

**REPORT ON THE
CITY OF BRISTOL – COUNTY OF WASHINGTON
VOLUNTARY SETTLEMENT AGREEMENT**



**Commission on Local Government
Commonwealth of Virginia**

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REPORT ON THE CITY OF BRISTOL – COUNTY OF WASHINGTON VOLUNTARY SETTLEMENT AGREEMENT

PROCEEDINGS OF THE COMMISSION

On March 10, 2014, the City of Bristol, Virginia, and the County of Washington submitted to the Commission on Local Government for review a proposed voluntary settlement agreement negotiated by the two jurisdictions under the authority of Section 15.2-3400 of the Code of Virginia.^{1 2} Consistent with the regulations promulgated by the Commission, the submission was accompanied by data and materials supporting the proposed agreement. Further, and in accordance with the Commission's regulation 1 VAC 50-20-230(C), the City and County gave notice of the proposed agreement to 26 other political subdivisions with which they are contiguous or with which they share functions, revenues, or tax sources.³ The proposed agreement contains provisions for (1) the waiver by the City and County of their legal rights to contest (i) the validity of Va. Code § 58.1-608.3 creating a Development of Regional Impact (DRI), (ii) eligibility of "The Falls" development and/or its expansion to be deemed a DRI and a public facility under § 58.1-608.3, (iii) authority of the Comptroller to remit state sales and use tax to the City or County under § 58.1-608.3, and (iv) the authorization, execution, issuance, sales and delivery, or validity of any bonds issued by the City or the County or the Industrial Development Authority of the City or County; (2) revenue sharing of \$350,000 per year paid by the City to the County for a period of 7 years for the County's loss of revenue due to a County retailer relocating to the City; (3) revenue and economic-growth sharing from the development of the Trammel property as a DRI located in the County on a 75% County and 25% City ratio for 7 years; (4) revenue sharing from major businesses relocating between the City and the County on a 50/50 ratio for a period of 15 years; and (5) for waiver of the City's right to seek annexation of the Trammel property for a period of 1 year following affirmation of the Voluntary Settlement.⁴

In conjunction with its review of the proposed settlement agreement, on May 12, 2014, the Commission toured relevant sections of the City of Bristol and Washington County and met in the City to receive oral testimony from the two jurisdictions in support of the agreement. That evening, the Commission held a public hearing, advertised in accordance with Section 15.2-2907(B) of the Code of Virginia, for the purpose of receiving citizen comment. The public hearing was attended by approximately 37 persons, and 13 individuals testified. In order to permit receipt of additional public comment, the Commission agreed to keep its record open for written submissions through May 30, 2014. The Commission did not receive any additional submissions or comments from the public.

¹ For the purpose of this report, any reference made to "Bristol" refers to the City of Bristol, Virginia, specifically. Any reference made to the City of Bristol, Tennessee, will be made using the phrase "Bristol, Tennessee."

² Joint Petition for Affirmation of a Voluntary Settlement Agreement Dated October 8, 2013, Settling Intergovernmental Issues between the City of Bristol, Virginia, and the County of Washington, Virginia, and Providing for Certain Revenue Sharing and Economic Growth Sharing between the City and the County, (hereinafter cited as the "Joint Petition"), October 8, 2013, which contains the Settlement Agreement and supporting materials.

³ Ibid., Tab 7. In addition to the requisite Virginia localities, the parties also notified three Tennessee jurisdictions: Johnson County, Sullivan County, and the City of Bristol, Tennessee.

⁴ Voluntary Settlement Agreement Between the City of Bristol and Washington County, Virginia, Pursuant to Virginia Code Section 15.2-3400 (hereinafter cited as the "Settlement Agreement"). See **Appendix A** for the complete text of the Settlement Agreement.

SCOPE OF REVIEW

The Commission on Local Government is directed by law to review proposed annexations and other local boundary change and transition issues, as well as negotiated agreements settling such matters, prior to their presentation to the courts for ultimate disposition. Upon receipt of notice of such a 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.⁵ With respect to a proposed agreement negotiated under the authority of Section 15.2-3400 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.”

As we have noted in previous reports, it is evident that the General Assembly encourages local governments to attempt to negotiate settlements of their interlocal concerns. One of the statutory responsibilities of this Commission is to assist local governments in such efforts. In view of this legislative intent, the Commission believes that proposed interlocal agreements, such as that negotiated by the City of Bristol and Washington County, should be approached with respect and presumption of their compatibility with applicable statutory standards. The Commission notes, however, that the General Assembly has decreed that interlocal agreements negotiated under the authority of Section 15.2-3400 of the Code of Virginia shall be reviewed by this body prior to their final adoption by the local governing bodies. We are obliged to conclude, therefore, that while interlocal agreements are due respect and should be approached with a presumption of their consistency with statutory standards, such respect and presumption cannot be permitted to render our review a *pro forma* endorsement of any proposed settlement. Our responsibility to the Commonwealth and to the affected localities requires more.

BACKGROUND

Virginia and Tennessee Sales Taxes. The Commonwealth of Virginia’s current sales tax rate is 5.3% (4.3% state and 1% local), while in nearby Tennessee, the rate is 9.75% (7% state and 2.75% local).^{6 7} Virginia’s 4.45% sales tax rate advantage has been a significant draw for retailers and has played a substantial role in the continued growth and viability of Interstate 81 retail development centers in Bristol and Washington County. This clustering of retail has been a substantial revenue source for the City and the County, as the Exit 7 area provides approximately 45.33% of all City sales tax revenues, and 34.83% of all County sales tax revenue.^{8 9} Meanwhile, most of the area along Interstate 81 in Bristol, Tennessee has not experienced significant retail development.¹⁰ This further emphasizes the importance of the retail hub at Exit 7 for the City and County.

Tennessee Legislation and The Pinnacle. In 2011 the Tennessee Legislature passed legislation known as the Border Region Retail Tourism Development District Act. The act allows remittances of sales

⁵ Section 15.2-2907(A), Code of Virginia.

⁶ Sections 58.1-603, 58.1-604, 58.1-605 and 58.1-606, Code of Virginia. Sections 58.1-603.1 and 58.1-604.01 of the Code of Virginia provide that the sales and use tax rate is 6.0% in Northern Virginia and Hampton Roads.

⁷ Joint Petition, Tab 4, p. 3.

⁸ Ibid, Tab 5, Table 9. In FY 2011, Bristol had \$1,643,827.95 in sales tax revenue in the Exit 7 area and \$3,626,112 in sales tax revenue citywide.

⁹ Ibid, Tab 5, Table 1. In FY 2011, Washington County had \$2,262,339 in sales tax revenue in the Exit 7 area and \$6,495,835 in sales tax revenue countywide.

¹⁰ Testimony of Jason Berry, County Administrator for Washington County, May 12, 2014.

taxes to provide certain benefits to assist with the cost of development of an “Extraordinary Retail or Tourism Facility” (ERTF). In order to qualify for such benefits, the development must be near a state boundary, have interstate access, attract a certain number of visitors, generate a certain amount of sales and use tax revenues, and meet several other criteria.¹¹

As a result of this legislation, the City of Bristol, Tennessee, sought to utilize these incentives, resulting in the development of an ERTF known as “The Pinnacle.”¹² This development is currently under construction at Exit 74 off of Interstate 81 in Bristol, Tennessee, less than ten miles from Exit 7 in Bristol.¹³

The Pinnacle’s initial phase will occupy 500 acres in Tennessee, and will contain approximately 1.3 million square feet of space. One major anchor tenant (Bass Pro Shops), is scheduled to open sometime in 2014, while Belk is scheduled to relocate from Bristol to The Pinnacle. Other retailers have either stated their intention to move to The Pinnacle, or there is speculation of their potential relocation. A later phase of The Pinnacle may include approximately 160 acres of development in Washington County, Virginia.¹⁴

Virginia Legislation and The Falls. Section 58.1-608.3 of the Code of Virginia entitles localities to receive remittances of the state portion of sales taxes generated within certain public facilities (typically stadiums and convention centers), for the purpose of financing the debt associated with the construction of those facilities. In response to the anticipated retail competition from Tennessee, the Virginia General Assembly amended Va. Code 58.1-608.3 to add a new type of facility, known as a Development of Regional Impact (DRI) that would be eligible for state sales tax remittances to help finance their construction.¹⁵

Through this legal authority, Bristol began to develop “The Falls” as a qualifying DRI to compete with The Pinnacle and to protect its retail tax base. The development is currently underway in Bristol with most of the site cleared and several development pads under construction. Located between Exits 5 and 7 of Interstate 81, The Falls will contain approximately 1.47 million square feet on 325 acres, and is projected to create 3,657 new jobs and produce \$529.8 million in annual sales.¹⁶ The site is under construction, and the first few tenants, including one major anchor (Cabela’s) are expected to open in 2015.¹⁷

As Bristol began to formulate plans for The Falls, it began to attract retailers, notably Lowe’s, which planned to relocate to The Falls from Washington County. These actions prompted the County to challenge the details of how the DRI legislation worked, specifically, whether sales tax remittances could be remitted beginning with the completion of the first phase of the development.¹⁸

¹¹ Joint Petition, Tab 4, Exhibit G.

¹² Ibid., Tab 4, p. 3.

¹³ “Bristol, Virginia,” 2014, *Google Maps*, <https://www.google.com/maps>, Accessed June 26, 2014.

¹⁴ Joint Petition, Tab 4, Page 7.

¹⁵ Section 58.1-608.3 (B) of the Code of Virginia. To qualify as a DRI, localities must contribute infrastructure or property in a public-private partnership with a developer equal to 20% of the total cost. It must be reasonably expected to require investments of \$50 million, generate \$5 million annual sales and use tax revenues, attract one million annual visitors, create 2,000 permanent jobs, be in a locality with a 3% higher unemployment rate than Virginia for Nov. 2011, be in a locality adjacent to a state that adopted a Border Regional Retail Tourism Development District. This description effectively limits the application of the DRI definition to the City of Bristol, Virginia.

¹⁶ Joint Petition, Tab 4, Exhibit H.

¹⁷ Testimony of Andrew Trivette, Director of Economic Development for Bristol, May 12, 2014.

¹⁸ Joint Petition, Tab 4, p. 5.

Ultimately, the City and County settled their differences and entered into a settlement agreement and mutual release, which is not subject to review by this Commission, although it was drafted in tandem with the voluntary settlement agreement. It will allow The Falls development to proceed forward without further conflict between the two neighboring localities. It ends the potential litigation between the two parties and contains provisions including: (1) cooperation on state legislation to clarify phased remittances of sales tax revenues within a DRI and to include Washington County among the eligible localities; (2) a settlement payment of \$350,000 from the City to the County to cover the loss of a major retailer (Lowe's) if it relocates from the County to The Falls; (3) a release from future litigation claims between the parties over The Falls, DRI legislation, and DRI expansions; and (4) mutual legal defense and other miscellaneous provisions.¹⁹

During the 2014 General Assembly session, both Bristol and Washington County sought legislation clarifying the phased remittances of sales taxes in a DRI and to add Washington County to the localities enabled to create a DRI. The General Assembly approved Senate Bill 673 (Puckett), which clarified that the phased remittances of sales tax revenue in a DRI can begin when the first building begins generating revenue. The proposal to allow Washington County to create its own DRI was unsuccessful.²⁰

GENERAL CHARACTERISTICS OF THE CITY AND THE COUNTY

City of Bristol

Bristol was originally named Goodson after its founder, Samuel Goodson. It was established in 1850 and incorporated as a town in 1856. In 1890, Goodson was incorporated as a city and renamed as Bristol to complement the neighboring town of Bristol, Tennessee.²¹ As of 2010, the City had a total population of 17,835, which is a 2.7 % increase from its 2000 total population of 17,367. Based upon its land area of 13.01 square miles and its total 2010 population, Bristol has a population density of 1,370.87 persons per square mile.²²

The City as a whole is older and less affluent than the State. According to the 2008-2012 American Community Survey, the median age for Bristol was 40.8 years while it was 37.4 years for Virginia as a whole. Moreover, the percentage of Bristol, Virginia's population age 65 and over is 19.2% compared to 12.3% for all of Virginia.²³ From a wealth perspective, Bristol has a median household income of \$31,973, which is only 51.8% of the statewide median of \$61,782 at that same time.²⁴

In regard to the City's overall fiscal condition, statistics indicate that between 2002 and 2011, the true value of real estate and public service corporation property in the municipality increased from \$826.3 million to \$1.14 billion, or by 37.5%, which is just over half of the rate of growth in the State overall (64.0%).²⁵ Additionally, Bristol's taxable retail sales, a significant indicator of the strength of a locality's commercial base, increased 3.8% between 2004 and 2013, whereas Statewide retail sales increased by a

¹⁹ Joint Petition, Tab 4, Exhibit B.

²⁰ Chapter 551, Acts of Assembly, 2014. The 2014 General Assembly did not pass two similar bills, House Bill 593 (O'Quinn) and Senate Bill 214 (Carrico). Those bills, as introduced, would have allowed Bristol's DRI designation to be expanded into adjacent Washington County.

²¹ Salmon, Emily J. and Edward D.C. Campbell Jr., The Hornbook of Virginia History, 4th ed. (Richmond: Library of Virginia, 1994), p. 189.

²² U.S. Department of Commerce, Bureau of the Census, Census 2000, Summary File 1; and Census 2010, Summary File 1.

²³ U.S. Department of Commerce, Bureau of the Census, 2008-2012 American Community Survey.

²⁴ U.S. Department of Commerce, Bureau of the Census, 2012 Small Area Income and Poverty Estimates.

²⁵ Virginia Department of Taxation. Virginia Assessment/Sales Ratio Study, 2011, February 2014; and Virginia Assessment/Sales Ratio Study, 2002, November 2004.

much larger rate of 16.4%.²⁶ Furthermore, between 2004 and 2013, the number of wage and salary employment positions in the City decreased from 12,935 to 10,350, a decrease of 20.0%, while the State as a whole experienced a 4.1% increase.²⁷

The City's fiscal condition can also be described utilizing data contained in this Commission's annual fiscal stress index. One component of the index, revenue capacity per capita, is a measure of the locality's ability to generate revenue based upon factors such as the value of taxable property within a particular jurisdiction. From FY 2003 through FY 2012, the City's revenue capacity per capita grew from \$1,008.96 to \$1,439.22, for an average annual growth rate of 4.74%. Within the same period, the statewide average for revenue capacity per capita grew from \$1,283.55 to \$1,828.15, for an average annual increase of 4.71%.²⁸ The data indicate that taxable assets within the City have grown at a similar rate to the State as a whole. The City's standing as the ninth most fiscally stressed locality on the Commission's 2012 index is primarily the result of a high revenue effort score (seventh highest in the state) and low median household income (fourth lowest in the state).²⁹

County of Washington

Washington County is the first locality in the United States known to have been named for George Washington. It was formed from Fincastle County (now extinct) in 1776, and part of Montgomery County, which was later added.³⁰ As of 2010, the County had a total population of 54,876, which is a 7.4% increase from its 2000 total population of 51,103. Based on its land area of 560.97 square miles and its 2010 total population, Washington County has a population density of 97.82 persons per square mile.³¹

With respect to the characteristics of its population, Washington County is demographically older and less affluent than the State as a whole, and, when compared to Bristol, the County's residents are slightly older and more affluent. The estimated 2008-2012 median age of County residents is 43.2 years, which is higher than the statewide median age of 37.4 years. Furthermore, the percentage of its population age 65 and over was 18.0%, also greater than the statewide average of 12.3%.³² Regarding income, the 2012 median household income for the County was \$43,155, which is 69.9% of the statewide median household income of \$61,782.³³

Regarding the fiscal condition of the County, between 2002 and 2011 the true value of real estate and public service corporation property in Washington County increased from \$3.1 billion to \$4.9 billion, or by 61.7%. This is less than the growth rate in the State (82.6%).³⁴ Additionally, the County's total

²⁶ "Taxable Sales Reports," Weldon Cooper Center for Public Service, University of Virginia, accessed June 27, 2014, <http://www.coopercenter.org/econ/taxablesales>.

²⁷ Virginia Employment Commission, Quarterly Census of Employment and Wages (QCEW) 2004 and 2013 (Online database). <https://vawc.virginia.gov>.

²⁸ Commission on Local Government, "Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities, FY 2012" (hereinafter cited as FY 2012 Fiscal Stress Report), January 2014, pp. 4, 11, and 13; and "Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities, FY 2002/2003" (hereinafter cited as FY2002/2003 Fiscal Stress Report) April 2005, Tables 1.1 and 1.2.

²⁹ FY 2012 Fiscal Stress Report, January 2014, p. 4. A locality's Revenue Effort is computed as its own-source revenue collections (real estate taxes, public service corporation real estate taxes, personal property taxes, local option sales taxes, and other local source revenue) divided by its revenue capacity (how much tax revenue a locality could collect from its base if it used statewide average rates).

³⁰ Salmon, Emily J. and Edward D.C. Campbell Jr., The Hornbook of Virginia History, 4th ed. (Richmond: Library of Virginia, 1994), p. 171.

³¹ U.S. Department of Commerce, Bureau of the Census, Census 2000, Summary File 1; and Census 2010, Summary File 1.

³² U.S. Department of Commerce, Bureau of the Census, 2008-2012 American Community Survey.

³³ U.S. Department of Commerce, Bureau of the Census, 2012 Small Area Income and Poverty Estimates.

³⁴ Virginia Department of Taxation. Virginia Assessment/Sales Ratio Study, 2011, February 2014; and Virginia Assessment/Sales Ratio Study, 2002, November 2004.

taxable retail sales increased by 28.1% between 2004 and 2013, which exceeds the statewide increase of 16.4%.³⁵ Regarding employment, between 2004 and 2013, the number of wage and salary employment positions in the County increased from 19,325 to 20,554 jobs, an increase of 6.4%. The State as a whole experienced a 6.6% increase.³⁶

As noted previously, the Commission's fiscal stress index can also provide insight into the overall fiscal condition of localities. With respect to the County, from FY 2003 through FY 2012, the County's revenue capacity per capita increased from \$1,054.16 to \$1,653.38, which implies an annual growth rate of 6.32%. Given the statewide increase of 4.71% over the same period, this factor indicates that taxable property within the County has grown at an above average rate.³⁷ In the Commission's 2012 index, the County's overall fiscal stress ranked 82nd in the state and was classified as experiencing "below average" stress.³⁸ A primary factor in the County's ranking is a low revenue effort (116th in the state).³⁹

ELEMENTS OF THE VOLUNTARY SETTLEMENT AGREEMENT

Following is a summary of each element of the proposed agreement:

Legal Waiver

The agreement provides for the settlement and waiver of any legal claim by either the City or the County with respect to The Falls development or the legality of the Virginia statute that is being used to finance the construction of the project. Should a third party file suit with respect to The Falls development or the financing of the project, provisions are also included to ensure that both parties will cooperate in defending any such litigation.⁴⁰

Revenue Sharing Provisions

The agreement contains three revenue sharing elements, all of which operate independently of one another.

Lowe's Relocation Revenue Sharing. Lowe's is currently located in Washington County in the Exit 7 area in a development containing several big box retailers. It is anticipated that Lowe's will relocate from its County location to a new building in Bristol at The Falls.⁴¹

The City has agreed to pay to the County \$350,000 for a period of seven years if a "County Retailer" as defined in the agreement, relocates to The Falls from a location in the County. Furthermore, if during that seven year period, another tenant occupies the space that was vacated by the "County Retailer," then the payment to the County shall be reduced by the amount of local sales taxes generated by the new occupant.⁴²

³⁵ "Taxable Sales Reports," Weldon Cooper Center for Public Service, University of Virginia, accessed June 27, 2014,

<http://www.coopercenter.org/econ/taxablesales>.

³⁶ Virginia Employment Commission, Quarterly Census of Employment and Wages (QCEW) 2004 and 2013 (Online database).

<https://vawc.virginia.gov>.

³⁷ FY 2012 Fiscal Stress Report, January 2014, pp. 4, 11, and 13; and FY2002/2003 Fiscal Stress Report, April 2005, Tables 1.1 and 1.2.

³⁸ FY 2012 Fiscal Stress Report, January 2014, p. 4.

³⁹ *Ibid.* p. 18.

⁴⁰ Settlement Agreement, Subsection 2.1.

⁴¹ Joint Petition, Tab 4, p. 5.

⁴² Settlement Agreement, Section 2.1.1. The definition of "County Retailer" in the agreement limits its applicability to the Lowes store that is anticipated to be relocating to The Falls in Bristol from its County location.

Trammel Property Revenue Sharing. The Trammel Property is located north of Exit 7 in Washington County, and consists of eight parcels totaling approximately 83.5 acres.⁴³ The property has significant development potential, given its proximity to the Interstate and other retail in the area. The property fronts on Clear Creek Road in the County and could potentially be accessed from US 11 in the City, although that would require a stream crossing and coordinating access through an adjacent tract located within the City.

The County has agreed to share for seven years, 25 percent of all new revenues generated on the Trammel Property with the City. The revenues subject to this provision include all real estate, personal property and local sales taxes that are attributable to new businesses that construct and locate on the property after the agreement takes effect. None of the existing revenues generated on this property would be shared with the City.⁴⁴

County-City Retailer Relocation Revenue Sharing. The final revenue sharing provision commits both the City and County to share 50% of the revenues generated by any large business – defined as those having annual retail sales of \$2 million or greater – if that retailer relocates from the City to the County or vice versa, for a period of 15 years.⁴⁵

Other Provisions

The proposed agreement also includes terms to ensure that the City will cooperate and assist the future developer of the Trammel property by issuing the necessary approvals for access into the property. In addition, the City agrees to assist or cooperate with the developer in obtaining public sewer and in resolving any state or federal agency issues involving access to the property.⁴⁶

Finally, the City agreed to waive its rights to seek annexation of the Trammel Property for a period of one year.⁴⁷ Although there is currently a moratorium on city-initiated annexations, the parties indicated that this provision was included to ensure that the agreement would be considered a voluntary settlement agreement, and as such, be binding upon future governing bodies. It could be inferred from the statute describing voluntary settlement agreements that in order to be considered such an agreement, a party to the agreement must modify or waive certain rights.⁴⁸

STANDARDS FOR REVIEW

As indicated previously, the Commission on Local Government is charged with reviewing proposed interlocal agreements negotiated under the authority of Section 15.2-3400 of the Code of Virginia for the purpose of determining whether such proposals are “in the best interest of the Commonwealth.”

In our judgment, the State’s interest in this and other proposed interlocal agreements is fundamentally the preservation and promotion of the general viability of the affected localities. In this instance, the Commission is required to review a proposed agreement which would contain provisions for: (1) the waiver by the City and County of their legal rights to contest (i) the validity of Va. Code § 58.1-608.3

⁴³ ibid., Section 1. It should be noted that the parcels described as the Trammel property by the agreement do not fully correspond with maps included in the Joint Petition at Tab 6. Those maps show the Trammel property as 132.1 acres.

⁴⁴ Settlement Agreement, Section 2.2.2.

⁴⁵ ibid., Section 2.2.3.

⁴⁶ ibid., Subsection 2.3.

⁴⁷ ibid., Subsection 2.4.

⁴⁸ Carter Glass, Counsel for the City of Bristol, Letter to Commission, May 2, 2014.

creating a Development of Regional Impact (DRI), (ii) eligibility of “The Falls” development and/or its expansion to be deemed a DRI and a public facility under § 58.1-608.3, (iii) authority of the Comptroller to remit state sales and use tax to the City or County under § 58.1-608.3, and (iv) the authorization, execution, issuance, sales and delivery, or validity of any bonds issued by the City or the County or the Industrial Development Authority of the City or County; (2) revenue sharing of \$350,000 per year paid by the City to the County for a period of 7 years for the County’s loss of revenue due to a County retailer relocating to the City; (3) revenue and economic-growth sharing from the development of the Trammel property as a DRI located in the County on a 75% County and 25% City ratio for 7 years; (4) revenue sharing from major businesses relocating between the City and the County on a 50/50 ratio for a period of 15 years; and (5) for waiver of the City’s right to seek annexation of the Trammel property for a period of one year following affirmation of the Voluntary Settlement. A proper analysis of the proposed City of Bristol – Washington County agreement, as mandated by statute, requires consideration of the ramifications of these provisions on the current and future viability of the two jurisdictions.

Interests of the City of Bristol

The following sections of this report consider the impact of the provisions of the proposed settlement agreement on the City of Bristol.

Waiver of Litigation. After the Virginia General Assembly amended § 58.1-608.3 in 2012, and Washington County became aware that Lowe’s would potentially relocate to a site within The Falls, the County considered filing litigation that could slow or halt the development of the property. The City will be issuing up to \$87 million in debt in order to finance its share of the development, and as of March 2014, has already issued \$40 million in short-term general obligation notes.⁴⁹ Any delays to the development of The Falls could reduce the ability of the City to pay the debt service on these notes. Additionally, legal challenges of the phased sales tax remittances could have been catastrophic to the City’s finances due to costly legal battles and the potential for withheld sales tax remittances that were intended to pay the debt service. The elimination of this threat through the waiver of litigation included in the agreement will ensure that the project is not delayed and can begin generating the revenue needed to pay for its construction.

Revenue Sharing Provisions. The revenue sharing provisions of the proposed agreement are in the City’s best interest for several reasons. While the City will be required to pay the County for lost revenues attributable to the relocation of a Lowe’s store from the County to The Falls, the City’s payment is to be reduced based upon the sales tax revenue generated by any future tenant to occupy the vacant Lowe’s site in the County. The agreement also will provide the City with 25% of the future revenues generated on the Trammel Property. These two revenue sharing components will incentivize the City to cooperate with the County on finding an occupant for the abandoned Lowe’s store and to encourage the development of the Trammel Property.

The other revenue sharing arrangement, which provides for sharing half the revenues of any large retailer that relocates from the City to the County, or vice-versa, is in the best interest of the City as well. This provision mutually protects both the City and County from revenue losses attributable to large retailers who choose to relocate, and will discourage both localities from using incentives to entice retailers to move from one jurisdiction to the other.

⁴⁹ Carter Glass, Counsel for the City of Bristol, Letter to Commission, May 2, 2014.

Summary. Much of the City of Bristol's retail development is concentrated near Exit 7, and because the city-county boundary line jogs through this area, a significant amount of retail businesses are also located in the County. As mentioned previously, 45.33% of the City's sales tax revenues were generated in the Exit 7 area. The economic development tools offered by the State of Tennessee, which have resulted in The Pinnacle development that is under construction just across the state line, threaten to shift the region's retail core away from Exit 7 to the Tennessee state line. The City responded with a competing retail development proposal in an attempt to retain retail activity within the City limits. The City also successfully sought legislation to enable financing of this development using the State's sales tax revenues generated within The Falls, similar to the benefit available in Tennessee.

Cumulatively, the agreement supports the City's interest to protect its existing retail tax base, its ability to finance the construction of The Falls, and ensures that a cooperative relationship is maintained with Washington County.

Interests of Washington County

The following sections of this report consider the impact of the provisions of the proposed settlement agreement on Washington County.

Waiver of Litigation & Mutual Defense. It is in the County's best interest to waive all claims made as to the legality of the financing mechanism that is being used to finance The Falls, and to assist in defending the City in any third-party lawsuits challenging such financing. The continued success of the City's and County's retail development in the Exit 7 area is more likely if The Falls development is allowed to succeed, and fewer retailers gravitate to The Pinnacle development in Tennessee. In addition, these provisions lay the groundwork for the cooperative themes that are found elsewhere in the proposed agreement.

Revenue Sharing Provisions. Several elements of this agreement serve to encourage inter-jurisdictional cooperation between the City and County and are in the best interest of the County. The two jurisdictions have realized a need to coordinate their efforts to ensure the continued success of the retail area that Bristol and Washington County share at Exit 7, despite new retail competition from across the state line in Tennessee.

First, the City's payment to the County of \$350,000 for seven years is proposed to replace the revenues that the County anticipated losing due to the relocation of its Lowe's store to The Falls development. While this will protect the County during the revenue sharing period, the City will also be encouraged to assist the County to recruit a new tenant for the vacated Lowe's site, because revenues generated by any replacement tenant on the Lowe's site will reduce the City's required payment to the County.

Second, the revenue sharing arrangement involving sharing half of the revenues of any large retailer that relocates from the City to the County, or vice-versa, is in the best interest of the County as well. Similar to the City's interests, this stipulation should protect the County from potential revenue losses, and dissuade the County and City from luring retailers to relocate from each other's locality.

Third, the terms of the agreement involving the Trammel Property should encourage cooperation among the two localities. The County has agreed to share with the City 25% of the revenues generated by the future development of this property. The City has agreed to assist with certain access and regulatory issues that may arise as this property develops. While the County may initially forego a

portion of its revenues from the Trammel Property, it will benefit from the City's cooperative efforts in fostering the development of this property.

Interests of the Commonwealth

The Commission notes that the City of Bristol – Washington County agreement is the product of negotiations conducted under a State-established process which encourages the settlement of interlocal issues. By the establishment of this negotiation process, the State has expressed its desire for local governments to effect a resolution of their interlocal concerns within the parameters established by law. This agreement, which constitutes a locally effected reconciliation of the needs and interests of the City and County, is consistent with the interest of the Commonwealth in the promotion of negotiated settlements. The principal interest of the State in the resolution of this and all other interlocal issues subject to the Commission's review is, in our view, the preservation and promotion of the viability of the affected local governments. As previous sections of this report have indicated, the revenue sharing provisions in the proposed settlement agreement will afford Bristol and Washington County to maintain their established retail base and provide opportunities for the synergy of location of retail businesses to grow in the future. The increased viability of Bristol which has historically played a significant role in Washington County, will enhance its capacity to serve the general area.

More specifically, the revenue sharing provisions of the voluntary settlement agreement not only fortify Bristol and Washington County's revenues, but they also fortify those of the Commonwealth. The General Assembly has endorsed the diversion of state sales tax revenues to finance the construction of The Falls, and as such has an interest in the success of this development and the prevention of existing retailers moving to The Pinnacle in Tennessee. At present, the existing cluster of retail at Exits 5 and 7 off of Interstate 81 produces approximately \$6.5 million in annual revenue for the Commonwealth.⁵⁰ The continued viability of this area for retail development, which the voluntary settlement agreement will help to preserve, will serve to maintain and enhance this revenue source for the Commonwealth in the future.

In sum, the Commission finds that the proposed agreement, fashioned by the governing bodies of the City and County, is consistent with the interest of the Commonwealth in the promotion and preservation of the viability of Virginia's local governments.

FINDINGS AND RECOMMENDATIONS

In the preceding sections of this report, the Commission has reviewed a proposed voluntary settlement agreement negotiated by the City of Bristol and Washington County addressing the interests of the two jurisdictions. Based upon that review, we find that the agreement promotes the viability of both local governments and is consistent with the best interests of the Commonwealth. Accordingly, we recommend the court's approval of the agreement. While finding the agreement to be in the best interest of the Commonwealth, there are several issues which we are obliged to address.

CAPITAL IMPROVEMENT PROGRAM

The Commission strongly recommends that the City of Bristol and Washington County adopt and annually revise a capital improvements plan (CIP) as authorized by Section 15.2-2239 of the Code of

⁵⁰ Joint Petition, Tab 4, p. 22.

Virginia. Because the City is experiencing significant fiscal stress and undertaking considerable debt associated with The Falls, the need for the adoption and utilization of such a planning instrument is underscored to ensure that proper fiscal planning and prioritization for capital needs occurs on an annual basis.

ECONOMIC DEVELOPMENT STRATEGIC PLANNING

The Commission recognizes that this project is a major undertaking for the City and the Commonwealth. As such, the Commission urges the City to consider adopting a formal economic development plan or strategy. Bristol has several economic development initiatives underway, but there is not any formal document to guide these efforts. The City's Comprehensive Plan refers to economic development strategies, but these ideas should be more fully elaborated and updated, as the Plan is 12 years old. The Commission also emphasizes the importance of diversifying Bristol's economy so that it will be less dependent on retail and service sectors.

TRAMMEL PROPERTY DESCRIPTION

The Commission also notes that Section 1 of the agreement describes the Trammel property as an 83.5 acre area consisting of eight specified tracts of land owned by the Trammel estate that will be subject to a revenue sharing arrangement. The maps that were submitted with the Joint Petition depict a larger 132.1 acre area, including several parcels that are not currently owned by the Trammel estate. The Commission urges both parties to verify that they understand that Trammel property revenue sharing provisions would only be applicable to the 83.5 acres described in the agreement, not the 132.1 acres that were shown in the maps. In addition, the Commission suggests that the City and County consider how revenue sharing would be impacted if a business were to straddle the revenue sharing boundary.

CONCLUDING COMMENT

The Commission on Local Government acknowledges the considerable effort devoted by the officials of the City of Bristol and Washington County to negotiate the agreement before us. The agreement reflects a notable commitment by the leadership of both jurisdictions to address in a collaborative fashion the concerns of their localities and the needs of their residents. We commend the officials of the two jurisdictions for their public leadership and for the interlocal agreement which they have negotiated.

Respectfully Submitted,

John T. Stirrup, Jr., Chairman

Bruce C. Goodson, Vice Chairman

Cole Hendrix

John G. Kines, Jr.

Victoria L. Hull

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

THIS VOLUNTARY SETTLEMENT AGREEMENT CONCERNING A DEVELOPMENT OF REGIONAL IMPACT AND REVENUE SHARING ("Agreement") is made and entered into this 8th day of October, 2013, 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.

"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 1. 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 1. 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 1) 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 1.

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 1), 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. 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 the first 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.
- c. 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.

- d. 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.

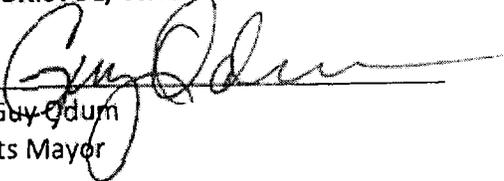
3.1.4 Enforceability. This Agreement shall be enforceable only by the Special Court affirming, validating, and giving full force and effect to this Agreement or by a successor Special Court appointed pursuant to Title 15.2, Chapter 30 of the Code, pursuant to a declaratory judgment action initiated by 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:

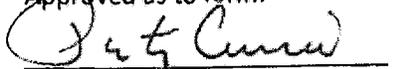
CITY OF BRISTOL, VIRGINIA

By 
Guy Odum
Its Mayor

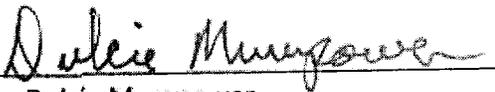
As approved by action of the Council of the City of Bristol, Virginia, at its regular meeting on the 8th day of October, 2013.

ATTEST: 
Clerk

Approved as to form:


Pete Curcio, Attorney for the City

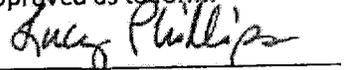
COUNTY OF WASHINGTON, VIRGINIA

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 8th day of October, 2013.

ATTEST: 
Clerk

Approved as to form:


Lucy E. Phillips, County Attorney

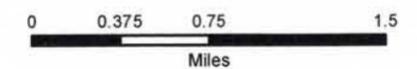
Vicinity Map - Development of Regional Impact Washington County VA & City of Bristol VA

Map 1



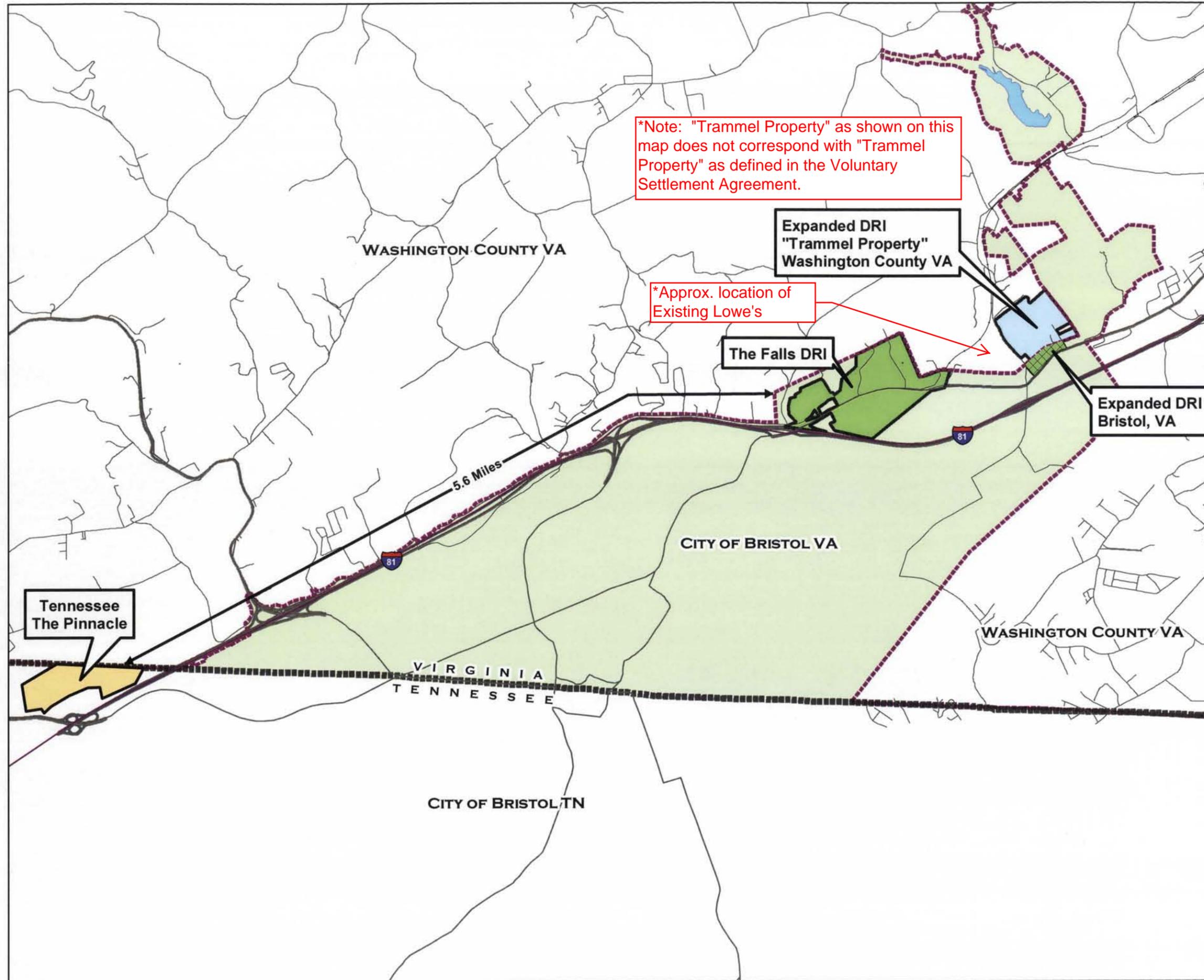
Legend

- Exits
- Bristol Portion of Expanded DRI
- The Pinnacle
- US Highways
- Rail
- Roads
- VA / TN State Line
- Bristol / Washington County Limits
- Expanded DRI
- The Falls DRI
- Interstate 81
- City of Bristol



FEBRUARY 21, 2014

Prepared by the Washington County Department of Geographic Information Systems.



* Notes added by the Commission on Local Government.