

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE TOWN OF CULPEPER, VIRGINIA AND
THE COUNTY OF CULPEPER, VIRGINIA
REGARDING CREATING A REGIONAL WATER & SEWER
AUTHORITY, EXPANDING TOWN GEOGRAPHICAL AREA BY
AGREED BOUNDARY ADJUSTMENT, AND RELATED TOPICS**

WHEREAS, for many years, the Town of Culpeper (the “Town”) has provided water & sewer utility services to Town citizens, and in some instances to County citizens; and

WHEREAS, in May, 2001, the County of Culpeper (the “County”) created a County Water & Sewer Authority; and

WHEREAS, in June, 2002, the Town and County entered into a Memorandum of Understanding pursuant to which the County would purchase water and sewer capacity from the Town; and, pursuant to which the County could provide those services to County customers; and

WHEREAS, in June, 2003, the Town and County entered into an Agreement, pursuant to which the County agreed to purchase from the Town, on a requirements basis, up to 600,000 gallons per day capacity of water and sewer services for County customers; and

WHEREAS, by conditional resolution in August, 2002, and by a series of written agreements between the Town and the County, commencing in June, 2003, the County approved the Town providing water and/or sewer services to various specific customers in the County upon the condition that the Town would turn over to the County the infrastructure and the service to those specific customers, upon request by the County; and

WHEREAS, for several years the Town and the County have been in the process of expanding their respective water and sewer capabilities to serve existing and anticipated needs; and

WHEREAS, the Town and the County understand and agree that a combination of unique circumstances have arisen at this time which render the creation of a Regional Water & Sewer Authority, to be named the

Culpeper Service Authority, to be in the long-term best interest of the citizens and the rate-payers in both the Town and the County; and

WHEREAS, the Town and County agree that since the creation of a regional authority should be addressed and completed as soon as reasonably possible, the issues related to the creation of a regional authority, and related operating agreement, referendum, protection of Town water and sewer utility staff, rate-payer protection, as necessary, and other related issues shall be treated separately in agreements other than the final Town and County voluntary boundary adjustment agreement; and

WHEREAS, residential and commercial growth in the Town over the past several years makes it desirable for the Town to expand its boundary in order to promote additional economic development; and

WHEREAS, in connection with the intended boundary adjustment, the parties intend to deal in this Memorandum of Understanding and the final agreements with such issues as: (1) Joint financing of the proposed “Western Outer Loop Road” as herein described; (2) Joint land use planning for the territory newly acquired by the Town from the County; (3) Revenue consideration and balancing as necessary; (4) Evaluation and development of Lake Catalpa as a water source for the Town and County; (5) the handling of agricultural businesses located within the boundary adjusted territory added to the Town; and (6) Tax payer and rate payer protection, as necessary.

NOW, THEREFORE, THE TOWN AND THE COUNTY MEMORIALIZE THEIR UNDERSTANDING AS FOLLOWS:

I. GENERAL

(a) The foregoing WHEREAS clauses are incorporated herein by reference.

(b) The provisions of this Memorandum of Understanding are a statement of mutual intent and **shall have no legal force and effect** until implemented by subsequent written agreements (“Agreements”) approved by both the Town Council and the County Board of Supervisors.

(c) The parties recognize and agree that the voluntary boundary adjustment agreement contemplated by the parties is governed, in part, by VA Code § 15.2-3400 which grants broad authority to localities to enter into such agreements.

(d) The parties recognize that pursuant to VA. Code § 15.2-3400(2), the parties may agree to “the joint exercise or delegation of powers as well as the modification or waiver of specific annexation, transition or immunity rights as determined by the local governing body...and such other provisions as the parties deem in their best interest.” This broad exercise of discretion by the parties is limited only by the Constitution of Virginia.

(e) Following approval by the Court of the proposed boundary adjustment, the Town shall not file in Court to annex any other property in the County for a period of fifteen years. This provision does not preclude additional boundary adjustment settlement agreements between the Town and the County. In addition, the Town Council and the Board of Supervisors shall meet every five years from the effective date of the final voluntary boundary adjustment agreement to consider and discuss whether additional agreed boundary adjustments are warranted.

(f) Also following the approval by the Court of the proposed Boundary Adjustment, the Town further agrees not to seek city status for a period of twenty-five years.

II. BOUNDARY ADJUSTMENT

(a) The boundary adjustment shall be substantially the same as the green area on the map attached as Exhibit A, on which a small number of parcels may be changed to improve revenue balancing between the Town and the County. Expanded maps and lists identifying each parcel to be included from the County into the Town by the proposed boundary adjustment shall be posted at multiple sites in the County Administration Building and Town Hall; made available to local newspapers; and, posted on the Town and County websites.

(b) The Western Outer Loop Road. This road, generally connecting Rt. 729 and Rt. 522, is depicted as one of the two alternatives shown on Exhibit A. The County shall continue its proposed funding and make every

effort to commence this project as soon as possible. The Town and County shall contribute saved revenue sharing funding for this project at an agreed upon time to expedite commencement of this road construction project. Of the plans presently being considered by the Virginia Department of Transportation, the parties prefer the alternative B plan for routing of the Western Outer Loop Road.

(c) For land presently zoned A-1 or RA in the County and which will become part of the Town by the boundary adjustment, the Town shall create agricultural zoning, consistent with an agreed upon process as more specifically described in III. JOINT LAND USE PLANNING, below.

(d) The following property presently containing agricultural businesses or uses are excluded from the intended boundary adjustment until there is: (1) a substantial change from the current use; or (2) a request by the owners of the parcel(s) to be annexed into the Town (the County will not object in Court to the annexation):

(i) Culpeper Farmers Coop, Inc. (current property owner). Parcels are Tax 41, parcels 76, 76A, and 77.

(ii) Culpeper Petroleum Coop, Inc. (present owner). Parcels are: Tax 41, parcel 73.

(iii) County Farm Service, Inc. (present owner). Parcels are: Tax map 41C(1), parcels 1, 1A, and 2.

III. JOINT LAND USE PLANNING

Consistent with the authority delegated by VA. Code § 15.2-3400, the parties agree:

(a) The Town and County shall jointly plan, develop, and approve a comprehensive land use plan for areas which move from the County to the Town in accordance with the intended boundary adjustment. This plan shall be in effect before the intended boundary adjustment becomes effective.

(b) The Town and County shall jointly plan, develop, and approve a master zoning plan for the boundary adjusted area which plan shall be effective the same day, but after the boundary adjustment becomes effective.

(c) For the period of five years after the effective date of the Boundary Adjustment Settlement Agreement, any change to the zoning or use of land within the boundary adjustment area, which change is a change under either the comprehensive plan or the master zoning plan for the boundary adjustment area, must be approved by both the Town and the County using their normal, respective processes for approving such changes.

IV. LAKE CATALPA

A portion of the geographical area which will be transferred from the County to the Town by this boundary adjustment will include a portion of the County Catalpa Magisterial District, including Lake Catalpa. The following is intended by both parties:

(a) The Authority should consider the feasibility, alternatives, and costs of creating another surface water source, including Lake Catalpa, for the future water needs of the Town and County.

(b) The Authority should determine the best alternative for a future surface water source for the Town and County and, if deemed feasible, cost-effective and the best alternative, will develop a plan of implementation to utilize that source.

(c) The Authority should also consider the feasibility and costs associated with:

- (i) Expansion of Lake Catalpa;
- (ii) Using wells as a supplemental water source;
- (iii) Piping and pumping water to Lake Pelham from potentially alternative water sources; and,
- (iv) Maintaining storm water retention capacity (flood control).

(d) The Town, County, and Authority should jointly plan for potential recreational use of area around Lake Catalpa.

V. REGIONAL WATER & SEWER AUTHORITY (“CULPEPER SERVICE AUTHORITY”)

(a) The Town and County shall agree to proceed upon two alternate tracks by agreements separate from the voluntary boundary adjustment agreement. One track shall be a voluntary boundary adjustment agreement which shall include matters discussed in Sections I – IV and VI – VII of this Memorandum of Understanding, which Agreement the parties understand will be submitted to the Commission on Local Government and a special court for approval. The second track shall include those matters discussed in Section V of this Memorandum of Understanding and related documents which, in accordance with Virginia law, allows the establishment and operation of the Culpeper Service Authority without referral to or approval of the Commission on Local Government or a special court. However, the parties agree that the creation and operation of the Culpeper Service Authority shall also be a consideration for the voluntary boundary adjustment agreement.

(b) It is the intent of the parties that a regional water & sewer authority be established that at some time in the future will own, operate, set rates for, and have all government authority – separate from the County Board of Supervisors and the Town Council – over and responsibility for water and sewer matters in the County of Culpeper, in accordance with applicable Virginia law.

(c) Both parties recognize that Town Charter, Ch. 7, § 7.4, states, in part, that no Town officers, or their agents:

[s]hall have the power or authority to sell...or otherwise dispose of any public utility owned by the Town of Culpeper without first submitting such sale [or disposal]...to a vote of the qualified electors of the Town of Culpeper....

Therefore, until such referendum of Town voters is held and a majority of those voters approve the transfer of all of the physical assets of the Town's water and sewer utility systems to the Culpeper Service Authority, the Town and County shall jointly create the Culpeper Service Authority and contract with the Authority for its use and operation of Town and County water and sewer system assets, generally in accordance with the following process:

(i) Articles of Incorporation of the Authority shall be approved by the Town and County and the Authority shall be established in accordance with Virginia law; and

(ii) The initial By-laws of the Authority shall be submitted to the Town and the County for review and comment and then submitted to the Authority for approval.

(iii) There shall be seven board members of the Authority, three appointed by the Town Council, three appointed by the County Board of Supervisors, and one to be recommended and confirmed by both the Town Council and the County Board of Supervisors; and

(iv) Both the Town and County shall enter similar agreements with the Authority transferring all rights, including DEQ nutrient loading allocations, customers, cash or cash equivalents, etc., and liabilities, except tangible assets, for example – infrastructure -- to the Authority so that the Authority can hire employees; operate and maintain all systems; serve all water and sewer customers; prescribe and adopt regulations for system construction, repair, and operation; incur debt; issue bonds; set and charge fees; set and charge rates; and perform any other functions of an Authority as authorized by Virginia law except to sell all or part of the physical assets of the systems owned by the Town or the County except as specified in (d) below.

(d) The Town shall hold a referendum, as soon as reasonably possible, on the transfer of physical assets of the Town's water and sewer utilities to the Authority. Upon approval by the Town's voters, by referenda, the Town shall expeditiously take all necessary steps to transfer those physical assets to the ownership of the Authority. Simultaneously and expeditiously, the County shall take all necessary steps to transfer ownership

of all water and sewer system assets to the ownership of the Authority. Upon completion of the foregoing transfer of physical assets, the Town, County, and Authority shall promptly rescind, if not rescinded by operation of law or condition subsequent, all operating agreements pursuant to which the Authority used Town and County physical assets in discharging the Authority's responsibilities.

(e) In its initial hiring of Authority employees, the Authority shall employ all of the qualified applicants presently employed by the Town or County ("present utility employees").

(f) The effective date of the boundary adjustment settlement agreement shall coincide with the date of execution of the operating agreement between the Town and the Authority unless the approval by the Court is later, in which case the final judgment of the Court governs.

(g) The parties shall, consistent with Virginia law, agree upon limitations in water and sewer service rate increases for a specified period of time to be determined by the parties.

(h) Those residences and commercial properties in the boundary adjustment area which move from the County to the Town and which presently use wells and/or septic systems shall not be required to hook up to available water and sewer systems. The Town and County shall jointly recommend that the Authority establish a connection fee rate that is discounted by 50% or more of the prevailing rate for such property owners to obtain water and/or sewer service. However, should a well or septic system fail, such property owner shall be required to hook up to the available water or sewer system, if the facility potentially using such services is located within such specified distance of existing water and/or sewer utility as specified by applicable regulations. All new uses in the boundary adjusted area which are within the distance specified in applicable regulations shall be required to hook up to available water and/or sewer systems.

VI. TAXPAYER PROTECTION

(a) Tax Exemption or Deferral: Any taxpayer in the boundary adjusted area which taxpayer presently receives a County or Virginia tax exemption

or deferral for the elderly or handicapped, or other exemption, credit or partial abatement pursuant to Sections 58.1-3210 through 58.1-3220 shall be permitted to continue to receive that tax benefit until by its terms the benefit would expire or 5 years, whichever is longer.

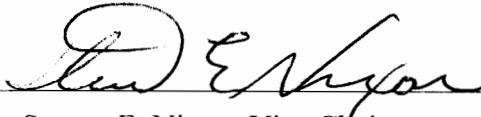
(b) Land Use Tax Benefits: Any taxpayer receiving agricultural land use tax benefits at the time the boundary adjustment becomes effective, shall be entitled to continue to receive such benefits as long as the land use meets the requirements of the Virginia Code governing such tax benefits.

VII. REVENUE BALANCING

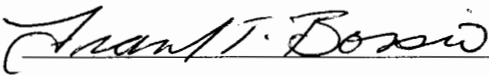
The parties shall consider, determine, and agree upon a revenue balancing plan which considers the revenues and expenses which are gained and lost by the County and Town in the boundary adjusted area. Such considerations will include gains in taxes to the Town, lost taxes to the County, additional expenses to the Town, for example, police protection and trash pick-up, and reduced expenses to the County, for example, the Sheriff's Department. The parties will seek to insure that there is a substantial balancing of revenues and expenses at the time of the boundary adjustment and will seek to preclude precipitous increases in taxes or fees for landowners in the boundary adjusted area. The parties shall negotiate a reasonable "sunset" provision to prescribe the time at which this provision shall terminate.

WITNESS the following signatures:

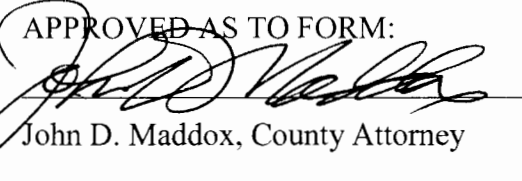
COUNTY OF CULPEPER, VIRGINIA:

BY:  (SEAL)
Steven E. Nixon, Vice Chair
Culpeper County Board of Supervisors

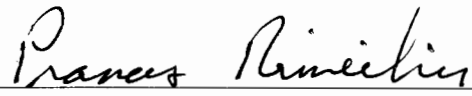
ATTEST:


Frank T. Bossio, Clerk to the Board

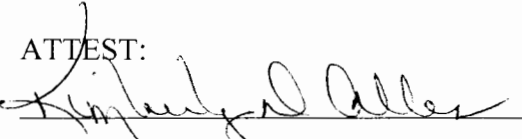
APPROVED AS TO FORM:


John D. Maddox, County Attorney

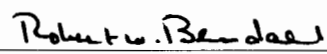
TOWN OF CULPEPER, VIRGINIA

BY:  (SEAL)
Pranas A. Rimeikis, Mayor
Culpeper Town Council

ATTEST:






Kimberly D. Allen, Clerk to the Town Council

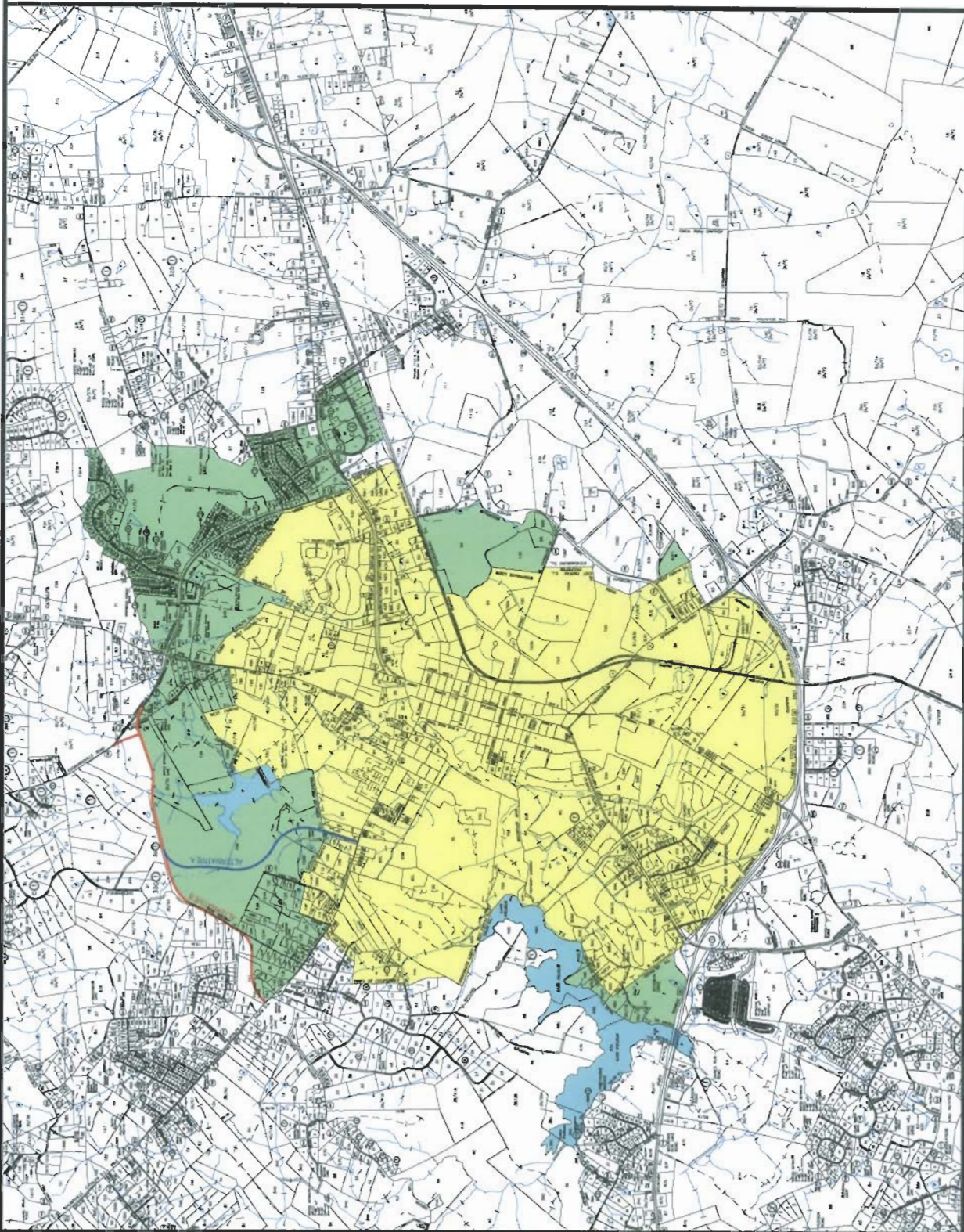
APPROVED AS TO FORM:


Robert W. Bendall, Town Attorney



POTENTIAL BOUNDARY ADJUSTMENT AREAS

-  CURRENT TOWN AREA
-  POTENTIAL ADJUSTMENT AREAS
-  WESTERN OUTER LOOP ALTERNATIVE A
-  WESTERN OUTER LOOP ALTERNATIVE B (PREFERRED ALTERNATIVE)



DATE: JULY 28, 2008
PREPARED BY
CULPEPER CO. PLANNING DEPT.