

VIRGINIA: IN THE CIRCUIT COURT OF SHENANDOAH COUNTY

IN RE: PETITION OF THE TOWN OF NEW  
MARKET AND SHENANDOAH COUNTY  
FOR AN ORDER AFFIRMING A  
VOLUNTARY SETTLEMENT AGREEMENT

CIVIL ACTION NO.: CL11-354

ORDER AFFIRMING A  
VOLUNTARY SETTLEMENT AGREEMENT

Petitioners, the Town of New Market, Virginia (the "Town") and Shenandoah County, Virginia (the "County"), by counsel, have petitioned the Court for an Order affirming a Voluntary Settlement Agreement pursuant to Virginia Code § 15.2-3400. On the 10<sup>th</sup> day of January, 2012, the Town and County appeared by their counsel Jason J. Ham and J. Jay Litten to present evidence and arguments on the Petitioners' Joint Petition for an Order Affirming a Voluntary Settlement Agreement (the "First Petition").

Petitioners called two witnesses, Evan L. Vass, Town Manager of the Town who described the terms of the First Amended Voluntary Settlement Agreement and described why it was in the best interests of the Town and the Commonwealth of Virginia. The First Amended Voluntary Settlement Agreement was introduced into evidence, as was a blown up copy of Exhibit B to such agreement, the map depicting the future growth area and the property use in such area. Petitioners also presented evidence from Richard Neese, the County's District One Supervisor. Mr. Neese testified that the First Amended Voluntary Settlement Agreement was in the best interest of the County and Commonwealth of Virginia.

Counsel for the Petitioners then described a housekeeping issue with respect to the First Amended Voluntary Settlement Agreement. The parties wished to change the wording of Section 2.6 to clarify that the Town may set the effective date of annexation as of either June 30

or December 31 at the discretion of the Town and that the Town did not have to wait until “the following year” as was unintentionally written in Section 2.6 of the First Amended Voluntary Settlement Agreement. Petitioners represented to the Court that a Second Amended Voluntary Settlement Agreement (the “Agreement”) would shortly be entered into by the Petitioner in order to rectify this issue. Accordingly, on March 15, 2012 the parties entered into the Agreement. The Agreement is attached as Exhibit 1 to this Order. The parties then filed an Amended Petition for an Order Affirming a Voluntary Settlement Agreement (the “Amended Petition”) contemporaneously with the presentation of this Order.

Upon consideration of the First Petition, the Amended Petition, the evidence presented on January 10, 2012, and upon consideration of the arguments of counsel, the Court makes the following findings:

1. On February 9, 2010, the County Board of Supervisors (the “Supervisors”) adopted a resolution endorsing a draft voluntary settlement agreement (the “Draft Agreement”) and directing County staff to refer the Draft Agreement to the Commission on Local Government (the “Commission”). Minutes (page 7) reflecting adoption of such a resolution are attached at Exhibit A to the First Petition.

2. On February 16, 2010, the Town Council of the Town (the “Town Council”) adopted a resolution endorsing the Draft Agreement and directing Town staff to refer the Draft Agreement to the Commission on Local Government (the “Commission”). The resolution is attached at Exhibit B to the First Petition.

3. On February 24, 2010 the Town and County presented the Draft Agreement to the Commission for their review pursuant to Code of Virginia § 15.2-3400. The Draft Agreement is attached as Exhibit C to the First Petition.

4. On March 26, 2010, the Town and County provided formal notice of the proposed agreement to the Commission and the eleven political subdivisions with which the Town and County are contiguous or with which they shared functions, revenues, or tax sources, in accordance with the Commission's regulation 1 VAC 50-2-230(C). The notice is attached as Exhibit D to the First Petition. Neither the Town nor the County received any negative comment from any of the eleven political subdivisions with respect to the draft agreement.

5. In conjunction with the Commission's review of the Draft Agreement, on May 3, 2010, the Commission held a public hearing, advertised in accordance with Code of Virginia § 15.2-2907(B) for the purpose of receiving citizen comment. The public hearing was attended by approximately fifteen persons and produced testimony from three individuals. Minutes of the hearing are attached as Exhibit E to the First Petition.

6. On May 4, 2010, the Commission toured relevant sections of the Town of New Market and Shenandoah County and met at the New Market Community Center to receive oral testimony from the Town and County in support of the Draft Agreement. Minutes of such meeting including the public comments are attached as Exhibit F to the First Petition.

7. The Commission, in its report of July, 2010 (the "Report") considered the general characteristics of the Town, the County, and the affected areas, citing census data and other information relevant to its consideration of the Draft Agreement, considered the proposed annexation procedure that would be undertaken, considered the interests of the Town, County, the citizens in the proposed annexation area, and the Commonwealth of Virginia, considered physical assets and public service liabilities in the Town, County, and the proposed annexation area, considered the community of interest existing between the area proposed for annexation and the Town, considered the need for urban services in the proposed annexation area and the

Town's ability to provide for the same, including water and sewer services, solid waste collection and disposal services, street maintenance, street lighting, parks and recreation, police protection, planning, zoning, and subdivision regulation, and the Town's ability and history of providing such services, conducted a public finance analysis, and considered many other factors. The Report is attached as Exhibit G to the First Petition.

8. After considering such factors and evidence, the Commission found that the Draft Agreement promotes the viability of both the County and the Town, is consistent with the best interest of the Commonwealth, and recommended that this Court approve the Draft Agreement.

9. Although recommending approval, the Commission set forth certain recommendations for the County and Town to consider with respect to the Draft Agreement.

10. Upon review of the Report, the County and Town conferred and amended the Draft Agreement into a First Amended Voluntary Settlement Agreement that contains all of the recommendations suggested by the Commission in its Report. The First Amended Voluntary Settlement Agreement is attached as Exhibit H to the First Petition.

11. On July 18, 2011, the Town held a public hearing preceded by public notice to obtain public comment regarding the Town's proposed entering into of the First Amended Voluntary Settlement Agreement. The notice of public hearing is attached as Exhibit I to the First Petition. One resident spoke in favor of the First Amended Voluntary Settlement Agreement, and his comments are attached in the Minutes of the New Market Town Council meeting as Exhibit J to the First Petition. Following such public hearing, the Town Council unanimously passed Resolution 212 adopting the First Amended Voluntary Settlement Agreement. A copy of Resolution 212 is attached as Exhibit K to the First Petition.

12. On August 23, 2011, the County held a public hearing preceded by public notice to obtain public comment regarding the County's proposed entering into of the First Amended Voluntary Settlement Agreement. The notice of public hearing is attached as Exhibit L to the First Petition. No member of the public spoke at the hearing. Following such public hearing, the Supervisors unanimously passed a resolution adopting the First Amended Voluntary Settlement Agreement. A copy of the Resolution is attached as Exhibit M to the First Petition.

13. On February 21, 2012, the Town held a public hearing preceded by public notice to obtain public comment regarding the Town's proposed entering into of a Second Amended Voluntary Settlement Agreement (the "Agreement"). A copy of the Agreement is attached as Exhibit N to the Amended Petition. The Agreement is identical to the First Amended Voluntary Settlement Agreement, other than changes to Section 2.6 to clarify that the effective date of annexation by ordinance shall be either June 30 or December 31 at the discretion of the Town, a change in the date of the Agreement, and a change in the name of the Agreement to indicate that it is the Second Amended Voluntary Settlement Agreement. The notice of public hearing is attached as Exhibit O to the Amended Petition. No member of the public spoke at the hearing. Following such public hearing, the Council unanimously passed a resolution adopting the Agreement. A copy of the Resolution is attached as Exhibit P to the Amended Petition.

14. On February 28, 2012 the County held a public hearing preceded by public notice to obtain public comment regarding the County's proposed entering into of the Agreement. The notice of Public Hearing is attached as Exhibit Q to the Amended Petition. No member of the public spoke at the hearing. Following such public hearing, the Supervisors unanimously passed a resolution adopting the Agreement. A copy of the Resolution is attached as Exhibit R to the Amended Petition.

15. The Agreement would allow the Town to annex certain portions of County land (the "Future Growth Area") by Town ordinance if such property is deemed developed as described in the Agreement, if the parcel is currently served by Town water or sewer, or if requested by the property owner.

16. The Future Growth Area contains approximately 1,918 acres of land to the north, south, east, and west of the existing Town boundaries. The metes and bounds of the Future Growth Area and a map depicting the Future Growth Area are attached to the Agreement. No single annexation shall include greater than 12% of the Future Growth Area until 75% of such area has been incorporated into the Town.

17. The Agreement provides that Town services excluding water and sewer service shall be available to residents in newly annexed areas on the effective date of each annexation or as soon as practicable. Water and sewer services will be extended as it becomes reasonably necessary and economically feasible.

18. The Agreement provides that Town zoning classifications in areas annexed shall substantially conform to the uses that are described in the map that is attached to the Agreement until 75% of the Future Growth Area is annexed. Rezoning, special use and nonconforming use requests within the Future Growth Area made prior to annexation shall be jointly reviewed by both the County and Town Planning Commissions.

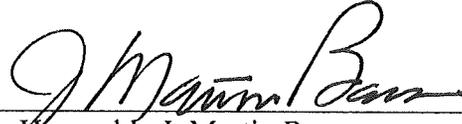
19. The Agreement further provides that the Town shall not institute or support annexation proceedings against the County for a period of twenty years, and that the Town will negotiate a pre-annexation agreement with developers including cash proffers to pay for the costs of new development. There are additional terms that are described in the Agreement.

20. Both the County and Town are represented by Litten & Sipe, LLP. Accordingly, the material portions of the Agreement were negotiated and agreed to without the participation of Litten & Sipe, LLP. Section 7.5 of the Agreement provides that the Town and County acknowledge and agree that both parties are represented by Litten & Sipe, LLP and waive any conflict that this presents, including any conflict with respect to both sides being represented by the same law firm during the affirmation proceedings at issue in this action.

Upon making the above recited findings, it is hereby **ORDERED** that the Amended Petition for an Order Affirming a Voluntary Settlement Agreement is **GRANTED**, that the Second Amended Voluntary Settlement Agreement between the Town of New Market and Shenandoah County which is attached as Exhibit 1 to this Order is hereby **AFFIRMED** to the fullest extent required by Code of Virginia § 15.2-3400 to give immediate full force and effect to such Agreement.

The Clerk shall send an attested copy of this Order to all Counsel of Record.

ENTERED: MAY 1, 2012

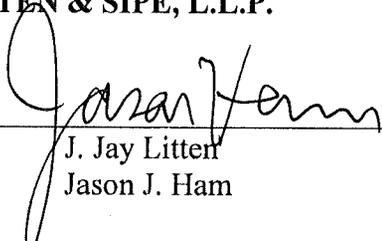
  
The Honorable J. Martin Bass

  
The Honorable Catherine C. Hammond

  
The Honorable Jane Marum Roush

**WE ASK FOR THIS:**

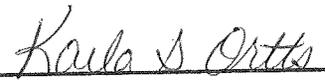
**LITTEN & SIPE, L.L.P.**

By:    
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Facsimile: (540) 434-6069

*Counsel for Petitioners*

A True Copy Teste:  
DENISE B. ESTEP, CLERK

By:  D.C.

**SECOND AMENDED VOLUNTARY SETTLEMENT AGREEMENT BETWEEN  
THE TOWN OF NEW MARKET AND SHENANDOAH COUNTY**

THIS AGREEMENT is made and entered into this 19 day of MARCH, 2012, and executed in triplicate originals (each executed copy constituting an original) by and between the TOWN OF NEW MARKET, VIRGINIA, a municipal corporation of the Commonwealth of Virginia, and the COUNTY OF SHENANDOAH, VIRGINIA, a political subdivision of the Commonwealth of Virginia.

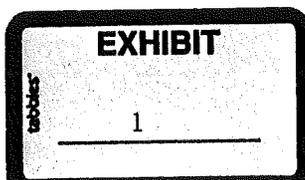
WHEREAS, the Town and the County have reached this Agreement, pursuant to Title 15.2, Chapter 34, of the Code of Virginia, (i) providing for the annexation of certain territory of the County to the Town (ii) providing for the development of the annexation areas in accordance with a jointly approved land use map, (iii) providing for the grant of immunity to the County from annexation for a period of 20 years, and (iv) providing for the transfer of certain funds received by the Town to the County.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Town and the County agree as follows:

**SECTION 1**  
**DEFINITIONS**

The Town and the County hereto agree that the following words, terms, and abbreviations as used in this Agreement shall have the following defined meanings, unless the context clearly provides otherwise:

- 1.1 "Town" means the Town of New Market, Virginia.
- 1.2 "Town Council" means the Town Council of the Town of New Market, Virginia.
- 1.3 "County" means the County of Shenandoah, Virginia.



- 1.4 “County Board of Supervisors” means the Board of Supervisors of the County of Shenandoah, Virginia.
- 1.5 “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 date of execution of this Agreement, or any successor provision should the Code be amended after execution of this agreement.
- 1.6 “Commission” means the Commission on Local Government.
- 1.7 “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.
- 1.8 “Section” refers to the parts of this Agreement unless the context indicates that the reference is to sections of the Code.
- 1.9 “Subsection” refers to the parts of this Agreement set out in the various “Sections.”
- 1.10 “Future Land Use Plan” refers to the written text outlining the future land use for Future Growth Area entitled “future land use plan.”
- 1.11 “Future Land Use Map” attached as Exhibit B

**SECTION 2**  
**ANNEXATION**

- 2.1 Annexation Area. The Town and the County agree to the annexation of County territory lying generally to the north, south, east and west of the existing Town corporate limits. This area is referred to as the Future Growth Area and is described by metes and bounds in Exhibit A and is depicted on the map attached as Exhibit B to this Agreement containing approximately 1,918 acres. The

annexation by the Town shall occur in strict accordance with the terms and conditions set out in Section 2 of this Agreement.

2.2 Survey of Parcels in Future Growth Area. Prior to the annexation of any parcel in the Future Growth Area, the Town shall have prepared, without expense to the County, a survey plat and metes and bounds description showing the parcel or parcels being annexed into the Town, as required by Subsection 2.5(b).

2.3 Terms and Conditions of Annexation. The Town and County agree that the Town may annex any tax parcel or parcels in the Future Growth Area by the passage of an ordinance by the Town Council, provided that either subsection 2.3 (a), 2.3 (b), or 2.3 (c) has been satisfied.

- (a) The tax parcel is deemed developed subsequent to the effective date of this Agreement, as the term “developed” is defined in Subsection 3.4; or
- (b) The tax parcel or parcels are currently being served by Town water, sewer or both; or
- (c) An owner in the Future Growth Area requests the annexation of a tax parcel or parcels in the Future Growth Area to the Town subsequent to the effective date of this Agreement; and
- (d) The tax parcel or parcels referred to in Subsections 2.3 (a), (b), and (c) of this Section that are to be annexed are either contiguous to the Town or contiguous to another tax parcel that is contiguous to the Town;
- (e) In the event annexation is sought for a tax parcel or parcels that are not contiguous to the Town but are contiguous to another tax parcel or parcels that are contiguous to the Town, the tax parcel or parcels that are not

contiguous to the Town must meet the requirements of Subsection 2.3 (a), (b), or (c) of this Section. The contiguous parcel or parcels shall also be annexed to the Town to insure that the Town remains a compact body of land.

- (f) No annexation shall include land greater than 12% of the total Future Growth Area except as otherwise noted in Section 2.4 of this agreement. The Town agrees that all such annexations shall be consistent with its Comprehensive Plan concerning growth.

2.4 Complete Annexation of Future Growth Area. When 75% of the acres in the Future Growth Area have developed as that term is defined in Subsection 3.4 of this Agreement, the Town may annex the remaining tax parcels within the Future Growth Area without regard to the 12% limitation set forth in Subsection 2.3(f) of this Agreement.

2.5 Conditions Precedent to the Town Annexing by Ordinance Pursuant to Subsections 2.1, 2.2, 2.3, and 2.4 of this Agreement. The Town shall not pass any ordinance to annex any territory in the Future Growth Area unless and until:

- (a) The Town provided the County written notice of its intent to adopt an annexation ordinance for any tax parcel or parcels in the Future Growth Area. Such notices shall be delivered at least 60 days prior to the adoption of an annexation ordinance.
- (b) The Town provides with the Annexation Notice to the County, (i) a metes and bounds description, (ii) survey plat of the tax parcel or parcels to be annexed to the Town, and (iii) a written statement of the Town's basis for annexing such tax parcel or parcels. Such written statement should include

reference to specific Subsections of this Agreement that permit such annexation.

- 2.6 Effective Date of Annexation by Ordinance. The effective date of any annexation that occurs pursuant to Section 2 of this Agreement shall be established in the Annexation Ordinance as of either June 30<sup>th</sup> or December 31<sup>st</sup>, at the discretion of the Town.
- 2.7 Extension of Municipal Services. The Town agrees to only annex such areas as can be served by water and sewer within a period of five (5) years from the date of annexation and will allow its water and sewer service to be extended to the tax parcel or parcels that are annexed to the Town on the same basis and at the same levels as such services are now or hereafter provided in areas within its current corporate limits where like conditions exist. Water and sewer services shall be extended into annexed areas only as it becomes reasonably necessary and economically feasible. Additionally, other municipal services, exclusive of water and sewer, will be extended by the Town into annexed areas on the effective date of each annexation, or as soon as practicable. All such services will be at the same level and quality as are generally available within the entire Town.

### **SECTION 3**

#### **LAND USE AND ZONING IN THE FUTURE GROWTH AREA**

- 3.1 Future Land Use. The Town and the County agree that the orderly development of the Future Growth Area is in the best interest of both parties. The Town and the County have agreed upon the Future Land Use Map attached hereto as Exhibit B. The Future Land Use Map depicts the types of land uses for the Future Growth Area that the Town and the County have agreed are most appropriate for the reasonably near future. The Future Land Use Map is to serve as a guide to future development as specified in Section 3 of this Agreement. The Town and the County have already amended their respective Comprehensive Plans to

incorporate the Future Land Use Map. The Town further agrees to amend their zoning ordinance to reflect the zoning districts proposed on the Future Land Use Map prior to any annexation requests.

3.2 Interim Zoning Classifications. Until such a time as a zoning classification is assigned, any unzoned land within the corporate boundaries may be used only as permitted by the regulations of the Transitional X District as set forth in the Town of New Market Zoning Ordinance.

3.3 Affirming or Rezoning of Interim Zoning Classifications.

(a) Within six (6) months after the effective date of a Future Growth Area Annexation, the Town Council shall classify all parcels so annexed to Town zoning districts that substantially conform to the Future Land Use Plan.

(b) After completing the herein referenced classification process, the Town Council shall then have the full discretion and power to approve or disapprove any rezoning requests, whether initiated by the property owners or the Town itself provided that the Town specifically agrees that it will only approve rezoning requests that substantially conform to the Future Land Use Plan until the terms and conditions of Subsection 3.4 of this Agreement are complied with.

3.4 Future Land Use Constraints.

(a) The Town and the County agree that the obligations imposed on the Town Council with respect to zoning and rezoning matters as reflected in Subsections 3.1, 3.2, and 3.3 shall remain in effect and the Town Council will specifically comply with such Subsections until such time as 75% of the original undeveloped acreage in the Future Growth Area has developed.

- (b) After the development of 75% of the undeveloped acreage in the Future Growth Area, the Town Council shall have complete discretion to deal with all zoning and rezoning matters within the Future Growth Area upon the merits of each zoning application without reference to Subsections 3.1, 3.2, and 3.3.
- (c) In determining whether 75% of the acreage in the Future Growth Area is developed, the Town and the County agree that Subsection 3.4 (d) and (e) shall be followed and applicable to the 75% calculation in the Future Growth Area.
- (d) The Town and the County agree that the term “developed” as used in this Agreement for the purpose of making the 75% calculation shall mean:
  - (1) The Town and the County agree that if a residential dwelling of any kind is constructed upon any tax parcel in the Future Growth Area which contains five (5) acres or less, then that entire parcel shall be deemed developed.
  - (2) The Town and the County agree that if a residential dwelling of any kind is constructed upon any tax parcel in the Future Growth Area which contains more than five (5) acres, then only five (5) acres of that tax parcel shall be deemed developed.
  - (3) The Town and the County agree that any tax parcel in the Future Growth Area that is exclusively in commercial or industrial use shall be deemed developed in making the 75% calculation.

- (4) The Town and the County agree that any tax parcel being used for commercial or industrial activities on which agricultural operations or uses are also occurring, including the planting and harvesting of crops or plant growth of any kind, pasture, horticulture, silviculture, dairying, floriculture, or the raising of poultry and/or livestock, then the portion (or acreage) of such tax parcel being put to such agricultural uses shall be deemed undeveloped in making the 75% calculation.
- (e) The Town and the County agree that any tax parcel or part of any tax parcel used for public roads and highways or public facilities, or which lies in the 100-year flood plain shall be excluded from the total acreage in the Future Growth Area for the purposes of making the 75% calculation.
- (f) The Town agrees that properties currently shown on the Future Growth Area Map may remain in the Agricultural and Forest District as long as they remain in Shenandoah County. In the event that a tax parcel or parcels are located in the Agricultural and Forest District and the property owner has requested the property to be annexed, they must also request that the property be removed from the Agricultural and Forest District by the County and have such request approved prior to any approval of annexation by the Town. Both parties recognize that land within the Agricultural and Forest District is limited in its growth potential.
- (g) Prior to annexation, in the event of rezoning requests, special use requests, non-conforming uses or any other use situations not permitted by right in the Shenandoah County Zoning Ordinance, the County Zoning Administrator shall refer any such matter for a joint review by the County Planning Commission and the Town Planning Commission. The respective commissions may meet jointly and shall make their recommendations

jointly or severally, as each respective commission may so desire, to the County Board of Supervisors, as provided by law. The Town agrees that, provided such referrals are made in a timely fashion so as to allow adequate time for review, the Town Planning Commission shall in turn make a timely recommendation, if any, so as not to delay formal action by the County. Any such referrals by the County Zoning Administrator to the Town Planning Commission should be made no less than 10 days prior to any meeting of the Town Planning Commission during which action thereon by the Town Planning Commission is desired.

**SECTION 4**  
**WAIVER OF ANNEXATION RIGHTS, IMMUNITY AND DEANNEXATION**

- 4.1 Waiver of Annexation Rights. The Town and the County agree that for a period of 20 years the Town waives all its statutory rights to annex County territory and will not initiate, institute or support any proceeding to annex territory of the County except (i) as specifically provided in Subsection 2 of this Agreement or (ii) any annexation that may be the result of a mutual agreement between the Town and the County. It is the intent of the Town and the County that the County be immune from any annexation to the Town for such 20-year period.
- 4.2 Citizen Annexation. In the event annexation proceedings are instituted by property owners or qualified voters pursuant to § 15.2-3203 of the Code or any statute similar thereto, the Town agrees that it will not support such proceedings and, if requested by the County, will oppose at no cost to the Town all such proceedings during the 20-year immunity period. The Town specifically agrees not to provide any legal assistance, engineering assistance, financial aid, or any other aid or assistance to property owners or qualified voters petitioning for annexation pursuant to Va. Code § 15.2-3203 of the Code.

**SECTION 5**  
**CASH PAYMENT TO THE COUNTY**

- 5.1 Cash Payment. It is in both the Town and County's interest that new development pay its fair share of the costs for new capital projects in the Town and County. The County agrees to run a fiscal impact model for all new developments proposed in conjunction with a property requested to be annexed into the Town to determine the county's share of fiscal impact on the County Capital Improvement Plan. The composition of the model shall be determined from time to time, within the County's reasonable discretion. The Town agrees to negotiate a pre-annexation agreement with the property owner of properties proposed to be annexed for development that stipulates the payment of cash on a per unit basis in the amount determined by the County fiscal impact model. This cash payment will be paid by the property owner after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy. Such cash payments shall be made payable to the Town of New Market. The Town will forward this payment to the County within 60 days.

**SECTION 6**  
**COMMISSION AND SPECIAL COURT APPROVAL**

Commission Approval. The Town and the County have presented this proposed settlement to the Commission as required by Code of Virginia § 15.2-3400. This agreement incorporates the changes suggested in their report.

- 6.1 Special Court Approval. The Town and County agree to petition the Shenandoah County Circuit Court for an order affirming the proposed settlement.
- 6.2 Termination for Failure to Affirm and Validate and Give Full Force and Effect to This Agreement. The Town and the County agree that if this Agreement is not

affirmed by the Special Court as required by Code of Virginia § 15.2-3400 that this Agreement shall immediately terminate.

**SECTION 7**  
**MISCELLANEOUS PROVISIONS**

- 7.1 Binding Effect. This Agreement shall be binding upon and inure to the benefit to the Town and the County, and each of the future governing bodies of the Town and the County, and upon any successor to either the Town or the County.
- 7.2 Amendments. This Agreement may be amended, modified, or supplemented in whole or in part, by mutual agreement of the Town and the County, prior to affirmation, by a written document of equal formality and dignity, duly executed by the authorized representatives of the Town and the County.
- 7.3 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 this Agreement of the Order affirming, validating, and giving full force and effect to this Agreement.
- 7.4 Standing. The Town and the County agree that each shall and does have standing to enforce any of the provisions, covenants, conditions and terms of this Agreement.
- 7.5 Conflict Waiver. The Town and County recognize that both parties are represented by Litten & Sipe, LLP and waive any conflict that this presents, including but not limited to any conflict with respect to both sides being represented by the same law firm during the affirmation procedures set forth in

Code of Virginia § 15.2-3400 and any work incidental to obtaining such required approvals of this Agreement. The parties acknowledge and agree that the material portions of this Agreement were negotiated and agreed to without the participation of Litten & Sipe, LLP, and that if a dispute arises with respect to the interpretation or performance of this Agreement that neither side may be represented by Litten & Sipe, LLP.

## SECTION 8

### RESOLUTION OF DISPUTES

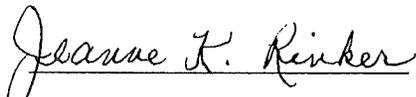
- 8.1 Should the parties have any dispute about the interpretation or performance of this agreement, the dispute will be resolved as follows:
- (a) The Town Manager and the County Administrator will meet informally to discuss the parties' needs and concerns. They will search for solutions and, if necessary, they will seek their governing bodies' approval of any solutions developed.
  - (b) Should the dispute not be resolved through such informal discussions, the parties agree to participate in mediation as a further effort to resolve the dispute. If such mediation shall fail to be held within sixty days of either parties' request court proceedings may commence.
  - (c) Should both of the foregoing steps fail to lead to resolution of the dispute, the parties may bring such legal or equitable proceedings as may be proper under Virginia law. This procedure shall not prevent the institution of any legal proceeding necessary to preserve a claim.

WITNESS the following signatures and seals:

TOWN OF NEW MARKET, VIRGINIA

By:   
Mayor

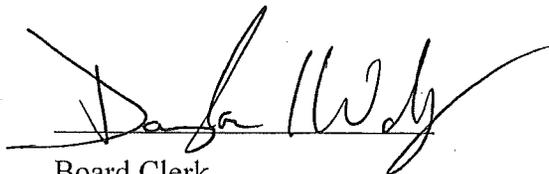
ATTEST:

  
Town Clerk

COUNTY OF SHENANDOAH, VIRGINIA

By:   
Chairman of the Board of Supervisors

ATTEST:

  
Board Clerk