportunities for economic growth for both the City and the County and will ensure the continued viability of the City and the County.

## **SECTION 1. DEFINITIONS**

“BVUA” means the Bristol Virginia Utilities Authority.

“City” means the City of Bristol, Virginia.

*“Code”* means the Code of Virginia (1950, as amended). A reference to a specific Code provision shall mean that Code provision as it existed on the Effective Date, or any successor provision should the Code be amended thereafter.

*“Commission”* means the Commission on Local Government.

*“Comptroller”* means the Comptroller of the Commonwealth of Virginia.

*“County”* means the County of Washington, Virginia.

*“County Retailer”* means the County retail business located in the vicinity of Interstate-81, Exit 7, that has generated annually for the County, over the most recent three years, local retail sales tax revenue of approximately Three Hundred Fifty Thousand Dollars (\$350,000.00) and that is currently eligible for economic incentives offered by the City if such retailer relocates to The Falls Shopping Center in the Falls Development.

*“Development”* means a development of regional impact as such is defined in Virginia Code section 58.1-608.3(B).

*“Effective Date”* means the date on which the Special Court enters its order affirming, approving, and validating this Agreement.

*“Local Retail Sales Tax Revenue”* means the tax revenue received by the City or the County from the local option sales and use tax authorized by Virginia Code sections 58.1-605 and 58.1-

606 to provide revenue for the general fund of the City or the County, each of which is one percent (1%) but shall apply as may be amended from time to time.

*“Local Revenue”* means (i) tax revenue received by a locality from local taxes levied on real estate and all personal property, and (ii) the Local Retail Sales Tax Revenue generated from transactions occurring on designated property.

*“Public Facility”* shall have the same meaning for such term as defined by Code section 58.1-608.3.

*“Retail business”* shall mean every person engaged in the business of making sales at retail, or for distribution, use, consumption, or storage to be used or consumed in the Commonwealth, as such term is further defined in Virginia Code section 58.1-602.

*“Retailer Revenue Sharing Amount”* shall mean Three Hundred and Fifty Thousand Dollars (\$350,000.00) annually.

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

*“Special Court”* means the Special Three-Judge Court appointed by the Supreme Court of Virginia pursuant to Title 15.2, Chapter 30 of the Code.

*“Subsection”* refers to the parts of the Agreement set out in the various “Sections” unless the context indicates that the reference is to subsections of the Code.

*“Trammell Property”* means the real property owned as of the Effective Date by the Trammell Estate near the intersection of Clear Creek Road and Route 11, consisting of a total of Eighty Three and One-Half (83.5) acres, more or less, in eight (8) tracts of land identified with County tax numbers 141-A-58, 141B-2-13, 141B-2-15, 141B-2-27, 141-B-2-33, 141B-2-37, 141B-2-41, and 141B-A-10. A map depicting the eight tracts of land constituting the Trammell Property is attached as Exhibit 1, which is hereby incorporated to be a part of this Agreement as if it were fully set out herein.

*“Trammell Revenue”* means a sum equal to the Local Revenue generated by operation of retail business(es) as may be located on the Trammell Property after the Effective Date of this Agreement.

## **SECTION 2. COVENANTS**

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual promises, covenants, and conditions herein contained, the parties do hereby covenant and agree as follows:

### **Subsection 2.1. Mutual Release and Litigation Waiver**

2.1.1 In consideration of the covenants, agreements, and payment provided for herein, the County releases and discharges the City and its officers, employees, and agents from any and all claims, counterclaims, demands, damages, losses, liability, rights or causes of action of whatsoever kind and nature (collectively, “claims”), whether legal or equitable, relating to the Falls Development. The County further waives its right to file suit,

including but not limited to any lawsuit against the Comptroller of the Commonwealth of Virginia, based on any and all claims relating to the Falls Development. Such claims shall include but not be limited to any litigation to challenge (i) the validity or constitutionality of Virginia Code section 58.1-608.3, (ii) the eligibility of the Falls Development to be deemed a “development of regional impact” and a “public facility” under Virginia Code section 58.1-608.3, (iii) the authority of the Comptroller of the Commonwealth of Virginia to remit sales and use tax revenue to the City pursuant to Virginia Code section 58.1-608.3 and the timing of such remittances made by the Comptroller, and (iv) the authorization, execution, issuance, sale and delivery, or validity of any bonds issued by the City or the City’s Industrial Development Authority in connection with the Falls Development. However, the County shall not release and discharge the City or its officers, employees, or agents, or waive its right to file suit as to any claims for personal injury or property damage arising out of the construction or operation of the Falls Development.

2.1.2 Similarly, the City releases and discharges the County and its officers, employees, and agents from any and all claims, counterclaims, demands, damages, losses, liability, rights or causes of action of whatsoever kind and nature (collectively, “claims”), whether legal or equitable, relating to the Falls Development and any expansion of such development of regional impact into the County as provided in a separate agreement between the parties dated October 8, 2013, and attached as Exhibit 2. The City further waives its right to file suit, including but not limited to any lawsuit against the Comptroller of the

Commonwealth of Virginia, based on any and all claims relating to the Falls Development and any expansion of such “development of regional impact” into the County as provided in a separate Settlement Agreement between the Parties. See Exhibit 2. Such claims shall include but not be limited to any litigation to challenge (i) the validity or constitutionality of Virginia Code section 58.1-608.3, (ii) the eligibility of the Falls Development and any expansion of such “development of regional impact” into the County as provided in a separate Settlement Agreement between the Parties (see, Exhibit 2) to be deemed a “development of regional impact” and a “public facility” under Virginia Code section 58.1-608.3, (iii) the authority of the Comptroller of the Commonwealth of Virginia to remit sales and use tax revenue to the County pursuant to Virginia Code section 58.1-608.3 and the timing of such remittances made by the Comptroller, and (iv) the authorization, execution, issuance, sale and delivery, or validity of any bonds issued by the County or the County’s Industrial Development Authority in connection with any expansion of the “development of regional impact” into the County. However, the City shall not release and discharge the County or its officers, employees, or agents, or waive its right to file suit as to any claims for personal injury or property damage arising out of the construction or operation of any development as may occur in the areas included within any expansion of the City’s “development of regional impact” as provided in a separate Settlement Agreement between the Parties. See, Exhibit 2.

2.1.3 Each party covenants to cooperate, assist, and participate in the defense of any litigation brought by third parties as to the Falls Development and/or its expansion into the County against either party, the Industrial Development Authority of the City or County, the Commonwealth of Virginia or any agency thereof, which litigation challenges (i) the validity or constitutionality of Virginia Code section 58.1-608.3, (ii) the eligibility of the Falls Development and any expansion thereof to be deemed a “development of regional impact” and a “public facility” under Virginia Code section 58.1-608.3, (iii) the authority of the Comptroller of the Commonwealth of Virginia to remit sales and use tax revenue to the County pursuant to Virginia Code section 58.1-608.3 and the timing of such remittances made by the Comptroller, and (iv) the authorization, execution, issuance, sale and delivery, or validity of any bonds issued by the City or the County or the Industrial Development Authority of the City or the County in connection with the Falls Development or any expansion of the “development of regional impact” into the County. The County shall be relieved of this obligation if efforts by the City and the County to amend Virginia Code section 58.1-608.3 to expand the development of regional impact definition to include land area in the County, pursuant to a separate Settlement Agreement between the Parties (See Exhibit 2), are unsuccessful, but in no event shall the County support any litigation that may be to the detriment of the City.

2.1.4 Each party may, at its sole discretion, participate in the defense of any litigation brought by any third party concerning the Falls Development or the expansion of such



“development of regional impact” into the County on grounds other than those stated in subsections 2.1.1, 2.1.2, and 2.1.3, but in no event shall either party support any litigation that may be to the detriment of the other party.

### **Subsection 2.2. Revenue Sharing**

2.2.1 County Retailer Relocation. The City shall compensate the County for its loss of certain tax revenues generated by the County Retailer if such County Retailer relocates to The Falls and ceases its operations in the County, as follows:

- a. For a period of seven years, the City shall annually pay to the County the sum of Three Hundred and Fifty Thousand Dollars (\$350,000.00) (“Retailer Revenue Sharing Amount”). That sum shall be payable at such times and with such adjustments as provided in this subsection.
- b. The County shall provide written notice to the City of the date that County Retailer closed its business in Washington County. The City shall make fourteen semi-annual payments to the County of the Retailer Revenue Sharing Amount. The first payment shall occur on a date to be set by the City within nine months after County Retailer closed its business in the County. Payments thereafter shall be paid semi-annually on June 10 and December 10. Each semi-annual payment shall be in the amount of \$175,000.00, with any such adjustments as are provided herein.

- c. Each payment by the City of such Retailer Revenue Sharing Amount shall be reduced by the amount of Local Retail Sales Tax Revenue that is generated by the operation of any retail businesses that may locate on the property on which the County Retailer was located prior to its relocation to the Falls Development. The amount of the reduction applied to the first payment of Retailer Revenue Sharing Amount shall equal the total amount of Local Retail Sales Tax Revenue received by the County from the Department of Taxation attributable to such retail businesses during the period from the commencement of their operations on such property through the date of the first payment. The amount of the reduction for each subsequent payment shall equal the total amount of such Local Retail Sales Tax Revenue received by the County from the Department of Taxation following the date of the first payment and during subsequent semi-annual payment periods, which shall correspond with the semi-annual payment periods established for payment of the Retailer Revenue Sharing Amount as provided in paragraph 2.2.1.b. In the event the amount of the Local Retail Sales Tax Revenue generated by any such retail businesses during a payment period should exceed the applicable amount of the Retailer Revenue Sharing Amount, the City shall have no obligation to make any payment during that period, and any such excess Local Retail Sales Tax Revenue shall be applied to reduce the payment of the Retailer Revenue Sharing Amount during the subsequent payment period.

- d. The City shall receive a credit toward its obligation to compensate the County for its loss of the County Retailer based on the City's payment, if any, to the County of Three Hundred Fifty Thousand Dollars (\$350,000.00), pursuant to a separate Settlement Agreement between the City and the County. The credit of \$350,000.00 paid by the City shall be applied to the first payment of Retailer Revenue Sharing Amount and to succeeding payments to the extent such credit is not fully used.

2.2.2 Trammell Property. The City and the County shall share Local Revenue generated by operation of any retail business(es) that may locate on the Trammell Property ("Trammell Revenue") following the Effective Date of this Agreement, as follows:

- a. For a period of seven years after each such retail business begins operations on the Trammell Property, the County shall pay to the City twenty-five percent (25%) of the Trammell Revenue, and seventy-five percent (75%) of the Trammell Revenue shall remain with the County.
- b. In the event any such retail business locates in part on the Trammell Property and in part on other property located within the county, the City and the County shall share Local Revenue as provided herein. The City and the County shall share only that proportion of Local Revenue generated by the business equal to the square footage of the portion of the building(s) located on the Trammell Property divided by the total square footage of such building(s). In computing

the square footage, only enclosed structures with a roof shall be counted, including the square footage of the space on each floor of any multi-story building. Such amount of local Revenue shall then be multiplied by 25% for the City's share and by 75% for the County's share. The Treasurer of the County shall determine the total amount of Local Revenue generated by any such retail business.

An example of this calculation is as follows: if 20,000 square feet of a building lie within the boundaries of the Trammell Property, and 30,000 square feet of the building lie outside the boundaries of the Trammell Property but within Washington County, then the City and the County would share 40% (20,000/50,000) of the Local Revenue generated by such business, and the other 60% would be retained entirely by the County. In that case, if the retail business generated \$100,000 of Local Revenue, 40% or \$40,000 would be shared, and the County would retain the balance of \$60,000. Of the 40% or \$40,000 to be shared from such retail business, the County would pay the City an amount equal to 25% thereof, or \$10,000, and the County would retain 75% thereof, or \$30,000.

- c. In the event any such retail business locates in part on the Trammell Property and in part on other property located *within the City*, the City and the County shall share that portion of Local Revenue consisting of Local Retail Sales Tax Revenue as provided herein. The City and the County shall share only that

proportion of Local Retail Sales Tax Revenue generated by the business equal to the square footage of the portion of the building(s) located on the Trammell Property divided by the total square footage of such building(s). In computing the square footage, only enclosed structures with a roof shall be counted, including the square footage of the space on each floor of any multi-story building. Such amount of Local Retail Sales Tax Revenue shall then be multiplied by 25% for the City's share and by 75% for the County's share. The Treasurers of the City and the County shall determine the total amount of Local Retail Sales Tax Revenue generated by any such retail business. For local taxes levied on real estate and personal property of any such retail business, only real and personal property taxes imposed by the County, in accordance with subsection f, on that portion of the business located on the Trammell Property shall be shared between the City (25%) and the County (75%). The City would retain all real and personal property taxes imposed by the City on that portion of such business located within the City.

An example of this calculation is as follows: If 20,000 square feet of a building lie within the boundaries of the Trammell Property, and 30,000 square feet of the building lie outside the boundaries of the Trammell Property but within the City of Bristol, then the City and the County would share 40% ( $20,000/50,000$ ) of the Local Retail Sales Tax Revenue generated by such business, and the City would

be entitled to receive all of the remaining 60%. In that case, if the retail business generated \$100,000 of Local Retail Sales Tax Revenue, 40% or \$40,000 would be shared, and the City would be entitled to the balance of \$60,000. Of the 40% or \$40,000 to be shared from such retail business, the City would be entitled to 25% thereof, or \$10,000, and the County would be entitled to 75% thereof, or \$30,000. Payments of the Local Retail Sales Tax Revenue from such a retail business shall be made by the City to the County or the County to the City as may be necessary to reflect the sharing of Local Retail Sales Tax Revenue as provided herein. In addition, if the County collected \$40,000 in local taxes on the improvements and personal property on that portion of the business located on the Trammell Property, the City would be entitled to 25% or \$10,000 thereof, and the County would be entitled to 75% or \$30,000 thereof. The City would retain all real and personal property taxes that it collected from that portion of such business located within the City.

- d. The County shall provide written notice to the City of the date that each retail business begins operations on the Trammell Property. The County shall make fourteen semi-annual payments as to each such retail business on January 10 and July 10, with the first such payment to occur no more than nine months after each such retailer began business on the Trammell Property. Notwithstanding the foregoing, the final payment as described in this subsection

shall occur seven years after the last business to locate on the Trammell Property or on the date of termination of this Agreement, whichever occurs first.

- e. The amount of the Trammell Revenue to be paid to the City shall equal the City's twenty-five percent (25%) share of the Trammell Revenue received by the County from the commencement of operations of each such retail business until the date of the first payment. Thereafter, payments shall consist of the City's share of such Trammell Revenue received by the County following the date of the first payment and within the applicable six-month payment period.
- f. The Local Revenue to be shared pursuant to Section 2.2.2 shall not include any Local Revenue currently generated by the Trammell Property, including real or personal property or any Local Retail Sales Tax Revenue generated by transactions occurring on the Trammell Property. The Local Revenue derived from real property to be shared pursuant to this Section 2.2.2 shall be limited to taxes imposed on the assessed value of improvements made on the Trammell Property following the Effective Date of this Agreement and shall not include taxes imposed on any increases in the assessed value of land constituting part of the Trammell Property.

2.2.3. City-County Retailer Relocation. In addition to revenue sharing as stated above in reference to County Retailer Revenue and Trammell Revenue, for a period of fifteen (15)

years after the Effective Date, revenue sharing as described in this subsection shall occur.

- a. In the event any retail business having annual retail sales of Two Million Dollars (\$2,000,000.00) or more relocates from either jurisdiction to the other the City and the County shall share an amount equal to the Local Revenue generated by such relocated retail business on an equal basis (50/50 revenue split). This additional revenue sharing shall not apply to the County Retailer.
- b. For purposes of this Subsection, the Local Revenue shall consist of all Local Revenue received by the City or the County from such relocated retail businesses during the period from the commencement of operations of any such retail businesses until fifteen (15) years after the Effective Date of this Agreement.
- c. The County or City shall provide written notice of the date that each retail business relocates from one locality to the other. Revenue sharing payments thereafter shall be made by the City on June 10 and December 10 and by the County on January 10 and July 10, with the first such payment from each locality to occur no more than nine months after each such retailer began business.
- d. The Local Revenue to be shared pursuant to Section 2.2.3 and derived from real property shall be limited to taxes imposed on the assessed value of improvements made by the retail business on the property to which the retail business has located and shall not include taxes imposed on improvements



existing prior to the relocation of the retail business or the assessed value of land where the retail business has located.

- 2.2.4 Accounting. On request of either party, the County and the City shall provide to the requesting party an accounting of payments made hereunder subject to confidentiality restrictions of Virginia Code section 58.1-3.

**Subsection 2.3. Cooperation in Development of the Trammell Property**

- 2.3.1 The City shall issue all permits, approvals and/or determinations necessary for construction of the developer's preferred access to the Trammell Property. City shall cooperate with the developer of such property and/or the County in an effort to resolve any objections or concerns of any state or federal agency involving access to the Trammell Property. Nothing herein shall relieve the Developer or the Parties from complying with standard access management requirements specified in City Code, State Code, or regulations of the Virginia Department of Transportation, as applicable.
- 2.3.1 The City agrees, if sought by the County, to request that the BVUA provide sewer service to development on the Trammell Property, provided that such development occurs within fifteen (15) years of the Effective Date.

**Subsection 2.4 Waiver of Annexation Rights**

- 2.4.1 The City agrees that, for a period of one year following the approval of this Agreement by a Special Court, the City hereby waives all rights to seek the annexation of the Trammell Property pursuant to Virginia Code section 15.2-3200, *et seq.*

### **Subsection 2.5. Special Court Approval**

- 2.5.1 The City and the County agree that they will take all steps necessary and will submit this Agreement to a Special Court for affirmation and validation and to give it full force and effect, as required by Title 15.2, Chapter 34 of the Code.
- 2.5.2 The City and the County agree that if this Agreement is not affirmed, validated and given full force and effect by the Special Court without modification, this Agreement shall terminate immediately. However, the parties may waive termination by written agreement duly certified on behalf of each party hereto either to accept modifications recommended by the Special Court or to accept such other terms mutually agreeable to the parties and approved by the Special Court.

### **SECTION 3. MISCELLANEOUS PROVISIONS**

- 3.1.1 Termination. This Agreement shall be subject to the termination provisions stated in Subsection 2.5 regarding Special Court approval. Otherwise, this Agreement and all obligations and benefits hereunder shall terminate fifteen (15) years after the Effective Date, with the exceptions that (i) the obligation to make payments owed from one locality to the other as of such termination date shall survive until paid in full and (ii) the mutual releases and litigation waivers by the County and the City as set forth in Subsection 2.1 shall survive until all bonds, which have issued by the City, the County, or the Industrial Development Authority of the City or the County in connection with the

Falls Development or any expansion of the “development of regional impact” into the County, have been repaid in full or until October 8, 2053, whichever first occurs.

3.1.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit to the City and the County, and each of the future governing bodies of the City and the County, and upon any successor to either the City or the County.

3.1.3 Amendments. This Agreement may be amended, modified, or supplemented in whole or in part, by mutual agreement of the City and the County, prior to affirmation by the Special Court, by a written document of equal formality and dignity, duly executed by the authorized representatives of the City and the County.

3.1.4 Enforceability. This Agreement shall be enforceable only by the Special Court affirming, validating, and giving full force and effect to this Agreement or by a successor Special Court appointed pursuant to Title 15.2, Chapter 30 of the Code, pursuant to a declaratory judgment action initiated by either of the parties hereto to secure the performance of any provisions, covenants, conditions and terms contained in the Agreement or the Order affirming, validating, and giving full force and effect to this Agreement, or to such Agreement as modified by agreement of the parties as set forth in subsection 2.5.2 herein.

3.1.5 Standing. The City and the County agree that each shall and does have standing to enforce any of the provisions, covenants, conditions and terms of this Agreement, notwithstanding either party’s waiver of its right to litigation as herein defined.

3.1.6 Sovereign Immunity. Nothing herein is intended to or shall be deemed to constitute a waiver of either Party's right of sovereign immunity.

**WITNESS** the following signatures and seals:

**CITY OF BRISTOL, VIRGINIA**

By \_\_\_\_\_

Catherine D. Brillhart  
Its Mayor

As approved by action of the Council of the City of Bristol, Virginia, at its regular meeting on the \_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST:

\_\_\_\_\_

Clerk

Approved as to form:

\_\_\_\_\_  
Pete Curcio, Attorney for the City

**COUNTY OF WASHINGTON, VIRGINIA**

By \_\_\_\_\_

Phillip B. McCall,  
Its Chairperson of the Board of Supervisors

As approved by action of the Board of Supervisors of the County of Washington, Virginia, at its regular meeting on the \_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST:

\_\_\_\_\_

Clerk

Approved as to form:

\_\_\_\_\_  
Lucy E. Phillips, County Attorney




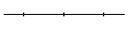





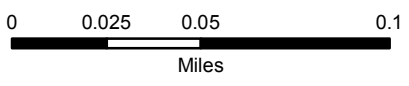
**"Trammel Property "**  
**for Voluntary**  
**Settlement Agreement**  
**(approximately**  
**83.5 acres)**

**Exhibit 1 to Voluntary**  
**Settlement Agreement --**  
**City of Bristol and**  
**County of Washington**



**Legend**

-  Exits
-  Bristol / Washington County Limits
-  Buildings
-  Rail
-  Roads
-  Trammel Parcels
-  Parcels



August 28, 2014

Prepared by the Washington County Department of  
 Geographic Information Systems.

# Exhibit 2 to Voluntary Settlement Agreement

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is made and entered into this 8th day of October, 2013, by and between the CITY OF BRISTOL, VIRGINIA (“City”), a municipal corporation of the Commonwealth of Virginia, and the COUNTY OF WASHINGTON, VIRGINIA (“County”), a political subdivision of the Commonwealth of Virginia (collectively, “Parties”).

### RECITALS

Whereas, the City and the County mutually desire to enhance retail development opportunities in their respective jurisdictions in response to the State of Tennessee’s Border Region Retail Tourism Development District Act;

Whereas, in furtherance of that desire, the City requested legislation, now codified within Virginia Code section 58.1-608.3, to provide to the City certain state sales tax revenue remittances in connection with a “development of regional impact” as defined by such Code section;

Whereas, the economic impact on the County of the Tennessee Border Region Retail Tourism Development District Act will be similar to the economic impact on the City;

Whereas, the City has commenced a shopping center development known as The Falls (“Falls Development”) that constitutes a “development of regional impact” pursuant to Virginia Code section 58.1-608.3, in connection with which the City will receive certain state sales tax revenue remittances as provided in such Code section;

# Exhibit 2 to Voluntary Settlement Agreement

Whereas, a controversy currently exists between the City and the County as to (i) the validity of Virginia Code section 58.1-608.3, (ii) the eligibility of the Falls Development to qualify as a “development of regional impact,” and (iii) the timing of state sales tax revenue remittances to be made pursuant to such Code section; and

Whereas, by entering into this Agreement, the City and the County seek to avoid litigation and the expenses thereof, to make a full and final settlement of such disputes, and to enhance the opportunities for economic growth for both the City and the County;

Now therefore, in consideration of the foregoing recitals and the mutual promises, covenants, and conditions herein contained, the Parties do hereby covenant and agree as follows:

## **SECTION 1. PROPOSED LEGISLATION**

1.1 The City and the County shall cooperate in the drafting of proposed legislation for consideration at the 2014 session of the Virginia General Assembly that shall include provisions substantially as follows:

- a. To amend Virginia Code section 58.1-608.3(B) to state clearly that the State Comptroller shall commence remittances of qualifying portions of sales tax revenues generated by transactions occurring within each building contained in a “development of regional impact,” as defined in such Code subsection, upon the completion of construction of each such building.

## Exhibit 2 to Voluntary Settlement Agreement

- b. To amend Virginia Code section 58.1-608.3(B) to provide for an expansion of the boundaries of the “development of regional impact” within the City to include designated parcels in Washington County and an adjoining parcel in the City that are consistent with the areas shown on the attached Exhibit A.
  - c. To amend Virginia Code section 58.1-608.3(B) to address potential issues regarding the validity of such Code section, if determined by the Parties to be feasible and reasonably necessary.
  - d. To amend Virginia Code section 58.1-608.3 to address the eligibility of the Falls Development to qualify as a “development of regional impact” and a “public facility,” if determined by the parties to be feasible and reasonably necessary.
  - e. To amend Virginia Code section 58.1-608.3 to provide for a severability clause as to subsection (B) thereof, if determined by the Parties to be feasible and reasonably necessary, in the event any other provision of such Code section is held to be invalid, void, or illegal by any court of competent jurisdiction.
- 1.2 The City and the County acknowledge that the most effective way to achieve their goals as stated in Section 1.1 is through the introduction of a single bill. Toward that end, the City and the County agree to draft jointly a single bill and submit such bill to their General Assembly legislators for their advice and consent and with a request that they introduce and sponsor such bill in the House of Delegates and Senate. Additionally,



# Exhibit 2 to Voluntary Settlement Agreement

each party shall employ the services of a lobbyist of their choosing and at their sole expense to work in a cooperative effort for the drafting and passage of the proposed bill.

- 1.3 Each party shall act reasonably in the drafting of said legislation and in considering amendments to the language as may be suggested by the legislators, lobbyists or the Division of Legislative Services in order to achieve the stated goals of Section 1.1.
- 1.4 The City and the County must reach agreement no later than November 15, 2013, on the proposed form of the legislative bill as described herein to be submitted to their State legislators, with the intention that the bill will be filed in the House of Delegates and/or Senate before the pre-filing deadline of December 6, 2013. In the event the Parties are unable to agree on the form of a bill to be submitted to their legislators by November 15, 2013, then this Agreement shall terminate immediately upon written notice from the dissatisfied party being received by the other party, unless the parties agree thereafter in writing to an extension of such date. In the event both Parties do not agree on the form of the bill subsequently filed by their legislators in the House of Delegates and/or Senate, then this Agreement shall terminate immediately upon written notice from the dissatisfied party being received by the other party, unless the Parties agree thereafter in writing to an amendment to this Agreement to avoid termination.

# Exhibit 2 to Voluntary Settlement Agreement

- 1.5 The City and the County will give full support to efforts to persuade the General Assembly to adopt the jointly proposed bill as introduced by their State legislators, and neither the City nor the County shall offer any proposed bills or other legislation that would in any manner defeat the terms stated in the joint legislation and/or this Agreement.
- 1.6 The General Assembly's adoption, modification, or rejection of the bill submitted on behalf of the City and the County shall not affect the enforceability of any other terms and provisions of this Agreement, which shall continue in full force and effect after completion of all 2014 General Assembly sessions.

## **SECTION 2. SETTLEMENT PAYMENT**

- 2.1 The City shall pay the County the sum of Three Hundred Fifty Thousand dollars (\$350,000.00) by check delivered to the County on or before the close of business on July 1, 2015. This amount shall compensate the County for its anticipated loss of tax revenues as a result of the proposed relocation to the Falls Development of a County retail business ("County Retailer") located in the vicinity of Interstate 81, Exit 7, that has generated annually for the County, over the most recent three years, local retail sales tax revenue of approximately Three Hundred Fifty Thousand dollars (\$350,000.00) and that is currently eligible for economic incentives offered by the City if it relocates to the Falls Development.

# Exhibit 2 to Voluntary Settlement Agreement

- 2.2 In the event the County Retailer announces prior to July 1, 2015 that it does not intend to relocate its business to the Falls Development, the City's obligation to pay the County such compensation specified in Section 2.1 shall be null and void.
- 2.3 In the event the County Retailer announces after July 1, 2015 that it does not intend to relocate its business to the Falls Development, the County shall refund to the City the entire sum of Three Hundred Fifty Thousand dollars (\$350,000.00). The County shall pay such sum by check delivered to the City within 30 days following such announcement by the County Retailer. Furthermore, in the event the County Retailer has not commenced its operations at the Falls Development by July 1, 2016, and has not ceased its operations in the County by such date, the County shall refund to the City the entire sum of Three Hundred Fifty Thousand dollars (\$350,000.00). The County shall pay such sum by check delivered to the City on or before the close of business on August 1, 2016.
- 2.4 The City's obligation to make the payment to the County as provided in Section 2.1 shall be conditioned on the re-approval of this Agreement by the County Board of Supervisors at its initial meeting in January, 2014, at which time certain newly-elected supervisors will begin their terms of office.

## **SECTION 3. MUTUAL RELEASE AND LITIGATION WAIVER**

- 3.1 In consideration of the covenants, agreements, and payment provided for herein, the County releases and discharges the City and its officers, employees, and agents from any and all claims, counterclaims, demands, damages, losses, liability, rights or causes of

# Exhibit 2 to Voluntary Settlement Agreement

action of whatsoever kind and nature (collectively, “claims”), whether legal or equitable, relating to the Falls Development. The County further waives its right to file suit, including but not limited to any lawsuit against the Comptroller of the Commonwealth of Virginia, based on any and all claims relating to the Falls Development. Such claims shall include but not be limited to any litigation to challenge (i) the validity or constitutionality of Virginia Code section 58.1-608.3, (ii) the eligibility of the Falls Development to be deemed a “development of regional impact” and a “public facility” under Virginia Code section 58.1-608.3, (iii) the authority of the Comptroller of the Commonwealth of Virginia to remit sales and use tax revenue to the City pursuant to Virginia Code section 58.1-608.3 and the timing of such remittances made by the Comptroller, and (iv) the authorization, execution, issuance, sale and delivery, or validity of any bonds issued by the City or the City’s Industrial Development Authority in connection with the Falls Development. However, the County shall not release and discharge the City or its officers, employees, or agents, or waive its right to file suit, as to any claims for personal injury or property damage arising out of the construction or operation of the Falls Development.

- 3.2 Similarly, the City releases and discharges the County and its officers, employees, and agents from any and all claims, counterclaims, demands, damages, losses, liability, rights or causes of action of whatsoever kind and nature (collectively, “claims”), whether legal or equitable, relating to the Falls Development and any expansion of such “development

## Exhibit 2 to Voluntary Settlement Agreement

of regional impact” into the County as provided in Section 1.1(b) of this Agreement. The City further waives its right to file suit, including but not limited to any lawsuit against the Comptroller of the Commonwealth of Virginia, based on any and all claims relating to the Falls Development and any expansion of such “development of regional impact” as provided in Section 1.1(b) of this Agreement. Such claims shall include but not be limited to any litigation to challenge (i) the validity or constitutionality of Virginia Code section 58.1-608.3, (ii) the eligibility of the Falls Development and any expansion of such “development of regional impact” into the County as provided in Section 1.1(b) of this Agreement to be deemed a “development of regional impact” and a “public facility” under Virginia Code section 58.1-608.3, (iii) the authority of the Comptroller of the Commonwealth of Virginia to remit sales and use tax revenue to the County pursuant to Virginia Code section 58.1-608.3 and the timing of such remittances made by the Comptroller, and (iv) the authorization, execution, issuance, sale and delivery, or validity of any bonds issued by the County or the County’s Industrial Development Authority in connection with any expansion of the “development of regional impact” into the County. However, the City shall not release and discharge the County, or its officers, employees, or agents, or waive its right to file suit as to any claims for personal injury or property damage arising out of the construction or operation of any development as may occur in the areas included within any expansion of the “development of regional impact” into the County as provided in Section 1.1(b) of this Agreement.

## Exhibit 2 to Voluntary Settlement Agreement

3.3 Each party covenants to cooperate, assist and participate in the defense of any litigation brought by Third Parties as to the Falls Development and/or its expansion into the County against either party, the Industrial Development Authority of either jurisdiction, the Commonwealth of Virginia or any agency thereof, which litigation challenges (i) the validity or constitutionality of Virginia Code section 58.1-608.3, (ii) the eligibility of the Falls Development and any expansion thereof to be deemed a “development of regional impact” and a “public facility” under Virginia Code section 58.1-608.3, (iii) the authority of the Comptroller of the Commonwealth of Virginia to remit sales and use tax revenue to the City or the County pursuant to Virginia Code section 58.1-608.3 and the timing of such remittances made by the Comptroller, and (iv) the authorization, execution, issuance, sale and delivery, or validity of any bonds issued by the City or the County or by the Industrial Development Authority of the City or the County in connection with the Falls Development or any expansion of the “development of regional impact” into the County. The County shall be relieved of this obligation if efforts by the City and the County to amend Virginia Code section 58.1-608.3 to expand the development of regional impact definition to include land area in the County, pursuant to section 1.1 of this Agreement, are unsuccessful, but in no event shall the County support any litigation that may be to the detriment of the City.

3.4 Each party may, at its sole discretion, participate in the defense of any litigation brought by any Third Party to the Falls Development or the expansion of such “development of

# Exhibit 2 to Voluntary Settlement Agreement

regional impact” into the County on grounds other than those stated above, but in no

event shall either party support any litigation that may be to the detriment of the other party.

## SECTION 4. MISCELLANEOUS PROVISIONS

- 4.1 Costs. The Parties shall each bear their own costs, attorneys’ fees, and other fees incurred in connection with this Agreement.
- 4.2 Successors. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors, and each of the future governing bodies of the City and the County, to the extent the Parties can bind such successors and future governing bodies.
- 4.3 Termination. This Agreement shall terminate upon the later of: (1). the entry of an order of a special, three-judge court that affirms, approves, and validates a separate agreement that is entered into by the Parties pursuant to Virginia Code section 15.2-3400 and that provides, among other terms, for (i) the release and discharge of certain claims and the waiver of rights to file certain court actions as to the Falls Development and any expansion thereof and (ii) for the sharing of certain local tax revenue; or (2.) the adjournment of the 2014 General Assembly sessions, including any reconvened session, if a special, three-judge court has entered such an order affirming the separate agreement and the adjournment occurs after the entry of such order.

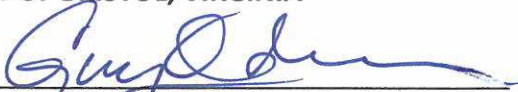
# Exhibit 2 to Voluntary Settlement Agreement

4.4 Sovereign Immunity. Nothing herein is intended to or shall be deemed to constitute a

waiver of either Party's right of sovereign immunity.

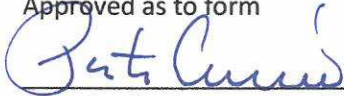
**WITNESS** the following signatures and seals:

## CITY OF BRISTOL, VIRGINIA

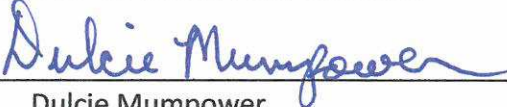
By   
Guy Odum  
Its Mayor

As approved by action of the Council of the City of Bristol, Virginia, at its regular meeting on the 8<sup>th</sup> day of October, 2013.

ATTEST:   
Clerk

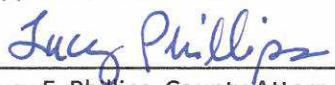
Approved as to form  
  
Pete Curcio, Attorney for City of Bristol

## COUNTY OF WASHINGTON, VIRGINIA

By   
Dulcie Mumpower,  
Its Chairperson of the Board of Supervisors

As approved by action of the Board of Supervisors of the County of Washington, Virginia, at its regular meeting on the 8<sup>th</sup> day of October, 2013.

ATTEST:   
Clerk

Approved as to form  
  
Lucy E. Phillips, County Attorney



# Exhibit 2 to Voluntary Settlement Agreement

EXHIBIT A

Extension of *The Falls* - a Development of Regional Impact

