

**Report on the  
City of Bedford - County of Bedford  
Voluntary Settlement Agreement**



**Commission on Local Government  
Commonwealth of Virginia**

**April 1993**

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**REPORT OF THE  
COMMISSION ON LOCAL GOVERNMENT**

**CITY OF BEDFORD - COUNTY OF BEDFORD  
VOLUNTARY SETTLEMENT AGREEMENT**

**PROCEEDINGS OF THE COMMISSION**

On January 25, 1993 the City of Bedford and Bedford County formally submitted to the Commission on Local Government for review a proposed voluntary settlement agreement which had been negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia. Consistent with the Commission's Rules of Procedures, the notice was accompanied by data and materials supporting the proposed agreement.<sup>1</sup> Further, in accordance with statutory requirements, the City and the County concurrently gave notice of the proposed agreement to 14 other localities with which they were contiguous or with which they shared functions, revenues, or tax sources.<sup>2</sup> The proposed agreement contains provisions which would (1) grant the City an annexation of 26.7 acres of territory in the County, (2) commit the City to compensate Bedford County in the amount of \$104,480 for its loss of net tax revenue and for the assumption of a portion of the County's debt, (3) require the municipality's renunciation of its authority to initiate succeeding annexation actions for a four-year period, and (4) obligate the City to make available water service to certain parcels in the County.<sup>3</sup>

As part of its general review of the proposed agreement, the Commission received oral presentations from the City and County on March 1, 1993. In addition to those presentations, the Commission

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<sup>1</sup>City of Bedford and County of Bedford, Notice by the City of Bedford and by the County of Bedford of Their Intent to Petition for Approval of a Voluntary Settlement of Annexation and Utility Issues (hereinafter cited as Notice).

<sup>2</sup>Sec. 15.1-945.7(A), Code of Va.

<sup>3</sup>The proposed agreement also commits the City to one commercial sewerage connection in the County. See Appendix A for the full text of the proposed Voluntary Settlement of Annexation and Utility Issues Between the City of Bedford and the County of Bedford (hereinafter cited as Voluntary Settlement).

received and reviewed other materials submitted by the City and Bedford County and solicited comment from other potentially affected political subdivisions in the area.<sup>4</sup> Each jurisdiction receiving notice of the proposed settlement from the parties was invited by the Commission to submit testimony on the agreement for consideration. Further, the Commission held a public hearing, which had been advertised in accordance with Section 15.1-945.7(B) of the Code of Virginia, in the City of Bedford on the evening of March 1, 1993.<sup>5</sup> In order to facilitate its receipt of public comment, the Commission kept open its record for written submissions through April 1, 1993.

#### SCOPE OF REVIEW

The Commission on Local Government is directed by law to review proposed annexations, other local boundary change and transition issues, and negotiated agreements settling such matters prior to their being presented to the courts for ultimate disposition. Upon receipt of notice of such proposed action or agreement, the Commission is directed "to hold hearings, make investigations, analyze local needs" and to submit a report containing findings of fact and recommendations regarding the issue to the affected local governments and to any court which may subsequently be convened to review the matter.<sup>6</sup> With respect to a proposed agreement negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia, the Commission is required to determine in its review "whether the proposed settlement is in the best interest of the Commonwealth." In our judgment, the State's fundamental interest in proposed interlocal agreements negotiated under the authority of

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<sup>4</sup>Counsel for the City of Bedford and Bedford County requested the Commission to incorporate by reference for consideration in the current proceedings all data and exhibits previously filed with the Commission during its review of the original property-owner initiated annexation actions.

<sup>5</sup>No person testified before the Commission at the public hearing.

<sup>6</sup>Sec. 15.1-945.7(A), Code of Va.

Section 15.1-1167.1 of the Code of Virginia is the preservation and promotion of the general viability of the affected localities.

As noted previously, in this instance the Commission is required to review an interlocal agreement whose principal provisions (1) grant the City an annexation of 26.7 acres of territory, (2) commit the City to compensate the County for the fiscal impact of the annexation, (3) require the City's waiver of its authority to initiate any subsequent annexation action for a four-year period, and (4) obligate the City to make available municipal water service to certain properties in the County. A proper analysis of the proposed City of Bedford - Bedford County settlement agreement, as mandated by statute, requires consideration of the ramification of these provisions with respect to the future viability of the two jurisdictions.

#### ANNEXATION

The annexation proposed in the current agreement embraces an area identical to that previously reviewed by the Commission in 1991 pursuant to two property-owner petitions initiated by Carriage Hill of Virginia, Ltd. and Otterburn Homes, Inc. In the Commission's September 1991 report on those annexation initiatives, this body recommended that the two tracts owned by those entities in Bedford County (collectively comprising 26.7 acres) be annexed to the City of Bedford.<sup>7</sup> The

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<sup>7</sup>Commission on Local Government, Report on the Carriage Hill of Virginia, Ltd. and Otterburn Homes, Inc. Annexation Actions (hereinafter cited as Carriage Hill/Otterburn Homes Annexation Report), Sep. 1991. In January 1990 Carriage Hill of Virginia, Ltd. (hereinafter cited as Carriage Hill) filed notice pursuant to Section 15.1-1043, Code of Virginia for annexation to the City of Bedford of 22.74 acres of territory which it owned in Bedford County. In response to Carriage Hill's notice, Bedford County filed a motion seeking to enjoin the Commission's review of the proposed annexation, and in June 1990 a special three-judge court temporarily enjoined the Commission's proceedings. After a hearing on the merits of the County's complaint, the temporary injunction was vacated by the court in late November 1990, and the Commission was directed to proceed with its hearings on the Carriage Hill annexation request. Bedford County, however, appealed the

annexation of those two parcels constitutes one of the principal provisions of the proposed settlement agreement.

Data cited in the Commission's previous report, and reaffirmed by the parties, revealed that the Carriage Hill property embraces 22.8 acres of territory which contained, as of 1990, 105 persons and \$1.4 million in real property values subject to local taxation.<sup>8</sup> In terms of its current development, that tract contains two buildings, both residential facilities for elderly residents, which occupy 1.19 acres. The Otterburn property is an unpopulated parcel which encompasses approximately 4.0 acres of vacant land having a 1990 assessed value of \$40,000.<sup>9</sup> The owners of that property propose development of a 40-unit apartment complex for low-income elderly residents. Neither of the two properties contains any County-owned facilities. The City has calculated that the two parcels will collectively yield approximately

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court's decision to the Virginia Supreme Court. In February 1991, prior to the commencement of the Commission's review of the Carriage Hill petition, the Commission received notice from Otterburn Homes, Inc. (hereinafter cited as Otterburn Homes) advising of the intention of that firm to seek the annexation of 4.2 acres of territory which it owned in Bedford County to the City of Bedford. The Commission held a consolidated review of the two property-owner initiated annexation actions in May 1991, but the County did not participate directly in those proceedings for the purpose of preserving its legal objections to the previous decision of the special three-judge court. In February 1992, subsequent to the issuance of the Commission's report which recommended approval of the Carriage Hill and Otterburn Homes annexation requests, the Supreme Court of Virginia granted the County's appeal of the special three-judge court's decision concerning the Carriage Hill petition. The Supreme Court remanded the case to the trial court to determine if actions by the City induced Carriage Hill to file for annexation in circumvention of the statutory prohibition on city-initiated annexation actions which was in force at that time.

<sup>8</sup>Carriage Hill/Otterburn Homes Annexation Report, p. 9; and Notice, Exh. 1. The Carriage Hill property is located adjacent to the southwestern boundary of the City of Bedford.

<sup>9</sup>Carriage Hill/Otterburn Homes Annexation Report, p. 10; and Notice, Exh. 2. The Otterburn Homes tract is situated adjacent to the City's westernmost boundary, with a portion of that parcel (approximately 0.20 acres) lying within the current boundaries of the City.

\$25,000 in additional local revenue for the municipality during the first year following annexation.<sup>10</sup>

With respect to the annexation of those two above-mentioned properties, the Commission found in its earlier report that the City of Bedford had a need for additional land for future development and for augmentation of its tax base. While the annexation of the Carriage Hill and Otterburn properties will increase the City's land area only slightly and provide only modest revenue gains to that municipality, the impact of the proposed annexation on the City, however small, will be positive.

In terms of the impact of the proposed annexation on Bedford County, as noted in the Commission's prior report the annexation of the Carriage Hill and Otterburn Homes properties to the City would result in the County's loss of only 0.006% of its land area, 0.23% of its 1990 population, and 0.11% of its total 1990 assessed real property values.<sup>11</sup> Current estimates of the revenue impact of the proposed annexation on Bedford County indicate an annual loss to the County of approximately \$18,600.<sup>12</sup> Thus, the two tracts proposed for annexation

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<sup>10</sup>The City of Bedford estimates that during the first year following annexation it will receive approximately \$24,800 in real estate, personal property, and business license tax revenues from the Carriage Hill property and \$284 in real estate taxes from the vacant Otterburn Homes tract. The City has projected that its local revenue collections will be increased by approximately \$13,000 annually in subsequent years upon completion of the proposed 40-unit Otterburn housing project. The City's analysis was based on County tax records. (Brenda A. Daniel, Commissioner of the Revenue, City of Bedford, memoranda to Jack A. Gross, City Manager, City of Bedford, Feb. 23, 1993; and Carriage Hill/Otterburn Homes Annexation Report, p. 12.)

<sup>11</sup>Carriage Hill/Otterburn Homes Annexation Report, p. 13.

<sup>12</sup>Daniel, memoranda to Gross, Feb. 23, 1993. The estimates of the County's revenue loss were made by City officials were based on County tax records. A representative of Bedford County has subsequently reviewed and expressed concurrence with the City's calculations. (William C. Rolfe, County Administrator, County of Bedford, letter to staff of Commission on Local Government, Mar. 30, 1993.)

in the settlement agreement, represent only a small proportion of the County's territory, population, and tax base.

While the overall impact of the proposed annexation on Bedford County is minimal, the interlocal agreement contains a provision to offset the County's revenue loss. Under the terms of the agreement the City has agreed to pay the County a total of \$104,480 in two annual installments as compensation for the County's prospective loss of net tax revenues and for assumption of a percentage of the County's long-term general obligation debt.<sup>13</sup> The total compensatory payment is consistent with the recommendation made by the Commission in its previous report regarding the properties in question. With respect to the impact of that financial obligation on the City, a representative of the municipality has advised that those compensatory payments will not place any substantial burden on that jurisdiction.<sup>14</sup>

#### WAIVER OF ANNEXATION AUTHORITY

Another major provision in the proposed agreement requires the City of Bedford to renounce its authority to initiate any succeeding annexation action for a four-year period commencing on July 1, 1992.<sup>15</sup> The agreement also requires the City of Bedford to remain neutral with

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<sup>13</sup>Voluntary Settlement, Sec. 3.1.

<sup>14</sup>Jack A. Gross, City Manager, City of Bedford, testimony before the Commission on Local Government, Mar. 1, 1993. The City proposes to finance the payments to the County from current general fund revenues. The initial amount due the County has been included in the City's FY1992/93 budget.

<sup>15</sup>Voluntary Settlement, Sec. 3.3. In 1986 the General Assembly imposed a moratorium on city-initiated annexations in conjunction with a legislative study commissioned to revise the State's annexation laws and to review other aspects of interlocal relations. (See Sec. 15.1-1032.2, Code of Va.) The expiration date of the moratorium has been extended twice and is currently due to terminate on June 30, 1995. Under the terms of the proposed agreement, however, the City of Bedford will not be permitted to initiate succeeding actions until July 1, 1996, or until one year after the statutorily-imposed moratorium has expired.



respect to annexations initiated by property owners or voters during the same period of time.<sup>16</sup> Although the annexation called for in the settlement will provide the City with only a negligible increase in land for future development and a minuscule growth in tax base, this Commission has no basis for concluding that the limited waiver by the City of its authority to initiate annexation actions beyond the statutorily imposed moratorium threatens the viability of that jurisdiction. In sum, the annexation-related provisions in the proposed agreement will have only a modest impact on both jurisdictions and do not threaten the long-term viability of either.

#### UTILITY PROVISIONS

The utility provisions included in the proposed agreement will benefit both the City and the County by fostering additional development in the area, resolving current utility service issues, and facilitating interlocal cooperation to address future water and sewage concerns. In this regard, the agreement identifies 108 residential lots and 2 commercial tracts in the County which the City will allow to be connected to municipal water lines.<sup>17</sup> Evidence presented by a

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<sup>16</sup>Voluntary Settlement, Sec. 3.4. The General Assembly barred citizen-initiated annexations of property to cities effective July 1, 1991, but that moratorium will expire on July 1, 1993. (Sec. 15.1-1032.2, Code of Va.)

<sup>17</sup>Voluntary Settlement, Secs. 4.2 - 4.4. In June 1989 the City of Bedford placed a temporary moratorium on new nonresident water and sewer connections and authorized a planning and engineering study of its current fiscal resources and future utility needs. That moratorium was intended to provide time to complete the study and to evaluate its recommendations. (Carriage Hill/Otterburn Homes Annexation Report, pp. 24-25.) Although the planning and engineering study contemplated by the City has not been completed, the additional water connections sanctioned by the proposed agreement can be accommodated. All of the new residential water connections called for in the settlement agreement are for properties located in previously platted subdivisions adjacent to the City which are currently served by municipal water distribution lines. At the present time only 4 of the 108 parcels authorized to be connected to City water lines have been developed for residential purposes. The new commercial water connections will serve two

representative of the City indicated that there is sufficient uncommitted capacity in the municipality's water system to serve the areas to be annexed, as well as the additional connections in the County which are called for in the proposed agreement.<sup>18</sup> Indeed, the Commission had previously reported that as of May 1990 approximately 42% of the capacity of the City's water treatment plants remained unutilized.<sup>19</sup>

With respect to the future extension of City water and sewer lines into other areas of the County, the agreement requires the City to receive permission from the County before providing utility service to any additional properties outside the present municipal boundaries and, in turn, expressly removes from the City any obligation to provide water or sewer service to parcels in the County not currently served or assured of service pursuant to the current settlement.<sup>20</sup> However, under the terms of the agreement the City will consider requests for utility service to properties in the County for jointly-sponsored economic development projects, while the County has agreed to collaborate with the City in examining the feasibility of its further utilization of the municipal utility systems.<sup>21</sup>

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undeveloped parcels located east of the City on U. S. Highway 460 adjacent to an existing retail area in the County. One of the commercial tracts will also be permitted to connect to City sewerage.

<sup>18</sup>Gross, testimony before the Commission on Local Government, Mar. 1, 1993. The Carriage Hill property is served currently by City water and sewer lines.

<sup>19</sup>Carriage Hill/Otterburn Homes Annexation Report, p. 15.

<sup>20</sup>Voluntary Settlement, Sec. 4.6. The provision in the proposed agreement which defines the City's obligation to extend utility lines into the County has the effect of removing any ambiguities surrounding previous commitments by the municipality to serve properties beyond its boundaries.

<sup>21</sup>Ibid., Sec. 4.7. Bedford County had previously declined to participate in a study of the expansion of the City's water system since it had planned to conduct a separate review of the County's existing and

Another component of the proposed agreement addresses the issue of the surcharge which the City imposes on its nonresident water customers. A 1982 interlocal agreement between the two jurisdictions limited the municipal charge to nonresident customers to no more than 115% of that paid by City residents.<sup>22</sup> The proposed settlement currently before this Commission will permit the City to increase incrementally its nonresident water rate over the next five fiscal years beginning in FY1994, with the limit on such charges being totally eliminated by FY1999.<sup>23</sup> However, the proposed agreement calls for the two jurisdictions to conduct a rate study to determine the City's actual cost for providing municipal water and sewer service to customers located in the County, with both jurisdictions agreeing that the results of the study will be used by the City to establish nonresident utility user fees in the future.<sup>24</sup> In our judgment, these utility provisions of the settlement agreement promote interjurisdictional cooperation in a major service area and are clearly consistent with the best interest of the Commonwealth.

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future utility needs and resources.

<sup>22</sup>Ibid., Sec. 5.1. The 1982 settlement also imposed a similar limitation on nonresident sewer user fees, but the proposed agreement currently does not expressly address that issue. (Gross, testimony before the Commission on Local Government, Mar. 1, 1993.)

<sup>23</sup>Voluntary Settlement, Sec. 5.1 The agreement permits the City to increase its nonresident water rates by 10% each year upon appropriate notice to the County. (Ibid., Sec. 5.2.)

<sup>24</sup>Ibid., Sec. 5.3. A study plan which sets forth the procedure, methodology, and terms for the employment of a consultant to assist with the analysis of the City's public utility systems is appended as an exhibit to the proposed agreement. (Ibid., Exh. 6.) The City's obligation to use the results of the rate study as the basis for determining the water and sewer fees charged County customers commences in FY1993, or upon completion of the study, and continues through June 30, 2001. (Ibid., Sec. 5.4.)

### CONCLUDING COMMENT

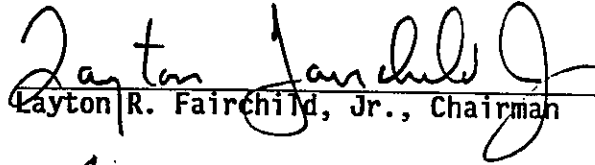
From our perspective, the proposed agreement between the City of Bedford and Bedford County constitutes a notable effort by the two localities to collaborate for the current and future benefit of their respective residents. The proposed agreement will effect an equitable adjustment in jurisdictional boundaries, assure the delivery of utility service to properties in immediate need of such, establish a framework for the reconciliation of long-term utility issues, resolve contentious and costly legal confrontations, and contribute to an atmosphere promotive of mutual concern and further interlocal cooperation.<sup>25</sup> These attributes of the proposed agreement are clearly in the best interests of the two jurisdictions and their residents.

From the Commission's perspective, the interest of the State in this and similar interlocal issues is the development of a resolution which protects and promotes the viability of the jurisdictions involved and equitably addresses the interests of the affected residents. Since, in our view, the proposed agreement between the City of Bedford and Bedford County meets those criteria, we recommend its approval by the court.

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<sup>25</sup>Section 7 of Voluntary Settlement expressly terminates the various legal proceedings engendered by the annexation actions initiated by Carriage Hill and Otterburn Homes.

Respectfully submitted,

  
Layton R. Fairchild, Jr., Chairman

  
Frank Raffo, Vice Chairman

  
Harold S. Atkinson

  
Mary Sherwood Holt

  
William S. Hubbard

**VOLUNTARY SETTLEMENT OF ANNEXATION AND UTILITY ISSUES  
BETWEEN THE CITY OF BEDFORD AND THE COUNTY OF BEDFORD**

This Agreement is made and entered into this 25th day of November, 1992, by and between the City of Bedford, a municipal corporation of the Commonwealth of Virginia, and the County of Bedford, a county of the Commonwealth of Virginia.

**WHEREAS**, the City and the County are parties to three legal proceedings pending in the Circuit Court for the County of Bedford, which generally involve requests for annexation of certain property to the City of Bedford and a request for the City to provide water and sewer services to certain parcels of property lying in the County adjacent to the present City boundaries;

**WHEREAS**, the first suit, which is styled Carriage Hill of Virginia, Ltd. v. City of Bedford and County of Bedford, (Case No. CH92016289), involves a request by Carriage Hill of Virginia, Ltd. for the annexation by the City of Bedford of 22.759 acres of land on which a retirement center is currently operated;

**WHEREAS**, the second suit, styled Otterburn Homes, Inc. v. City of Bedford and County of Bedford, (Case No. 19CH91016190), involves a request by Otterburn Homes, Inc. for the annexation to the City of Bedford of 3.998 acres of land, which property is the proposed site for certain apartments for low income elderly persons;

**WHEREAS**, the third suit, which is styled County of Bedford and Board of Supervisors of Bedford County, Virginia vs. City of Bedford and Carriage Hill of Virginia, Ltd., (Case No. 15674), involves a request by the County for a judicial

declaration that Carriage Hill of Virginia, Ltd. is barred from proceeding with its request for the annexation of its property and a request for a court determination that the City is required to provide water and sewer services to certain parcels of property lying within the County;

**WHEREAS**, the City and the County recognize that the continued pursuit of these lawsuits will require significant expenditures of time and money by both localities, and they further recognize that they have a mutual interest in the economic growth and orderly development of areas within the County adjacent to the City of Bedford and in the orderly provision of utility services to such areas; and

**WHEREAS**, pursuant to the provisions of Chapter 26.1:1 of Title 15.1 of the Code of Virginia (1950), as amended, the City and the County have undertaken to negotiate a voluntary settlement to resolve these annexation and utility issues.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, the City and the County agree as follows:

#### **SECTION 1 - DEFINITIONS**

**Section 1.1** "Code" shall mean the Code of Virginia (1950), as amended. References to Code provisions shall mean those particular Code provisions or similar provisions if the Code is amended after the execution of this Agreement.

**Section 1.2** "Commission" shall mean the Commission on Local Government.

**Section 1.3** "City" shall mean the City of Bedford.

**Section 1.4** "County" shall mean the County of Bedford.

**Section 1.5** "Special Court" shall mean a special three-judge court appointed by the Supreme Court of Virginia pursuant to Chapter 26.2 of Title 15.1 of the Code.

**SECTION 2 - VOLUNTARY ANNEXATION**

**Section 2.1** The City's corporate boundaries shall be modified by the annexation to the City of two parcels of County territory containing approximately 26.712 acres which are described by metes and bounds as follows:

**PARCEL A**

[see attached Schedule A]

Parcel A is further designated and described on a survey plat, dated April 19, 1990, by Donnie W. Slusher, Certified Land Surveyor, a copy of which is attached to this Agreement as Exhibit No. 1.

**PARCEL B**

[See attached Schedule B]

Parcel B is further designated and described on a survey map, dated January 10, 1991, by Donnie W. Slusher, Certified Land Surveyor, a copy of which is attached to this Agreement as Exhibit No. 2.

**Section 2.2.** The annexation to the City of the areas described in Section 2.1 shall be effective at midnight on June 30, 1993. If a Special Court, pursuant to § 15.1-1167.1 of the Code, has not entered a final order prior to June 30, 1993 approving and affirming this Agreement, then the annexation shall become effective at midnight



on the 31st day of December or at midnight on the 30th day of June following the date of entry of such order, whichever date is earlier.

### **SECTION 3 - ANNEXATION TERMS AND CONDITIONS**

**Section 3.1.** Following the effective date of the annexation provided for in Sections 2.1 and 2.2, the City agrees to pay to the County a fixed sum of \$104,480.00 in full compensation for payments provided by law in respect to annexation of the two parcels, including, but not limited to reimbursement of a percentage of the County's long-term indebtedness and compensation for loss of tax revenues. The City shall make payment of said sum in two equal annual installments, the first due on or before that date which is six months following the effective date of annexation and the second installment due twelve months after the initial payment.

**Section 3.2.** The City shall not incur any obligation to any creditors of the County as a result of the payments provided for herein.

**Section 3.3.** For a period of four years beginning July 1, 1992, the City hereby waives its statutory rights to institute any action to annex County territory under Article 1 of Chapter 25 (§ 15.1-1032, et seq.) of Title 15.1 of the Code, or any statutes similar thereto, unless the County agrees to such an annexation.

**Section 3.4.** If any proceedings for the annexation of territory to the City are initiated by landowners or qualified voters during the four years beginning July 1, 1992, the City agrees that it will maintain a position of neutrality in such proceedings, neither supporting nor opposing any such petition.

#### **SECTION 4 - PROVISION OF WATER AND SEWER SERVICE**

**Section 4.1.** By resolution adopted on June 13, 1989, the City adopted a temporary policy of no longer accepting applications for connections to the City's water and sewer facilities from applicants located outside the City boundaries. This policy was to continue until such time as an engineering and planning study had been completed concerning the need for additional water and sewer service, the necessity to expand the City's existing utility facilities, the financing of expansions of such systems, and other matters. The City agrees to modify this policy to permit the owners of certain parcels of property to connect to the City's water and/or sewer systems as described below.

**Section 4.2.** The City agrees to allow the owners of approximately 108 residential lots located in platted subdivisions within the County to connect to the City's water facilities, pursuant to the City's standard water connection and extension policies as they exist at the time of application by each property owner. All lots that may be connected to the City's system are individually identified and marked on a series of maps prepared by Dave Ballard, City Engineering Project Manager, and John Dooley, County Community Development Planner, copies of which are attached hereto as Exhibit No. 3. Upon connection of any such lot to the City's water system, the City agrees to provide water service for single-family residential use on such property.

**Section 4.3.** The City further agrees to allow the owners of the Wal-Mart Shopping Center out-parcel to obtain one connection to the City's water facilities and one connection to the City's sewer facilities, pursuant to the City's standard utility

connection and extension policies as they exist at the time of application by the property owners. The location of this out-parcel is depicted on the survey map attached hereto as Exhibit No. 4. Upon connection of the out-parcel to the City's water and sewer system, the City agrees to provide water and sewer service for a single commercial use on such property. The City will be obligated to provide a maximum of 75,000 gallons of water per month to such property and to receive for treatment a maximum of 75,000 gallons of sewage from such property.

**Section 4.4.** The City further agrees to allow the owners of a parcel containing 4.69 acres of land along Route 460 East adjacent to the eastern boundary of the Wal-Mart Shopping Center (presently Jimmy W. Andrews and Arthur Bunnell) to connect to the City's water facilities, pursuant to the City's standard water connection and extension policies as they exist at the time of application by the property owners. The location of this parcel is depicted on the survey plat attached hereto as Exhibit No. 5. Upon connection of this parcel to the City's water facilities, the City agrees to provide limited water service through an existing 3/4 inch line which shall be used only for a single business office on such property.

**Section 4.5.** The County hereby gives its consent to the City's provision of water and/or sewer service to those properties described in Sections 4.2, 4.3, and 4.4, in accordance with the terms set forth in such Sections. The City agrees that it will not permit any additional properties within the County to be connected to its water or sewer systems without the approval of the County.

**Section 4.6.** The County agrees that the City has no obligation to provide water or sewer service to any parcel of property in the County not currently receiving City water or sewer service, except as provided in Sections 4.2, 4.3, 4.4, and 4.8. The City agrees, however, that it will give consideration to requests for connections of additional properties in the County to the City's water and sewer systems for purposes of economic development projects sponsored jointly by the City and the County.

**Section 4.7.** Upon the request of the County or the City, the parties shall undertake discussions of the feasibility of future expansions of the City's water and sewer treatment and transmission facilities for the purpose of serving additional areas of the County surrounding the City.

**Section 4.8.** The City's obligation to permit water and/or sewer connections to those properties described in Sections 4.2, 4.3, and 4.4 shall be from November 25, 1992, to June 30, 1993, and then continue in effect for fiscal years beginning July 1, 1993, and continuing as an automatically renewing perpetual obligation to permit said connections during each fiscal year unless terminated as herein provided. The City Council or the County Board of Supervisors may terminate this obligation, effective at the end of any fiscal year by giving written notice of such termination not less than two years prior to the proposed termination date; provided, however, this obligation shall not terminate prior to June 30, 2001.

#### **SECTION 5 - UTILITY RATES FOR COUNTY CUSTOMERS**

**Section 5.1.** By an agreement dated April 13, 1982 between the City and the County, the City agreed that it would not charge any County customers of the City

water system more than 115% of the rate paid for water service by City customers of the City water system.

The County agrees to a phase-out of the 15 percent cap (ceiling) on water rates in the County. There will be no increase in the rate cap (ceiling) during the fiscal year 1992-93. The City and County agree that there will be an increase in the rate cap (ceiling) to County customers of 10% per year for the succeeding five years, after which there will be no rate cap (ceiling). Thus, the maximum rate cap (ceiling) for out-of-city water service (as a percentage of the rate for in-city water service for the same class of customers) will be as follows:

1992-93	115%
1993-94	125%
1994-95	135%
1995-96	145%
1996-97	155%
1997-98	165%
succeeding years	no rate cap (ceiling)

**Section 5.2.** - The City agrees that it will give the County notice of any increase in water service rates applicable to County customers of the City water system at least 45 days prior to the effective date of any such rate increase, and the City shall provide a reasonable justification for any such increases.

**Section 5.3.** - The City and County further agree to conduct a rate study to determine the cost to provide water and sewer services to County customers. This study will serve as the basis for determining actual rates to be charged to County citizens who are customers of the City of Bedford's water and/or sewer system.

The procedure, methodology, and other terms for conducting such a study including a plan for employment of consultants to assist in said study and a procedure for making revisions thereto is attached as Exhibit 6 and the City agrees that the study will serve as the basis for determining actual rates to be charged to County citizens who are customers of the City of Bedford's water and/or sewer system.

**Section 5.4.** The City's obligation under section 5.3 to use the results of the rate study as the basis for determining water and sewer rates to be charged County residents shall be from November 25, 1992, to June 30, 1993, and then continue in effect for fiscal years beginning July 1, 1993, and continuing as an automatically renewing perpetual obligation for each fiscal year unless terminated as herein provided. The City Council or the County Board of Supervisors may terminate this obligation, effective at the end of any fiscal year by giving written notice of such termination not less than two years prior to the proposed termination date; provided, however, this obligation shall not terminate prior to June 30, 2001.

#### **SECTION 6 - COMMISSION AND COURT APPROVAL**

**Section 6.1.** The City and the County agree to initiate promptly the steps required by Chapter 26.1:1 of Title 15.1 of the Code to obtain a review of this Agreement by the Commission and by a Special Court.

**Section 6.2.** The City and the County agree that if this Agreement is not affirmed without modification, then it shall be null and void and of no further force and effect, unless the City and the County expressly agree to any such modifications.

## **SECTION 7 - DISMISSAL OF PENDING PROCEEDINGS**

**Section 7.1.** Upon entry of the final order of the Special Court approving and validating this Agreement, the City and the County agree that they will jointly request the dismissal of the annexation proceedings filed by Carriage Hill of Virginia, Ltd. and by Otterburn Homes, Inc. now pending in the Circuit Court for the County of Bedford.

**Section 7.2.** Upon entry of the final order by the Special Court, the County further agrees that it will dismiss with prejudice the pending action which it initiated in the Circuit Court for the County of Bedford styled County of Bedford and Board of Supervisors of Bedford County v. City of Bedford and Carriage Hill of Virginia, Ltd.

## **SECTION 8 - MISCELLANEOUS PROVISIONS**

**Section 8.1.** This Agreement may hereafter be amended, modified, or supplemented, in whole or in part, by mutual consent of the City and the County by a written document duly executed by authorized representatives of the City and the County.

**Section 8.2.** This Agreement shall be binding upon and shall inure to the benefit of 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.

**Section 8.3.** This Agreement shall be enforceable only by the Special Court affirming and giving full force and effect to this Agreement or by any successor Special Court appointed pursuant to Chapter 26.2 of Title 15.1 of the Code, pursuant to an action at law or in equity initiated by either or both parties hereto to secure the

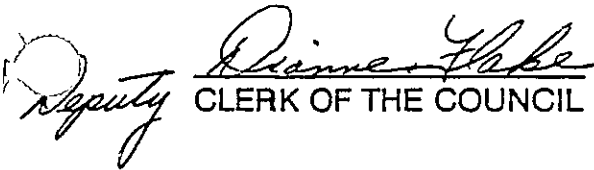
performance of the covenants, conditions or terms contained herein or the order affirming and giving full force and effect to this Agreement.

**IN WITNESS WHEREOF**, the governing bodies of the City and the County have each by ordinance or resolution caused this Agreement to be duly executed by their Mayor or Chairman in several counterparts, each of which shall constitute an original.

CITY OF BEDFORD

BY:   
MAYOR

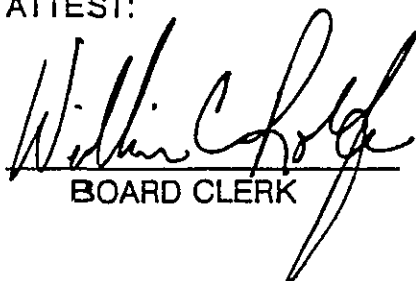
ATTEST:

  
Deputy  
CLERK OF THE COUNCIL

COUNTY OF BEDFORD

BY:   
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

  
BOARD CLERK

annxgmt