

**REPORT ON THE  
CITY OF COVINGTON – COUNTY OF ALLEGHANY  
VOLUNTARY ECONOMIC GROWTH-SHARING AGREEMENT**



**Commission on Local Government  
Commonwealth of Virginia**

**May 2017**

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# **REPORT ON THE CITY OF COVINGTON – COUNTY OF ALLEGHANY VOLUNTARY ECONOMIC GROWTH-SHARING AGREEMENT**

## **INTRODUCTION & BACKGROUND**

### ***Proceedings & Chronology of Events***

On November 30, 2016, the Commission on Local Government (the Commission) received a joint submission from the City of Covington and Alleghany County requesting that the Commission review a proposed Joint Economic Development and Growth Sharing Agreement (Agreement) pursuant to § 15.2-1301 of the Code of Virginia. The submission was accompanied with supporting data and materials to the Agreement and was in compliance with Commission regulations §§ 1VAC50-20-382 and 1VAC50-20-612 of the Virginia Administrative Code.

The proposed Agreement before the Commission is a result of negotiations between the City and County and their willingness to collaborate to share the costs and reduced financial burden associated with new development and make worksites ready to attract new businesses and growth to the Alleghany Highlands.<sup>1</sup> The City and County have lost population and jobs over time due to the changing economy, which has reduced the tax revenue base. Furthermore, it has become more difficult to attract employers to the region due to lack of available land, product, and infrastructure such as broadband; all significant costs to the localities to develop and expand in the region.<sup>2</sup> The localities have tried other avenues such as the Alleghany Highlands Economic Development Authority (AHEDA), but it became ineffective over time;<sup>3</sup> and the localities are in the process of dissolving the organization.<sup>4</sup> The City and County have decided to jointly invest in the Covington-Alleghany Joint Industrial Development Authority (The Authority), a well-established entity since 1969<sup>5</sup> that will allow for them to pursue their goals in revitalizing the area.

On October 4, 2016, the Alleghany County Board of Supervisors and the Covington City Council adopted concurrent resolutions endorsing a “Framework Memorandum of Understanding” (MOU) (see Appendix A). Item 4.3 of the Framework MOU stated that the City and County agreed to “develop a revenue-sharing agreement pursuant to Va. Code § 15.2-1301 to submit to COLG for review and adoption.” Then on November 9, 2016, the City and County adopted the formal Joint Economic Development and

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<sup>1</sup> “The Agreement” Joint Submission, November 11, 2016, p. 6.

<sup>2</sup> Testimony of Ms. Marla Akridge, Executive Director, Alleghany Highlands Economic Development Corporation (AHEDC), March 13, 2017 & Testimony of Mr. Jonathan A. Lanford, Alleghany County Administrator, March 13, 2017.

<sup>3</sup> Joint Supplemental Submission, March 7, 2017, pg. 1.

<sup>4</sup> Young, Bruce. “Alleghany County dissolves old agency.” *WDBJ*, January 3, 2017. Accessed April 25, 2017. <http://www.wdbj7.com/content/news/Alleghany-county-dissolves-old-agency-409574225.html>.

<sup>5</sup> “The Agreement” Joint Submission, November 11, 2016, p. 6.

Growth-Sharing Agreement. The proposed Agreement and supplemental documents were submitted to the Commission on November 30, 2016. Upon request of Commission staff the localities provided further information in a supplemental filing on March 7, 2017.

Pursuant to a schedule adopted by the Commission at their January 10, 2017, regular meeting, a tour of the affected area followed by testimonies from the parties involved and a public hearing were all held on March 13, 2017, in the Covington City Hall.<sup>6</sup> A Notice for the public hearing and oral presentations were advertised in the February 23, 2017, edition of the *Virginian Review*. A copy of the Notice was provided to each local government either contiguous to or sharing functions, revenue, or tax sources with the City or the County, including: the Towns of Clifton Forge, Iron Gate, Rocky Mount, and Vinton; Bath, Botetourt, Craig, Franklin, Roanoke, and Rockbridge Counties, and the City of Roanoke. Two members of the public attended and spoke in support of the Agreement at the hearing.<sup>7</sup> The Commission agreed to keep its record open until March 27, 2017, for the receipt of additional public comment, but received none.

## SCOPE OF REVIEW

Pursuant to § 15.2-2903 of the Code of Virginia, the Commission is directed to “investigate, analyze, and make findings of fact, as directed by law, as to the probable effect on the people residing in any area of the Commonwealth of any proposed action in that area...to enter into economic growth-sharing agreements among localities.” If there are other provisions in the agreement such as boundary line adjustments, immunity from annexation, town incorporation, or governmental transition; then the agreement is subject to a different review process. Once the Commission issues its findings on the proposed agreement, the governing bodies or the localities must hold a public hearing prior to approving the agreement.

Unlike other mandatory reviews conducted by the Commission, there is no requirement for the Commission to conduct a public hearing, to tour the affected area, or to require oral presentations by the localities in the context of agreements negotiated under Va. Code § 15.2-1301. However, at its January 10, 2017, regular meeting, the Commission voted unanimously to engage in these additional activities in order to capture the best and most comprehensive information available with which to conduct its review.<sup>8</sup> Furthermore, the Commission also based this decision on precedent because such a

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<sup>6</sup> Commissioners Linderman, Reynolds, Goodson, and Hull attended the Commission’s proceedings on March 13-14, 2017. Commissioner Amyx was not present for the proceedings.

<sup>7</sup> Testimony of Mr. David Oliver, Chair of the Covington-Alleghany Joint Industrial Development Authority (IDA) and Testimony of Ms. Susan Adcock, Member, Board of Supervisors of Alleghany County.

<sup>8</sup> In the absence of a statutory requirement that the Commission hold a public hearing or oral presentations in the instant case as well as any applicable statutory notice requirements, the Commission followed the notice requirements set forth in Va. Code § 15.2-2907, which address other mandatory Commission reviews.

procedure was also followed during the Commissions' review of the Montgomery County-Town of Christiansburg Joint Economic Development and Growth Sharing Agreement in 2008.<sup>9</sup>

While the Commission approached this review with respect for the collaborative efforts of the participating localities as well as their negotiated Agreement, the Commission believes that the intent of the General Assembly in mandating the review of such Agreements requires this body to conduct a thorough examination of the terms of the Agreement and the supporting materials and data provided by both localities in order to adequately identify in its findings the probable impact the proposed Agreement will have on the area's residents. The Commission chose in part to conduct a thorough review of the proposed case to ensure that the Agreement provides a net benefit to the citizens of the region.

The statutes governing the Commission state that a procedure must be established to ensure that localities are "maintained as viable communities in which their citizens can live." This legislative intent gives the Commission the responsibility to review voluntary economic growth-sharing agreements before such actions can be adopted by localities. Pursuant to § 15.2-1301 (A) of the Code of Virginia, any locality may enter into a voluntary economic agreement with any other locality to "share in the benefits of the economic growth of their localities." The City of Covington-Alleghany County Voluntary Economic Growth-Sharing Agreement is only the second such type of case that has been brought before the Commission for its review.

In view of this legislative intent, the Commission believes that proposed interlocal agreements, such as that negotiated by the City of Covington and Alleghany 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 § 15.2-1301 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 agreement. Our responsibility to the Commonwealth and to the affected localities requires more.

## **GENERAL CHARACTERISTICS OF THE CITY & THE COUNTY**

### ***History***

The City of Covington was initially laid out in 1818 from parts of Botetourt County and formally incorporated as a town in 1833.<sup>10</sup> In 1952, Covington transitioned from a town to an independent city<sup>11</sup>

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<sup>9</sup> Montgomery County-Town of Christiansburg Joint Economic Development and Growth Sharing Agreement, January 2009.

<sup>10</sup> "Background on the City and County" Joint Submission, November 11, 2016, p. 3.

<sup>11</sup> City of Covington Comprehensive Plan (adopted July 15, 2013), pg. 6.

and annexed a significant portion of territory from Alleghany County.<sup>12</sup> Alleghany County was formed by an Act of the Virginia General Assembly from portions of Botetourt, Bath, and Monroe Counties (now part of West Virginia) on January 5, 1822.<sup>13</sup> Two incorporated towns reside in the County: Clifton Forge and Iron Gate. Iron Gate has been a town since 1889 and Clifton Forge was an independent city from 1906 until 2002, when it reverted to town status.<sup>14</sup>

The City experienced a slight population growth, and the County experienced a sharper decline from 1950-1960 due to the City annexing land from the County. The City also received land and population due to a boundary line adjustment in 1991, but population continued to decline over the years. The County experienced population increases from 1960 to 1990 due to overall growth and from reversion of the former City of Clifton Forge to town status; however, since that time, population has been declining slowly. In 2000, Alleghany County had a total population of 17,215.<sup>15</sup> Alleghany County's population then decreased by 5.6% to 16,250 in 2010 and then declined again by 4.2% to an estimate of 15,561 as of 7/1/2016.<sup>16</sup> In 2000, the City of Covington had a total population of 6,303.<sup>17</sup> The City's population then declined by 5.4% to 5,961 in 2010 and then had a nominal increase to an estimate of 5,965 as of 7/1/2016.<sup>18</sup> This is counter to the statewide population growth, which increased by 13% between 2000 and 2010 and by 5.1% between 2010 and 7/1/2016.<sup>19</sup> Much of this growth has occurred outside of the Alleghany Highlands region and has been mostly within the metro areas of the Urban Crescent (Northern Virginia, the Richmond Region, and Hampton Roads).<sup>20</sup>

Based on 2010 Census Data, Alleghany County's population density is 36.5 persons per square mile while the City of Covington is 1,090.1 per square mile.<sup>21</sup> Populations are concentrated in the City and the Towns as can be seen in a map thematically displaying 2010 population density by Census Block in Appendix C. Both localities have aging populations and, overall, are older than the Commonwealth based on the table on the following page. In 2000 median age was 40.5 for Covington and 41.1 for Alleghany County while Virginia was 35.7.<sup>22</sup> In 2010, median age for the City and County was 42.9 and 45.8, respectively, while Virginia was 37.5.<sup>23</sup> In 2015, the median age for Covington was 43.4 and 48.0 for Alleghany County while the Commonwealth was lower at 37.8 years.<sup>24</sup> While the overall trend shows that populations are aging in the Alleghany Highlands and at the state level, they are aging more rapidly than the Commonwealth, as demonstrated by the percent change quantities in Table 1 on the following page.

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<sup>12</sup> City of Covington Comprehensive Plan (adopted July 15, 2013), pg. 7.

<sup>13</sup> Alleghany County Comprehensive Plan (adopted May 7, 2013), pg. 2.

<sup>14</sup> City of Clifton Forge-County of Alleghany Voluntary Settlement Agreement, October 2000.

<sup>15</sup> Alleghany County Comprehensive Plan (adopted May 7, 2013), pg. 21.

<sup>16</sup> "Virginia Population Estimates." Demographics. January 30, 2017. Accessed April 24, 2017. <http://demographics.coopercenter.org/virginia-population-estimates/?q=demographics/virginia-population-estimates>.

<sup>17</sup> City of Covington Comprehensive Plan (adopted July 15, 2013), pg. 7.

<sup>18</sup> "Virginia Population Estimates." Demographics. January 30, 2017. Accessed April 24, 2017. <http://demographics.coopercenter.org/virginia-population-estimates/?q=demographics/virginia-population-estimates>.

<sup>19</sup> Ibid.

<sup>20</sup> Lombard, Hamilton. "Virginia's population is growing at its slowest pace since the 1920s." StatChat. January 30, 2017. Accessed April 24, 2017. <http://statchatva.org/2017/01/30/virginias-population-is-growing-at-its-slowest-pace-since-the-1920s/>.

<sup>21</sup> U.S. Census Bureau, 2010 Census.

<sup>22</sup> Ibid, 2000 Census.

<sup>23</sup> Ibid, 2010 Census.

<sup>24</sup> Ibid, 2011-2015 American Community Survey 5-Year Estimates.

**Table 1**  
**Median Age Comparison**

	Median Age 2000	Median Age 2010	Percent Change	Median Age 2015	Percent Change
<b>Covington</b>	40.5	42.9	5.9%	43.4	1.2%
<b>Alleghany County</b>	41.1	45.8	11.4%	48.0	4.8%
<b>Virginia</b>	35.7	37.5	5.0%	37.8	0.1%

## ***Economy***

Alleghany County’s economy has been built around manufacturing and heavy industry. Railroad freight, manufacturing, and iron mining dominated the economy during the early half of nineteenth century, but those industries have relocated or have declined.<sup>25</sup> Manufacturing jobs still exist through major companies such as Westrock and Applied Extrusion Technology, Inc., and are anchored by small business, health care, and the government sector. Historically, the unemployment rate has been relatively higher than the statewide unemployment rate. The January 2017 unemployment rate for the County was 5.9%, compared to the statewide unemployment rate of 4.0%.<sup>26</sup> However, from 2009 to January 2017, the County’s recovery from the 2008 financial crisis improved significantly and faster (from 9.1% to 5.9%) in terms of unemployment rates than the statewide average (from 6.7% to 4.0%). Like Alleghany County, the City of Covington’s unemployment rate has been relatively higher than the statewide rate. The January 2017 unemployment rate for the City was 7.6%, one of the highest in the Commonwealth.<sup>27</sup> Unlike the County, the City’s unemployment rate improved at a slower pace than the statewide unemployment recovery rate since 2009. In 2010, the City’s unemployment rate jumped to its highest at 10.6%, and the City’s unemployment rate has only improved by 2.5%. It retains one of the highest unemployment rates in the Commonwealth and has had a slow recovery from the 2008 financial crisis.

Twenty seven percent of the County’s non-farm jobs are in government,<sup>28</sup> reflecting the presence of Dabney S. Lancaster Community College, a regional community college, and the employees of the County and School Board.<sup>29</sup> Private sector jobs are concentrated in healthcare (25%), manufacturing

<sup>25</sup> City of Covington Comprehensive Plan (adopted July 15, 2013), pg. 5.

<sup>26</sup> “Area Labor Force, Employment, and Undemployment Data.” Virginia Labor Market Information. Accessed April 25, 2017. <https://data.virginialmi.com/vosnet/lmi/area/areasummary.aspx?enc=0sOjpercent2FA15jsaGJZeQkgtRQuiT4oPTzSCpQThqx9percent2Brd1BOgR1pZgq4loPpercent2FJ8jrK3PnW9percent2FPtcsZQ8Lu5rRFSCs0sw>.

<sup>27</sup> Ibid.

<sup>28</sup> Virginia Employment Commission. “Virginia Community Profile: Alleghany County.” Labor Market Information. April 22, 2017. Pg. 23. Accessed April 25, 2017. [http://virginialmi.com/report\\_center/community\\_profiles/5104000005.pdf](http://virginialmi.com/report_center/community_profiles/5104000005.pdf).

<sup>29</sup> Alleghany County Comprehensive Plan (adopted May 7, 2013), pg. 40.

(13.5%), and retail trade (7.8%).<sup>30</sup> The County averages three “New Startup Firms” in each quarter since 3<sup>rd</sup> quarter of 2013.<sup>31</sup> Since 2012, the County’s taxable sales increased by 5.9%<sup>32</sup>, auto sales increased by 1.5%<sup>33</sup> (since 2013), and 2015 median household income (MHI) was \$45,210, 68% of the state’s MHI of \$66,263.<sup>34</sup> The MHI increased by 0.2% since 2011, meaning that tax base and local income for the County is growing.<sup>35</sup> The County has net negative in-commuting, meaning that more workers commute into other surrounding jurisdictions for work.<sup>36</sup>

Covington is one of the major employment centers in Alleghany Highlands region, and is comparably diversified, with all major job sectors represented. Fourteen percent of the City’s non-farm jobs are in retail trade,<sup>37</sup> reflecting a strong presence of healthy smaller enterprises. The government sector (11%) represents the second highest level of nonfarm jobs in the City, followed by construction (9%), accommodation & food services (8%) and transportation and warehouse (5%).<sup>38</sup> Taxable sales have decreased by 9% since 2012, which indicates the strong competition among regional businesses such as those in Alleghany County which increased by 5.9% over the same time period.<sup>39</sup> The City averages two “New Startup Firms” in each quarter since 3<sup>rd</sup> quarter of 2013 – roughly about the same as the County.<sup>40</sup> However, the rate of opening of new business is inconsistent, and there is no activity in some quarters. Consequently, taxable sales in Covington are also inconsistent. Automobile sales declined by 0.9% in 2013, but since 2014 automobile sales have grown by 15.3%.<sup>41</sup> The 2015 MHI for Covington has had a negative growth of 7.1% since 2011<sup>42</sup> and is 50% of statewide MHI of \$66,263, meaning that the tax base and local income for the City is declining.<sup>43</sup> The City has net positive in-commuting, meaning that more workers commute into Covington from surrounding jurisdictions.<sup>44</sup>

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<sup>30</sup> Virginia Employment Commission. “Virginia Community Profile: Alleghany County.” Labor Market Information. April 22, 2017. Pg. 23. Accessed April 25, 2017. [http://virginalmi.com/report\\_center/community\\_profiles/5104000005.pdf](http://virginalmi.com/report_center/community_profiles/5104000005.pdf).

<sup>31</sup> Ibid. Pg. 24.

<sup>32</sup> “Taxable Sales.” Taxable Sales | Center for Economic Studies. March 9, 2017. Accessed April 25, 2017. <https://ceps.coopercenter.org/content/taxable-sales>.

<sup>33</sup> “Statistical Reports - Virginia Automobile Dealers Association - Driving Virginia Since 1943.” Virginia Automobile Dealers Association. Accessed April 25, 2017. <https://www.vada.com/media-and-statistics/statistical-reports/>.

<sup>34</sup> U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates.

<sup>35</sup> Ibid, 2007-2011 American Community Survey 5-Year Estimates.

<sup>36</sup> Virginia Employment Commission. “Virginia Community Profile: Alleghany County.” Labor Market Information. April 22, 2017. Pg. 11. Accessed April 25, 2017. [http://virginalmi.com/report\\_center/community\\_profiles/5104000005.pdf](http://virginalmi.com/report_center/community_profiles/5104000005.pdf).

<sup>37</sup> Virginia Employment Commission. “Virginia Community Profile Covington City.” Labor Market Information. April 22, 2017. Pg. 23. Accessed April 25, [http://virginalmi.com/report\\_center/community\\_profiles/5104000580.pdf](http://virginalmi.com/report_center/community_profiles/5104000580.pdf).

<sup>38</sup> Ibid, Pg. 23.

<sup>39</sup> “Taxable Sales.” Taxable Sales | Center for Economic Studies. March 9, 2017. Accessed April 25, 2017. <https://ceps.coopercenter.org/content/taxable-sales>.

<sup>40</sup> Virginia Employment Commission. “Virginia Community Profile Covington City.” Labor Market Information. April 22, 2017. Pg. 24. Accessed April 25, [http://virginalmi.com/report\\_center/community\\_profiles/5104000580.pdf](http://virginalmi.com/report_center/community_profiles/5104000580.pdf).

<sup>41</sup> “Statistical Reports - Virginia Automobile Dealers Association - Driving Virginia Since 1943.” Virginia Automobile Dealers Association. Accessed April 25, 2017. <https://www.vada.com/media-and-statistics/statistical-reports/>.

<sup>42</sup> U.S. Census Bureau, 2007-2011 American Community Survey 5-Year Estimates.

<sup>43</sup> Ibid, 2011-2015 American Community Survey 5-Year Estimates.

<sup>44</sup> Virginia Employment Commission. “Virginia Community Profile Covington City.” Labor Market Information. April 22, 2017. Pg. 24. Accessed April 25, [http://virginalmi.com/report\\_center/community\\_profiles/5104000580.pdf](http://virginalmi.com/report_center/community_profiles/5104000580.pdf).



## ***Finances***

Both the County and City's budgets highly depend on revenue from their real estate tax, which is approximately 50% for Alleghany County and approximately 45% for Covington.<sup>45</sup> The unassigned fund balance has grown for both localities since 2012 at 42% for the City and 15% for the County. This indicator is an important measure of economic stability because the unassigned fund balance can be used to mitigate financial risk from unanticipated revenue fluctuations, unanticipated expenditures, or from other similar circumstances by providing cash flow liquidity for general operations. Also, both localities' unassigned fund balances are, on average, three months of their operating expenses, which is well above the Government Finance Officers Association's (GFOA) recommended unassigned fund balance requirement.<sup>46</sup> This is another positive indicator for the financial stability and health for both the City and County. The City of Covington's current general obligation debt is 89.44% of its statutory debt issue limit and Alleghany's current general obligation debt is only 8.03% of its statutory debt issue limit.<sup>47</sup>

From a different perspective, both localities are fiscally stressed based on the Commission's yearly Fiscal Stress Report. In FY 2014, Alleghany County's fiscal stress level was above average (score of 102.19 and rank of 36), and Covington's fiscal stress level was high (score of 106.43 and rank of 5).<sup>48</sup> However, the fiscal stress scores for both localities have improved by 0.3% since 2010.<sup>49</sup> Revenue Capacity, one of the three components of the Fiscal Stress Report, measures the local capacity to collect revenue from each of its citizen, and it has improved considerably for both localities. Since 2010, revenue capacity has grown by 7.7% for Alleghany County and 8.8% for Covington, respectively.

## ***Geography & Terrain***

One notable aspect of the Alleghany Highlands, especially in relation to future economic development, is its topography, the presence of National Forests, and other environmental features that constrain or restrict development. Based on an analysis performed by Commission staff using Geographic Information Systems (GIS) and the City and County's contour shapefiles, approximately 89.22% of the area is constrained by steep slopes (e.g. slopes greater than 9% grade).<sup>50</sup> Another 47.57% of the region is undevelopable because it is part of a National Forest. Finally, another 4.2% of the region could be constrained from future development by the 100-year floodplain.<sup>51</sup> When these three development constraints are aggregated, approximately 6.65% of the region remains unconstrained by these

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<sup>45</sup> "Local Government Reports." Welcome to the VA APA - Virginia Auditor of Public Accounts. 2016. Accessed April 25, 2017. [http://www.apa.virginia.gov/APA\\_Reports/localgov\\_cafrs.aspx](http://www.apa.virginia.gov/APA_Reports/localgov_cafrs.aspx).

<sup>46</sup> "Appropriate Level of Unrestricted Fund Balance in the General Fund." Resources Best Practices/Advisories. September 01, 2015. Accessed April 25, 2017. <http://gfoa.org/appropriate-level-unrestricted-fund-balance-general-fund>.

<sup>47</sup> "Local Government Reports." Welcome to the VA APA - Virginia Auditor of Public Accounts. 2016. Accessed April 25, 2017. [http://www.apa.virginia.gov/APA\\_Reports/localgov\\_cafrs.aspx](http://www.apa.virginia.gov/APA_Reports/localgov_cafrs.aspx).

<sup>48</sup> Report on Comparative Revenue Capacity, Revenue Effort, And Fiscal Stress of Virginia's Cities and Counties FY 2014, March 2016

<sup>49</sup> Ibid, FY 2014, FY2013, FY2012, FY2011.

<sup>50</sup> In their response to questions by the Commission, the City and County provided a different statistic of 2.8%, which was reference from a previous 2011 Commission case. For purposes of this report and the in-house GIS analysis performed by staff, this report will rely on the 10.78% (89.22%) statistic.

<sup>51</sup> Appendix D

development obstacles.<sup>52</sup> The extent of these development obstacles can be seen in the series of maps on development constraints and developable area in Appendix D.

### ***Previous Commission Cases & Other Interlocal Collaboration***

The City and County have a history of interlocal agreements, transition issues, and other collaborative efforts. In fact, this case represents the fifth time one or both localities have been before the Commission for review. Given this background, it would be appropriate for the Commission to briefly summarize these events in this report.

The City and County first appeared before the Commission in 1984 during the Commission's review of an annexation case. Because of ongoing discussions at that time regarding other local government structural and consolidation options among the various localities in the Allegheny Highlands region, the Commission recommended the City instead consider annexing the entirety of Allegheny County; however, the City chose to neither proceed with its annexation proceedings nor pursue the option.<sup>53</sup>

Prior to the completion of the Commission's review of the Covington Annexation case, in 1983, citizens of the City of Covington initiated a petition for a consolidation agreement with the City of Clifton Forge and Allegheny County that would have established the new City of Allegheny Highlands. While the Commission concluded its review in favor of such a consolidation agreement, it failed at the local referendum stage in 1987. Citizens of Clifton Forge and Allegheny County voted in favor of the consolidation, but it was defeated by the citizens in Covington.<sup>54</sup> Following that failed consolidation effort, and recognizing the level of support within their jurisdictions; the governing bodies for the City of Clifton Forge and Allegheny County submitted a consolidation agreement for the Commission's review in 1990. Again, the Commission found that such a consolidation would be in the best interests of the citizens affected and the Commonwealth; however, such effort failed again at the local referendum level.<sup>55</sup>

Years later in 1999, the City of Clifton Forge filed notice with the Commission of its intent to revert to town status within Allegheny County. As part of its initial response, the Commission advised the City to enter into negotiations with Allegheny County by using a mediator to resolve their differences. The conclusion of such negotiations led to a voluntary settlement of the City's transition (reversion) issues, which was also subject to the Commission's review. The Commission concluded its review in support of the settlement agreement in 2000, and the City of Clifton Forge reverted to town status effect 7/1/2001.<sup>56</sup>

In 2011, the Commission reviewed a citizen-initiated consolidation agreement between the City of Covington and Allegheny County pursuant to § 15.2-3531 of the Code of Virginia. The agreement called

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<sup>52</sup> This analysis was performed using GIS data available to Commission staff and data provided by the City and the County. It is possible that additional analysis and refinement could be necessary to get more precise statistics on developable areas in the Allegheny Highlands. Overall, the analysis is consistent with concluding that development within the Allegheny Highlands is significantly constrained by several impediments.

<sup>53</sup> County of Allegheny-City of Clifton Forge Consolidation Action, August 1991.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> City of Clifton Forge-County of Allegheny Voluntary Settlement Agreement, October 2001.

for the creation of a consolidated City of Alleghany Highlands and created a new charter, which was passed in the 2011 General Assembly session. Subsequently this agreement - like the previous two consolidation agreements - had the approval of the Commission and Special Court, but it failed at the local referendum stage.<sup>57</sup>

Despite the largely unsuccessful efforts of the City and County to fully consolidate and achieve better economies of scale and service efficiencies, they jointly operate several different services and offices, including a Circuit Court and Clerk, Sheriff, Commonwealth's Attorney, Department of Social Services, Community Services Board, Economic Development Corporation, and Industrial Development Authority. Additionally, the City and County already conduct joint budget work sessions for the aforementioned joint functions, joint comprehensive planning work sessions, and joint coordination of fire/EMS and related functions.<sup>58</sup>

## **DESCRIPTION OF GROWTH-SHARING AREA & AGREEMENT**

### ***Rationale for Agreement***

During testimony before the Commission and based on the materials provided to the Commission for its review, it became apparent that the City and County were missing out on economic development prospects because they did not have the shovel-ready site inventory available to market to and meet the needs of potential prospects.<sup>59</sup> Furthermore, it became apparent that collaborating on such site development initiatives and sharing in the tax increment revenues and other revenues from future developments could be a viable option for the localities to consider as a way to reduce the burden for each locality.

Consequently, the City and County entered into a Framework Memorandum of Understanding (MOU) (see Appendix A) on October 4, 2016. The Framework MOU, while not legally binding, establishes the generally agreed upon processes and terms by which the City and County will venture to cooperate to address economic development efforts in the Alleghany Highlands. First, the MOU indicates the City and County will cooperate on obtaining economic development planning grants from the Virginia Department of Housing and Community Development (DHCD). The purpose of such grants would be to (1) develop an inventory and priority ranking of marketable properties in the region, and (2) study which industries would be best suited to target for locating in the City and County. Next, the MOU indicates that the City and County plan to develop and submit a revenue-sharing agreement to the Commission. Finally, the MOU provides the general guidelines by which the City, County, and – in some cases – the Authority will provide incentives and share in certain revenues related to economic development efforts within their jurisdictions.

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<sup>57</sup> City of Covington – County of Alleghany Consolidation Action, May 2011.

<sup>58</sup> Joint Supplemental Submission, March 7, 2017.

<sup>59</sup> Testimony of Ms. Marla Akridge, Executive Director, Alleghany Highlands Economic Development Corporation (AHEDC), March 13, 2017.

It should be noted that the concept of such an arrangement – in similar form – is currently available through the Regional Industrial Facilities Authority (RIFA) Act pursuant to § 15.2-6400 et seq. of the Code of Virginia, but most RIFAs require three or more localities to participate in order to be eligible for revenue sharing. There are several exceptions that would allow two localities to participate in such agreements; however, these are limited to Planning Districts 2, 3, 10, 11, and 12. While the City and County could have pursued such an effort to get their Planning District (#5) included in those two-locality exemption provisions, such course of action was not pursued because of the unpredictability, timeliness, and other factors related to the General Assembly legislative process.<sup>60</sup>

### ***Provisions of Agreement***

This Agreement before the Commission would provide the framework for how such economic development efforts would be structured and the responsibilities of the City, County, and the Authority relative to the Agreement. The existing Joint Industrial Development Authority (formed in 1969) would be the vehicle by which the localities choose to collaborate on economic development in the future. The Authority, itself, would be the main driver behind such efforts, and the Agreement establishes that the Authority is responsible for managing all infrastructure investments and divisions of certain “Other Revenues” (defined later in this section) between the City and the County. In order to better coordinate the provisions of the Agreement within the structure of the joint Industrial Development Authority and keep its costs low, the Revenue Sharing Agreement also establishes that the City Manager and County Administrator shall be appointed as co-executive directors of the Authority. Furthermore, the Agreement also requires the City and County to adopt ordinances limiting the Authority’s powers, so that it can only finance facilities that are in relation to this overall Agreement (see Exhibit B of Appendix B).

The Agreement sets out provisions that authorize the governing bodies of the City and County to concurrently pass ordinances, designating certain to-be-determined sites as Development Areas within the City or County. Development Areas that are designated within the corporate limits of the Towns of Clifton Forge and Iron Gate would also require the concurrent designation of the Town Council; however, the Agreement establishes that taxes levied by the two Towns are not subject to the Agreement and that the Towns shall continue to tax property within the Development Areas as all other property within their borders. Such concurrence is required whenever another Industrial Development Authority exists, which is the case for the Town of Clifton Forge. Getting the concurrence of the Town of Iron Gate is included out of fairness and being considerate of other communities within the Alleghany Highlands.<sup>61</sup> The Agreement calls for copies of such concurrent ordinances designating Development Areas to be forwarded to the Commission, but the Commission has no statutory responsibility or role with managing such information. Based on an inquiry by the Commission regarding this provision, the City and County have offered to remove this provision.<sup>62</sup>

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<sup>60</sup> Joint Supplemental Submission, March 7, 2017.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

Once designated as a Development Area, the site becomes subject to the provisions of the Agreement and, in particular, its provisions regarding Performance Agreements. Such Performance Agreements, which could be multiple agreements or documents, would be binding and more explicitly identify and define the responsibilities of the City, County, Authority, and any other relevant parties regarding such parcels within Development Areas. Furthermore, the Performance Agreements would establish (1) any foreseen infrastructure investments needed, (2) the share of such infrastructure investments by the City and County, (3) the shares of any economic development incentives – if so included, and (4) the division of revenue from such Development Areas. In all cases, the default ratio of City and County investments, incentives, and revenue sharing shall be 50/50. The City and County have provided a draft/form Performance Agreement with additional annotations and comments that provides examples of the provisions which they would consider including in such a Performance Agreement (See Appendix E). It should be noted that such Performance Agreements could include existing businesses within the Alleghany Highlands, but it would be up to the discretion of the City and County as to which businesses would be eligible and it would likely be reserved for those that would meet the goals of the Agreement to have significant economic development impacts on the region.<sup>63</sup>

Article III of the Agreement establishes two types of revenue sharing scenarios that would occur between the City and the County regarding Development Areas: (1) tax increment revenue sharing and (2) sharing of other revenue. In order to quantify these two sharing obligations, the Agreement defines five terms in Article I:

- (1) Based Assessed Value – the assessed value of all property subject to Shared Taxes within a Development Area shown on the land book or other official roll of the local assessing officer on January 1 of the year preceding the effective date of the Designation Ordinance
- (2) Base Tax – the product of the Base Assessed Value and the levy laid by the City Council or Board of Supervisors in any given year
- (3) Other Revenue – rental, sale, or other revenue realized by the (Joint Industrial Development) Authority in the ownership or management of parcels in Development Areas
- (4) Shared Taxes – real estate taxes (which shall include any public service corporation tax), personal property taxes, machinery and tools taxes, and professional, and occupational license (BPOL) tax
- (5) Tax Increment – the amount by which the current assessed value of all property subject to Shared Taxes exceeds the Base Assessed Value

A closer review of the Agreement raised the potential need for additional clarification regarding the definition of “Tax Increment.” As it is currently defined, the Commission’s understanding is that the amount would be the difference between the Base Assessed Value (as defined) and current assessed value. Calculating this number would yield an amount greater than what would be calculated if the local

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<sup>63</sup> Testimony of Mr. Michael Lockaby, Guyann & Waddell P.C., March 13, 2017.

levy laid by the City Council or Board of Supervisors were applied, which is our assumption for how the localities intended this amount to actually be calculated. This assumption is supported by Exhibit A of the Agreement, which provides the method by which tax increment revenue sharing would be calculated by using real estate taxes as an example. In general terms, the calculation would involve quantifying the total tax collected in the current year, subtracting the base tax (which could fluctuate if local rates change), and then applying the share (usually 50%) to the net amount.

While the localities have stated that the default sharing ratio would be 50/50, they have indicated that this ratio could change based on the unique circumstances of the development under consideration.<sup>64</sup> Furthermore, recognizing that the tax increment revenue sharing provisions would constitute a long-term debt subject to Article VII, Section 10 of the Virginia Constitution; such revenue sharing obligations are subject to annual appropriation within the Agreement. This particularly helps the County proceed with the Agreement because such revenue sharing would otherwise be required to get the support of County voters via a local referendum.<sup>65</sup>

Other Revenues subject to the Revenue Sharing Agreement are those that would be collected by the Joint Industrial Development Authority and would include proceeds from the lease or sale of improvements or sites under the Authority's ownership or other revenue realized from the ownership or management of parcels within Development Areas.

Section 15.2-1301 of the Code of Virginia requires that such agreements be established "for fixed time periods." While the Agreement, itself, appears to have no sunset date, the Performance Agreements would be the framework for which such fixed time periods would be established. The City and County have stated their intent to include sunset provisions within each Performance Agreement that are appropriate for the specific circumstance. They have stated, as an example, that such agreements could include a clause whereby the agreement ends once the structures have been repurposed, which could vary based on the type of use involved. Such agreements could also terminate by the agreement of the parties involved.<sup>66</sup>

### ***Outcomes of Agreement***

Upon receipt of this Commission report, the City and the County are then eligible to adopt their proposed Agreement per §15.2-1301 of the Code of Virginia. It is possible that the Agreement may change slightly to account for some of the recommendations that the Commission has made (see the Summary of Findings and Recommendations Section) and other factors that may have been identified over the last few months. Nevertheless, the essence of the revenue-sharing component of the Agreement is anticipated to remain the same.

Once the Agreement has been formally adopted by both localities after holding a public hearing, the next step will be for the parties to investigate more thoroughly the sites within the Alleghany Highlands

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<sup>64</sup> Joint Supplemental Submission, March 7, 2017.

<sup>65</sup> "Background" Joint Submission, November 11, 2016, p. 3.

<sup>66</sup> Joint Supplemental Submission, March 7, 2017.

that may be most appropriately geared toward this Agreement as agreed upon in the Framework MOU. The City and County have indicated that they will apply for several grants – including some from the Virginia Department of Housing and Community Development – to assist them in identifying these key sites. Previous studies have already identified several sectors that the City and County should target, including: manufacturing, transport, managed forestry, and related industries.<sup>67</sup> It is assumed that this study of key sites will also provide other information regarding the various needs to get the sites ready for potential development. Some of this work has already been conducted by the localities and several sites are already expected to be part of this process. Most recently, a 2015 Site Study produced by AECOM identified seven sites within the County and Town of Clifton Forge that could be part of this process. The study also provided potential uses for the sites and the costs for making them more shovel-ready for economic development prospects. Table 2 below, which was also included as part of the background information in the localities’ Notice, summarizes those sites and includes those costs.<sup>68</sup>

**Table 2**  
***Expected Investments in Alleghany County (2015)***

<b>Site</b>	<b>Area</b>	<b>Potential Use</b>	<b>Utility Cost</b>
Alleghany Innovation Park	169+ acres	Light manufacturing	\$6.6 million
Clifton Forge Business Park	14 acres	Office	\$2.3 million
Clifton Forge Rail Site North	20 acres	Bulk wood processing with rail	\$390,000
Clifton Forge Rail Site South	20 acres	Wood processing or metalworking	\$342,000
Low Moor	9 acres	Data center	\$100,000 (or lower)
Alleghany Regional Commerce Center	84 acres	Light manufacturing	\$400,000
Rail Over River Industrial Park	15 acres	Light manufacturing	\$35,000

While the list is not a complete accounting of all the available sites for economic development within the Alleghany Highlands, especially because it doesn’t include sites within Covington, it provides some

<sup>67</sup> “The Agreement” Joint Submission, November 11, 2016, p. 3.

<sup>68</sup> “Expected Investments” Joint Submission, November 11, 2016, p. 8.

good examples of the potential expenses that will be incurred by the City, County, and Joint Industrial Development Authority as they take additional steps once the Agreement has been formally adopted.

As potential sites are evaluated and prioritized, the City, County, and the Authority will concurrently begin responding to requests for proposals from economic development prospects that may be interested in the sites available within the Alleghany Highlands. If such efforts prove to be successful and an economic development prospect enters into negotiations with the parties, then it is anticipated that the parties will enter into a Performance Agreement, as previously described.

Ultimately, it is the expectation of the City, County, Authority, and other stakeholders that such Performance Agreements will lead to increased economic development in the region, thereby employing more of the regional workforce and generating additional revenue for which the localities can improve their fiscal situation and potentially direct to other future economic development efforts. The following section will more specifically speak to the Commission's view on the probable impacts the Agreement will have on the City and County, their citizens, and the Commonwealth overall.

## **PROBABLE IMPACT OF AGREEMENT ON CITY & COUNTY**

### ***Limitation of Analysis***

As previously stated, this is only the second time a case of this type has been brought before the Commission. The previous case of this type was significantly different from the case before us now. The previous agreement was limited to a specific area of Montgomery County and the Town of Christiansburg, while the provisions of this Agreement could potentially apply to any area within the Alleghany Highlands. The Montgomery-Christiansburg agreement was also limited to a 20-year growth sharing term, while this Agreement is more open-ended with revenue sharing ceasing upon a significant change in use or other terms, as determined by the parties involved. Therefore, some of the precedent by which the Commission's review of the Montgomery-Christiansburg case was set was difficult to apply to our review of the case before us now.

Because the Agreement is predicated on future business development and their accompanying Performance Agreements, it is difficult to accurately predict where, when, and if such business developments will occur and how those specific Performance Agreements will be structured. This issue is further compounded because the Agreement, itself, is not confined to any one specific area within the City or County, nor is the Agreement limited by time. Instead, this Agreement serves as the *framework* (emphasis added) by which some future economic development projects will be structured through their respective Performance Agreements. The City and the County have provided examples and other background information that could provide some greater certainty on where these sites may be, what level of investment may be required to get the sites shovel-ready, how such Performance Agreements could be structured, and other factors; however, this certainty is not absolute and will not be known until actual Performance Agreements are initiated. Therefore, the following sections describing the



Commission's opinion and observations regarding the probable impacts are mostly speculative and general in nature.

### ***Benefits and Costs for City and County***

Through this Agreement, the City and County have shown they are committed to jointly sharing the costs of developing areas for potential employers. Furthermore, their joint investment in the Authority could be beneficial by its ability to carry out transactions quickly and efficiently and allowing for the County to be able to take on long-term debt. It is in the best interests of the City and County to share in development of the region because it could lead to a greater, shared revenue capacity for undertaking the financial risk related to economic development. Both localities noted that jointly investing would allow for expanded opportunities to develop areas and diversify the area's economy beyond what they could likely pursue independent of one another.<sup>69</sup>

In addition, pooling resources opens up the possibility for shared revenue across the Allegheny Highlands. Generally speaking, counties tend to have more land available for development and cities have more capital. The joint investment in the Authority would give the City access to revenue and land opportunities outside its boundaries and the County access to more capital in addition to revenue from any developments that would occur within the City.<sup>70</sup> The City and County will be able to share in revenue of joint projects, regardless of whether the revenue is in form of tax revenue, or revenue from the sale, lease, or management of projects. The increase in such revenue would not be restricted and would give the City and County greater financial capacity to fund general fund public services such as education, infrastructure, and law enforcement.<sup>71</sup>

The proposed Agreement requires both the City and County to make joint investments by sharing in the costs for preparing and marketing sites for attracting economic development prospects. Per the Agreement, in general, both the City and County agree to share 50% of the cost for any land development project, whether such obligation is spelled out in a Performance Agreement or as part of the Authority's annual budget request. The City and the County expressed hesitance in providing an estimate or range of what revenues and costs could be expected from such developments. All such costs would be driven by the kinds of businesses that the localities choose to market themselves to or by those prospects that trigger a Performance Agreement.<sup>72</sup> Because the Agreement calls for the City Manager and County Administrator to serve as co-executive directors of the Authority, it is reasonable to assume that some collaboration and harmony would exist between the fiscal operations of the two localities and that of the Authority. Furthermore, as previously indicated, such revenues are subject to annual appropriation and the default sharing ratio is set at 50%, so it could be reasonable to assume that such obligations could be reduced in a given year if one locality had a diminished ability to contribute. However, such a situation does raise the Commission's concern that the current Agreement

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<sup>69</sup> Testimony of Mr. Jonathan A. Lanford, Allegheny County Administrator, March 13, 2017.

<sup>70</sup> West, John S., and Carter Glass, IV. "Revenue Sharing: An Important Economic Development Tool for Virginia Localities." VA Lawyer, April 2000, 18-23. [http://www.vsb.org/docs/valawyer magazine/apr00west\\_glass.pdf](http://www.vsb.org/docs/valawyer magazine/apr00west_glass.pdf).

<sup>71</sup> Joint Supplemental Submission, March 7, 2017.

<sup>72</sup> Ibid.

before us contains no provisions for how amendments to the Agreement or disputes over provisions of the Agreement would be resolved. In response to this concern, the City and County have expressed a willingness to include such provisions in the final, adopted Agreement.<sup>73</sup>

For any successful project, the impact would be different for the City and the County based on the location of the project. If the project is located in the City, then the City would receive the base taxes and share 50% of any incremental revenue with the County. Consequently, the existing base tax revenue collected by the City would not be impacted, and the City could continue to factor this amount into future budgets. In this scenario, the City's revenue capacity and revenue effort would increase, and the overall fiscal stress score for the City would improve. Meanwhile, for the County, their revenue capacity would not have any impact as the property is not located in their jurisdiction, but it could have a greater impact on their revenue effort due to the additional revenue from the growth sharing project which could influence their fiscal stress score. The impact would be the opposite of what is described above if the project is located in the County.

### ***Benefits and Costs to Residents/Consumers of City and County***

Potential benefits to citizens in the area include increased access to jobs and stability in the local economy. If the City and County are successful in attracting future employers, then availability of jobs will increase. There would be a trickle-down effect as employers move to the area; investments would be made in housing, infrastructure, and other support businesses would likely also start or grow to support the expanded population and workforce. As more people would either commute or move to the area, they would spend money at local businesses, providing increased tax revenue that the City and County could use for services to their citizens.

The Alleghany Highlands region has been on a slow decline in population over the years. The relocation of employers to the area has potential to increase population levels and increase the number of tax-paying citizens in the region. The joint investments in the Authority are meant to give the City and County a head start on attracting employers to the region. Once those employers move to the area, then the rest of the benefits should follow, including the possibility of providing additional job opportunities to the regional workforce. Based on previous economic studies, there are about 35,800 individuals in the labor force in the Alleghany Highlands; and of those, 12,300 are available for a new or expanding employer.<sup>74</sup> Furthermore, all of the labor force is within 10-20 miles commuting distance of the area.<sup>75</sup>

The Agreement could create additional positive economic activities in the region. Additional economic activity, such as a new business moving in this community, would affect the local and regional economy and have a multiplier effect. The construction and operational expenses of a new facility will necessitate spending money directly on certain items, such as contractors, payroll, service contracts with local vendors, local purchases of supplies and equipment, and many others. When a business makes such

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<sup>73</sup> Joint Supplemental Submission, March 7, 2017.

<sup>74</sup> The Alleghany Highlands Area of Virginia Labor Availability Report, February 2010.

<sup>75</sup> "Background" Joint Submission, November 11, 2016, p. 3.

direct expenditures, it sets in motion a series of additional spending flows throughout various sectors of the local economy. All these activities could contribute positively to the growth and diversification of local revenue base. Consequently, it could lead to a reduction in the local tax burden for residents such as reducing the real estate tax rate, personal property tax, etc. as there could be a long run move of the tax burden from residential sources to non-residential sources.

Also, because the Agreement could obligate the localities to provide water and sewer service to any new commercial development subject to a Performance Agreement or prospective site, it might be seen as catalyzing growth in the surrounding areas. Such catalysts could include the provision of water and sewer service to previously unserved residents in addition to stimulating additional development.

### ***Impact on the Interests of the Commonwealth***

As far as impacts to the Commonwealth are concerned, the Agreement provides a vehicle by which the City and County can better collaborate on future economic development efforts, which in turn could enhance their viability. Furthermore, the Agreement would better coordinate economic development projects between two entities that may have otherwise competed against one another on such efforts. The consequence of such collaboration would be a better promotion of the orderly economic growth of the Allegheny Highlands region. Such positive outcomes would also greatly benefit the Commonwealth overall, such as additional revenues for the payroll tax, sales and use tax, and recordation fees, among others.

## **SUMMARY OF FINDINGS & RECOMMENDATIONS**

Overall, the Commission is supportive of the Agreement between the City and the County. Furthermore, the Commission commends the City, County, and the stakeholders involved in crafting the Agreement, which could serve as a best practice for other localities to emulate.

The outcome of the Agreement is based on future speculative economic development projects, therefore; it would be difficult for the Commission to determine with any degree of certainty what would be the specific, quantifiable results from the Agreement. Again, because the Agreement is based upon tax increment revenues rather than base taxes, the outcome should have no impact on existing revenue sources to the City and County. Furthermore, in the event of future Performance Agreements, base revenues would still be held harmless and relegated to the appropriate corresponding locality. The tax increments would be reduced by 50% for the duration of the Performance Agreement, but these revenues would be above the base minimum. The Agreement does commit the City and County to incurring capital expenses relative to making key economic development sites more shovel-ready; and, in the event they are obligated to do so, through specific Performance Agreements. The liability for meeting such obligations, however, will be easier for both localities together rather than independently.

As stated previously, additional clarity may be needed regarding the definition and calculation of “Tax Increment” in Article I of the Agreement. The Commission recommends that the City and County look

into this matter more closely and revise the definition if such clarification is needed. For example, such definition could be amended to use similar phrasing from the definition of Base Tax to read as “...*the product of the levy laid by the City Council or Board of Supervisors in any given year and the amount by which the current assessed value of all property subject to Shared Taxes exceeds the Base Assessed Value.*”

Other agreements that have come before the Commission have contained provisions by which amendments, disagreements, and other related matters can be addressed. While it is our impression that the spirit of the Agreement and the parties involved is one of enthusiastic cooperation, there is no guarantee that such collaboration will always exist. We are encouraged by and confident in the capacity of the existing stakeholders, but for an Agreement that could exist indefinitely; it must anticipate and address such situations. Therefore the Commission suggests that the Agreement include a mediation provision so that future, unanticipated disputes between the various parties involved can be mitigated without jeopardizing the good, collaborative spirit embodied by the existing Agreement.

The Commission also suggests that the City and County drop the provision in the Agreement by which ordinances certifying Development Agreements in the two towns (Clifton Forge and Iron Gate) be sent to the Commission. The Commission has no role in managing or keeping such records based upon its statutory authority. Furthermore, from a records-keeping perspective, such records would still be preserved by the localities involved once such an ordinance was adopted so future inquires on the matter could still proceed by using local, rather than state, records.

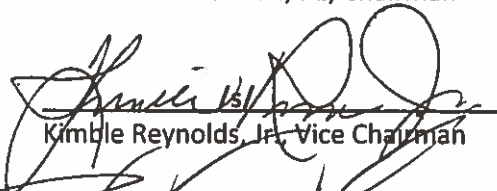
## CONCLUDING COMMENT

The Commission on Local Government recognizes the significant efforts put forth by the officials of the City of Covington and Allegheny County and the various stakeholders involved. We commend the officials for working together in the spirit of cooperation to negotiate and achieve the Economic Growth-Sharing Agreement we have herein reviewed. We were honored to have been given the opportunity to learn more about the Allegheny Highlands community and thank everyone involved in helping the Commission with its review. Provided that the parties take into consideration the foregoing findings, the Commission sees no reason why the parties should not adopt the Agreement.<sup>75</sup>

Respectfully submitted,



Diane M. Linderman, PE, Chairman



Kimble Reynolds, Jr., Vice Chairman



Bruce C. Goodson



Victoria L. Hull

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<sup>75</sup> Commissioner Amyx abstained from voting on this report because he was unable to attend the Oral Presentations, Public Hearing, and Special and Regular Meetings held on March 13 and March 14, 2017.

## Appendix A

### **FRAMEWORK MEMORANDUM OF UNDERSTANDING JOINT ECONOMIC DEVELOPMENT & GROWTH-SHARING**

This Memorandum of Understanding ("MOU") is made this 5<sup>th</sup> day of October, 2016, by and between ALLEGHANY COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "County"), and the CITY OF COVINGTON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (the "City").

**WHEREAS**, the City and the County are situate in the Alleghany Highlands, and wish to work cooperatively on economic development projects of common interest for the benefit of their citizens; and

**WHEREAS**, both the City and County own or control real property (if unimproved, the "Sites"; if and when improved, the "Facilities") which has significant value and which may provide sources of desirable employment for their citizens, and increase opportunities, tax revenue, and the public health, safety, and general welfare of both localities; and

**WHEREAS**, the Sites are largely unfinished and not suitable for immediate use, which handicaps the ability of the City and the County to market them effectively to potential economic development prospects ("Prospects"); and

**WHEREAS**, development of such Sites and Facilities would positively impact both localities, and the general wellbeing of the region as a whole; and

**WHEREAS**, the City and the County wish to work with the Commonwealth Opportunity Fund, the Roanoke Regional Partnership and seek funds under House Bill 2 and the GO Virginia program, as well as other joint and regional programs and organizations, to foster economic development in the City and County; and

**WHEREAS**, the City and the County have formed the joint Covington-Alleghany Industrial Development Authority (the "Authority") pursuant to the provisions of the Industrial Development and Revenue Bond Act, and wish to use the Authority and its powers to pursue their mutual goals and the goals of the Authority; and

**WHEREAS**, the City and County foresee that infrastructure improvements ("Infrastructure Improvements") and incentives ("Incentives") may be necessary to induce Prospects to locate or expand their operations in the County or the City; and

**WHEREAS**, the City and County intend to share revenue from the lease or sale of Sites or Facilities ("Revenue") as well as the tax increment over and above the existing assessment of the Sites and Facilities ("Tax Increment") proportionally among themselves, and, if applicable, the Towns:

**NOW THEREFORE**, the City and the County, not intending to be legally bound but instead to express a mutual understanding between themselves as to future courses of action, hereby state their intentions as follows:

#### **Article 1—Planning**

1.1 *Study of current status.* The City and the County shall cooperate to obtain economic development planning grants from the Virginia Department of Housing and Community Development (DHCD). The objective of such grants is to inventory and rank marketable proper-

ties and to study which industries would be most appropriate to target for location in the City and the County. This will form the basis for carrying out the other provisions of this MOU.

1.2 *Types of industries.* This MOU is meant to cover primarily regional industries of an industrial, commercial, or manufacturing type.

1.3 *Development of joint plan.* Based upon the goals and principles set forth in this MOU, the City and the County will engage in collaborative planning on their strategic goals for economic development, including an inventory of Sites and Facilities, goals, and advantages to the Alleghany Highlands region.

1.4 *Submission of revenue-sharing agreement to COLG.* Revenue-sharing agreements between two localities must be submitted to the Virginia Commission on Local Government (COLG) for review prior to their finalization. The City and the County will jointly apply to COLG for review of the Agreement developed in accordance with Paragraph 4.3.

#### **Article 2—Incentives**

2.1 *In general.* The City and the County recognize that incentives are frequently necessary to induce firms, nonprofits, and other commercial and cultural entities to locate or remain in the City or the County. Such incentives might, in appropriate circumstances, include sites and facilities, in-kind services, discretionary grants, tax rebates, utility extensions, fee waivers or rebates, low-interest loans, or the creation of community development authorities or service districts. The City and the County further recognize that they are not legally authorized to offer some of the foregoing incentives. However, in appropriate circumstances, they would support other entities' or political subdivisions' use of these incentives, including the Authority.

2.2 *Sharing of responsibility.* Generally, investment of the City and the County in incentive packages should be 50/50.

2.3 *Performance guarantees.* In return for granting or supporting Incentives, the City and the County would expect a Prospect to enter into a legally binding Performance Agreement by which it agreed to meet certain Performance Targets in order to qualify for the Incentives.

#### **Article 3—Revenue and Growth Sharing**

3.1 *Basic principle.* Revenue from the sale or lease of Sites and Facilities and Tax Increments will be shared fairly and equitably between the County and the City. In general, the investment of the County and the City in any site or incentive package should be shared 50/50.

3.2 *Revenue.* Revenue from the sale or lease of any Site or Facility would be shared in accordance with Paragraph 3.1.

3.3 *Base assessed value.* The locality (or localities, if the Site or Facility is located in a Town) in which a Site or Facility is located shall retain the right to collect Base Assessed Value of any Site or Facility prior to its being sold or leased to a Prospect, subject to the provisions of any Performance Agreement.

3.4 *Tax increment.* Tax increment revenue for any Site or Facility should be shared in accordance with Paragraph 3.1.

#### **Article 4—Implementation**

## Appendix A

4.1 *In general.* Implementation of the provisions of this MOU will entail other legislative acts, regulatory approvals, and agreements made in individual instances. It is intended to be implemented flexibly through ordinances, appropriations, and Performance Agreements in individual instances, and its terms are meant to be liberally construed to achieve its objectives.

4.2 *Role of the Authority.* The Authority is a political subdivision of the Commonwealth created by the City and the County to carry out certain specific functions. It is an essential part of economic development in the City and the County as contemplated by this MOU. It will provide incentives, own property, and provide conduit financing in accordance with Article 2.

4.3 *COLG revenue-sharing Agreement.* The City and the County will develop a revenue-sharing agreement pursuant to Va. Code § 15.2-1301 to submit to COLG for review and adoption. The City and County will take such steps as may be necessary to move this Agreement through the COLG process quickly and efficiently.

4.4 *Performance agreements.* Each individual Prospect will be expected to enter a legally binding Performance Agreement that will set out performance targets, benchmarks, and objectives in order to qualify for incentives.

### Article 5—Miscellaneous

5.1 *Status of MOU.* This MOU is not a legally binding contract, but a framework for further action.

5.2 *Virginia Constitution.* In no instance will any provision of this MOU be construed to bind the City, the County, or any other political subdivision of the Commonwealth of Virginia to any legislative act, nor to lend any credit, appropriate any funds, or otherwise violate the Credit Clause or the Debt Clause of the Virginia Constitution.

IN WITNESS WHEREOF, see the following signs and seals:

For the CITY OF COVINGTON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia:

/s/ Richard Douglas  
Richard Douglas, City Manager

And

For ALLEGHANY COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia:

/s/ J.A.L.  
Jonathan A. Lanford, County Administrator



## Appendix B

### **JOINT ECONOMIC DEVELOPMENT & GROWTH-SHARING AGREEMENT**

This Agreement is made and entered this Ninth day of November, 2016, by and between ALLEGHANY COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, and the CITY OF COVINGTON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia.

#### **RECITALS:**

**WHEREAS**, by concurrent resolutions dated October 4, 2016, the Board of Supervisors of Alleghany County and the City Council of the City of Covington adopted a Framework Memorandum of Understanding regarding various economic development issues affecting both localities; and

**WHEREAS**, among the matters addressed in the Framework Memorandum of Understanding is a development and adoption of a Voluntary Economic Growth-Sharing Agreement, as authorized by Section 15.2-1301 of the Code of Virginia, 1950, as amended; and

**WHEREAS**, such Growth-Sharing Agreement must be reviewed by the Virginia Commission on Local Government pursuant to Section 15.2-2903(4) of the Code of Virginia, 1950, as amended, prior to going into effect; and

**WHEREAS**, the Framework Memorandum of Understanding and the substance of this Agreement have been endorsed by the Industrial Development Authority of the City of Covington and Alleghany County, as well as the Alleghany Highlands Economic Development Corporation; and

**WHEREAS**, the County and the City anticipate that implementation of this Agreement, together with other elements of the Framework Memorandum of Understanding, will increase the likelihood of positive economic development in the Alleghany Highlands region, thereby increasing the tax base and opportunities for positive employment for the citizens of the County and the City; and

**WHEREAS**, the Board of Supervisors and the City Council intend to adopt this Agreement following review by the Commission on Local Government:

#### **WITNESSETH:**

**NOW THEREFORE**, in consideration of the premises hereof and the mutual promises hereinafter contained, the City and the County agree as follows:

#### **ARTICLE I – DEFINITIONS**

1.1. *Agreement* means this Agreement.

1.2. *The Authority* means the Covington-Alleghany Industrial Development Authority, a political subdivision of the Commonwealth of Virginia pursuant to the Industrial Development and Revenue Bond Act, its agents, employees, contractors, counsel, or Board of Directors, as required by context.

1.3. *Base Assessed Value* means the assessed value of all property subject to Shared Taxes within a Development Area shown upon the land book or other official roll of the local

## Appendix B

assessing officer on January 1 of the year preceding the effective date of the Designation Ordinance.

1.4. *Base Tax* means the product of the Base Assessed Value and the levy laid by the City Council or Board of Supervisors in any given year.

1.5. *Board of Directors* means the Board of Directors of the Authority.

1.6. *Board of Supervisors* means the Board of Supervisors of the County.

1.7. *City* means the City of Covington, Virginia, its agents, employees, counsel, contractors, or Council, as required by context.

1.8. *City Council* means the City Council of the City.

1.9. *Commission, Commission on Local Government, or COLG* means the Virginia Commission on Local Government, an agency of the Commonwealth of Virginia exercising those powers set forth in Section 36-132.1 of the Code of Virginia, 1950, as amended.

1.10. *County* means Alleghany County, Virginia, its agents, employees, counsel, contractors, or Board of Supervisors, as required by context.

1.11. *Designation Ordinance* means a concurrent ordinance of the governing bodies of the County and the City designating a parcel as part of the Development Area in accordance with Article II hereof.

1.12. *Development Area* means an area that has been designated by concurrent ordinance of the governing bodies of the County and the City as being subject to the provisions of this Agreement.

1.13. *Economic Development Prospect* means any person recognized at law who is party to a Performance Agreement, as defined herein, and who is eligible for incentives relating to an Authority Facility in a Development Area, as the term "Authority Facility" is used in the Industrial Development and Revenue Bond Act.

1.14. *Local Assessing Officer* means the Commissioner of the Revenue of the County or the City, as applicable.

1.15. *MOU* means the Framework Memorandum of Understanding Joint Economic Development & Growth-Sharing entered by the City and the County on October 4, 2016.

1.16. *Other Revenue* means rental, sale, or other revenue realized by the Authority in the ownership or management of parcels in Development Areas.

1.17. *Performance Agreement* means a binding agreement, generally although not necessarily between the County, the City, the Authority, and an Economic Development Prospect, which sets forth the terms and conditions of development of any site within a Development Area. Such Performance Agreement shall contain or be construed to contain a limited waiver of the rights of any Economic Development Prospect under Section 58.1-3 of the Code of Virginia, 1950, as amended, so that the City and the County may verify tax information in accordance with Paragraph 3.5 of this Agreement, but such waiver shall be construed to be limited to the necessary staff of the City and County, and such information shall otherwise be confidential under

## Appendix B

Section 58.1-3. Note that a "Performance Agreement," for the purposes of this Agreement, need not be a single agreement, but may be two or more agreements serving the functions of a Performance Agreement.

1.18. *Shared Taxes* means real estate taxes (which shall include any public service corporation tax), personal property taxes, machinery and tools taxes, and, professional, and occupational license (BPOL) tax.

1.19. *Tax Increment* means the amount by which the current assessed value of all property subject to Shared Taxes exceeds the Base Assessed Value.

### ARTICLE II – DESIGNATION OF DEVELOPMENT AREA & INVESTMENTS

2.1. *Designation by Ordinance.* The County and the City, by concurrent ordinance following such notice and public hearing as may be required by law, may designate parcels within the City or the unincorporated areas of the County as part of the Development Area that is subject to this Agreement. As a condition of such Ordinance taking effect, the County and City shall cause copies of the Ordinance to be forwarded to the Commission on Local Government.

2.2. *Designation of Areas Within Towns.* Subject to the provisions of Article III herein, the County and the City may designate parcels as part of the Development Area that are within the incorporated areas of the Towns of Clifton Forge and Iron Gate in the same manner as set forth in Paragraph 2.1 herein, provided however that as a condition of such Ordinance going into effect, the Town Council of the relevant Town shall adopt an ordinance concurring in the designation.

2.3. *Performance Agreements.* Upon designation of a parcel as a Development Area, the City, the County, the Authority, and any other relevant parties shall enter a Performance Agreement setting forth their respective responsibilities with respect to such parcel. A Performance Agreement shall set forth (1) any foreseen infrastructure investments necessary for the parcel; (2) the share(s) of such infrastructure investments that will be borne by the City and the County; (3) if any economic development Incentives are foreseen, what the shares will be; and (4) the division of revenue for revenue sharing in accordance with Article III, if such division will be different from 50/50 between the County and the City. The default division, and the division foreseen by the County and the City, is that all costs and revenue will be divided 50/50.

2.4. *Management by Authority.* The Authority shall manage all infrastructure investments and division of Other Revenue between the County and the City in accordance with any Performance Agreement and as set forth herein.

### ARTICLE III – REVENUE SHARING

3.1. *Base Tax.* The locality in which a parcel within a Development Area lies, whether the County or the City, shall be entitled to retain the Base Tax.

3.2. *Town Taxes Not Affected.* Taxes laid by the Towns of Clifton Forge and Iron Gate shall not be subject to this Agreement, and the Towns will continue to tax property within Development Areas as all other property within their borders.

## Appendix B

3.3. *Tax Increment Revenue Sharing.* Tax Increment revenue shall be shared 50/50 between the County and the City. Tax Increment Revenue shall be appropriated in accordance with Paragraph 3.5 herein.

3.4. *Sharing of Other Revenue.* Other Revenue shall generally be shared 50/50 between the County and the City in accordance with the approved budget for the Authority adopted in accordance with Paragraph 4.5 herein. Other Revenue shall be distributed to the County and the City as set forth in Paragraph 4.6 herein.

3.5. *Revenue Sharing Subject to Appropriation.* The City and the County agree and recognize that Tax Increment Revenue Sharing under Paragraph 3.3 is a long-term debt subject to the Debt Clause of the Virginia Constitution, Art. VII § 10. Accordingly, the revenue-sharing obligations set forth in this Agreement are subject to annual appropriation in accordance with this Paragraph. **Exhibit A** to this Agreement shows the method of calculation of the Tax Increment Revenue Sharing.

3.5.1. *Certification by Commissioner of the Revenue.* Upon certification by the Commissioner of the Revenue of the land book or other tax rolls for any year, information shall be forwarded to the Clerk of the City Council and the Clerk of the Board of Supervisors for each parcel in a Development Area. The Clerk shall be responsible for ensuring that Base Tax and Tax Increment Revenue are calculated.

3.5.2. *Certification by Treasurer.* The Treasurer shall certify to the Clerk of the City Council and the Clerk of the Board of Supervisors when tax bills have been paid for each parcel in a Development Area.

3.5.3. *Certification by Authority.* The Authority shall certify to the Clerk of the City Council and the Clerk of the Board of Supervisors the amount and payment of any Other Revenue, including projections for the remainder of any fiscal year, when it submits its annual budget in accordance with Paragraph 4.5 herein.

3.5.4. *Appropriation by Board of Supervisors and City Council.* In the annual budget process for the fiscal year following any collection of Tax Revenue or Other Revenue, the locality receiving such revenue shall appropriate a percentage of such revenue as set forth in any Performance Agreement under Paragraph 2.3 herein, which division shall normally be 50/50.

3.5.5. *Unpaid Taxes.* In the event that taxes are not timely paid, the amount of such taxes shall be deducted on the same basis from both localities' revenue-sharing portion. In the event of any tax collection action, the City and the County shall share in any proceeds ratably. If any tax assessment is challenged in court, the City and the County shall share ratably in the costs of any defense of the assessment and cooperate in such defense, as well as in the cost of any refund of taxes that may be ordered by any court or administrative body.

### ARTICLE IV – JOINT INDUSTRIAL DEVELOPMENT AUTHORITY

4.1. *Agreement to Continue Existence.* The City and the County have created a joint industrial development authority pursuant to the provisions of the Industrial Development and Revenue Bond Act, Sections 15.2-4900 *et seq.* of the Code of Virginia, 1950, as amended (the

## Appendix B

“Act”), as set forth in Sections 2-131 through 2-133 of the Code of Alleghany County, Virginia, and Sections 2-303 through 2-306 of the Code of the City of Covington, Virginia. The Board of Directors of the Authority is composed of seven members appointed for staggered four-year terms in accordance with the Act and the ordinances of the City and County creating the Authority. Three members are appointed by the City Council, three members are appointed by the Board of Supervisors; the seventh member rotates between the City Council and the Board of Supervisors. The City and the County hereby agree that the Authority is a perpetual body and appointments to the Board of Directors shall continue in the same manner for so long as the Authority continues to have any financial or legal commitments in or remains the owner of real property within Development Areas.

4.2. *Appointment of Executive Directors.* The City Council and the Board of Supervisors shall request the appointment of the city manager of the City of Covington and the county administrator of Alleghany County as co-executive directors of the Authority.

4.3. *Role in Development Area.* The Authority shall provide for the management of properties in the Development Area through appropriate Performance Agreements and in accordance with its corporate powers.

4.4. *Adoption of Ordinances.* Pursuant to Section 15.2-4903(A) of the Code of Virginia, 1950, as amended, the City and the County agree that they shall adopt concurrent ordinances limiting the Authority’s powers to finance facilities, in substantially the form set forth in **Exhibit B** to this Agreement.

4.5. *Budget.* Each year, not later than March 15, the Authority shall forward a proposed budget to the City Council and the Board of Supervisors. The City Council and the Board of Supervisors may comment on such budget, and shall, at their discretion, appropriate any funds necessary for the Authority in their annual budget on a 50/50 basis or as otherwise set forth in any Performance Agreement.

4.6. *Distribution of Other Revenue.* The Authority shall, not later than 90 days following the first day of each fiscal year, distribute the Other Revenue from the previous fiscal year to the City and the County in accordance with the provisions of Article III herein.

4.7. *Concurrence of Town of Clifton Forge.* The Town of Clifton Forge has its own industrial development authority under the Industrial Development and Revenue Bond Act, as set forth in Sections 2-231 through 2-233 of the Code of the Town of Clifton Forge, Virginia. Pursuant to Section 15.2-4905 of the Code of Virginia, 1950, as amended, any ordinance of the Town of Clifton Forge adopted pursuant to Paragraph 2.2 of this Agreement shall include consent to the Authority taking such actions as may be contemplated in this Agreement with respect to such parcel or parcels.

### ARTICLE V – MISCELLANEOUS PROVISIONS

5.1. *Contingent Effectiveness.* This Agreement shall not become effective until it is adopted by the City Council and the Board of Supervisors following report from the Commission and public hearing and notice in accordance with Section 15.2-1301(B) of the Code of Virginia, 1950, as amended.

## Appendix B

5.2. *Rule of Construction.* This Agreement is to be construed liberally and reasonably so as to accomplish its purpose and intent, and not to defeat such purpose or intent.

5.3. *Integration.* This Agreement, including the exhibits hereto, constitutes the full and complete agreement of the City and the County respecting the sharing of revenues in Development Areas, and any prior or contemporaneous agreements or understandings, written or oral, are hereby merged into and superseded by the provisions of this Agreement. This Agreement may only be amended or supplemented by a subsequent writing of equal dignity except where expressly set forth herein. This Agreement may not be assigned by the City or the County without the prior written consent of the other.

5.4. *No covenants of officials.* No covenant, agreement or obligation contained in this Agreement shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee, council member, supervisor or agent of the City or the County in his or her individual capacity, and neither County nor City officials nor any officer, employee, council member, supervisor or agent thereof executing this Agreement or any related instrument shall be liable personally on this Agreement or such instrument or be subject to any personal liability or accountability by reason of the execution and delivery thereof. No director, officer, employee, council member, supervisor or agent of the City or the County shall incur any personal liability with respect to any other action taken by him or her pursuant to this Agreement or any of the transactions contemplated hereby, provided he or she acts in good faith.

5.5. *Rule of construction as to dates.* If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a legal holiday in the Commonwealth of Virginia, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first business day following such Saturday, Sunday or legal holiday. Unless otherwise specified herein, all references in this Agreement to a "day" or "days" shall refer to calendar days and not business days.

5.6. *Choice of law.* This Agreement shall be construed according to the laws of the Commonwealth of Virginia without regard to its principles of conflicts of laws. The Parties consent to exclusive venue and jurisdiction in the Circuit Court for Alleghany County, Virginia, and shall not file any suit in any other court.

5.7. *Attorney's fees.* The City and County agree that if either pursues legal action to enforce the terms of this Agreement, the American Rule shall apply and each shall bear its own attorneys' fees and expert costs and no fee shifting shall occur.

5.8. *Drafter & Severability.* This Agreement has been jointly drafted by the City and the County, and is to be construed as jointly drafted and not be construed against either as the drafter. This Agreement is severable, and if any provision is found to be invalid by any court of competent jurisdiction, the remainder shall survive. The section and paragraph headings in this Agreement are for convenience of reference only and do not modify or restrict any provisions hereof.

5.9. *Covenant of authority.* Both the City and the County warrant that the signatories below have full authority, and have undertaken such legal actions as may be necessary to ensure such authority, to bind the entities of which they are representatives to the full extent permitted

## Appendix B

by law. This Agreement may be executed by facsimile, electronic or original signature of the Parties and in counterparts which, assuming no modification or alteration, shall constitute an original and when taken together, shall constitute one and the same instrument.

5.10. *Time of the essence.* Time is of the essence of all obligations set forth herein for which a time is stated.

5.11. *Waiver.* The failure of either the City or the County to insist upon strict compliance with any term herein shall not be construed to be a waiver of that requirement.

5.12. *Assignment of obligations.* Any obligation under this Agreement may be assigned to a third party with the prior written consent of both the County and the City and upon such terms as may be set forth in such consents.

*[SIGNATURES ON FOLLOWING PAGES]*

Appendix B

FOR THE CITY OF COVINGTON, VIRGINIA:

/s/ \_\_\_\_\_

Date: \_\_\_\_\_

Name:

Title:

Approval as to Form:

/s/ \_\_\_\_\_

City Attorney

FOR ALLEGHANY COUNTY, VIRGINIA:

/s/ \_\_\_\_\_

Date: \_\_\_\_\_

Name:

Title:

Approval as to Form:

/s/ \_\_\_\_\_

County Attorney



Appendix B

**EXHIBIT A**

**CALCULATION OF SHARED REVENUE**

Tax Map Nos. \_\_\_\_\_

Business Name(s) \_\_\_\_\_

**REAL ESTATE TAX:**

**CALCULATION OF TOTAL TAX**

- 1. Assessed Value of Real Estate (Land and Improvements): \$ \_\_\_\_\_
- 2. Real Estate Tax Rate: \_\_\_\_\_ ¢ / \$100 valuation
- 3. Total Tax: \$ \_\_\_\_\_
- 4. Total Collected (Line 3 and Line 4 should equal): \$ \_\_\_\_\_

**CALCULATION OF BASE TAX**

- 5. Assessed Value of Real Estate in Base Year: \$ \_\_\_\_\_
- 6. Base Tax (Line 5 x Line 2): \$ \_\_\_\_\_

**CALCULATION OF TAX INCREMENT:**

- 7. Tax Increment (Line 6 – Line 3): \$ \_\_\_\_\_

**CALCULATION OF ANNUAL APPROPRIATION:**

- 8. Division of Revenue Set Forth in Performance Agreement  
(Should Be 50/50): \_\_\_\_\_
- 9. Appropriation (Line 7 x Line 8): \$ \_\_\_\_\_

**OTHER TAXES CALCULATED MUTATIS MUTANDIS.**

## Appendix B

### EXHIBIT B

Both the County and the City shall adopt ordinances relating to the Joint Industrial Development Authority, setting forth substantially as follows:

**Sec. 2-\_\_\_\_. Created; name.**

There is created a joint political subdivision of the Commonwealth by the City Council of Covington, Virginia, and the County Board of Supervisors of Alleghany County, Virginia, to be known as the Industrial Development Authority of Covington – Alleghany County, Virginia.

(State Law reference: Va. Code § 15.2-4903.)

**Sec. 2-\_\_\_\_. Board of directors.**

The industrial development authority created in this division shall be governed by a board of seven directors to be appointed by concurrent action of the City Council of Covington, Virginia, and the Board of Supervisors of Alleghany County, Virginia. Appointments shall be for terms of four years, except appointments to fill vacancies which shall be for the unexpired portion of such term. If, at the end of any term of office of any director, a successor shall not have been appointed or qualified, the director whose term of office shall have expired shall continue to hold office until his successor shall be appointed and qualified. The City Council of Covington, Virginia, shall nominate and submit three directors, and the Board of Supervisors of Alleghany County shall nominate and submit three directors for appointment to such board of directors, and the City Council of Covington, Virginia, and the Board of Supervisors of Alleghany County, Virginia, shall alternate the nomination and submission of the seventh director to the board of directors. The seven directors shall be appointed by concurrent action of the City Council of the City of Covington, Virginia, and the Board of Supervisors of Alleghany County, Virginia.

(State Law reference: Va. Code § 15.2-4904.)

**Sec. 2-\_\_\_\_. Powers.**

In general and except as expressly set forth in this division, the Industrial Development Authority of Covington – Alleghany County, Virginia, shall have and exercise all powers and duties set forth in the Industrial Development and Revenue Bond Act, §§ 15.2-4900 *et seq.* of the Code of Virginia, 1950, as amended.

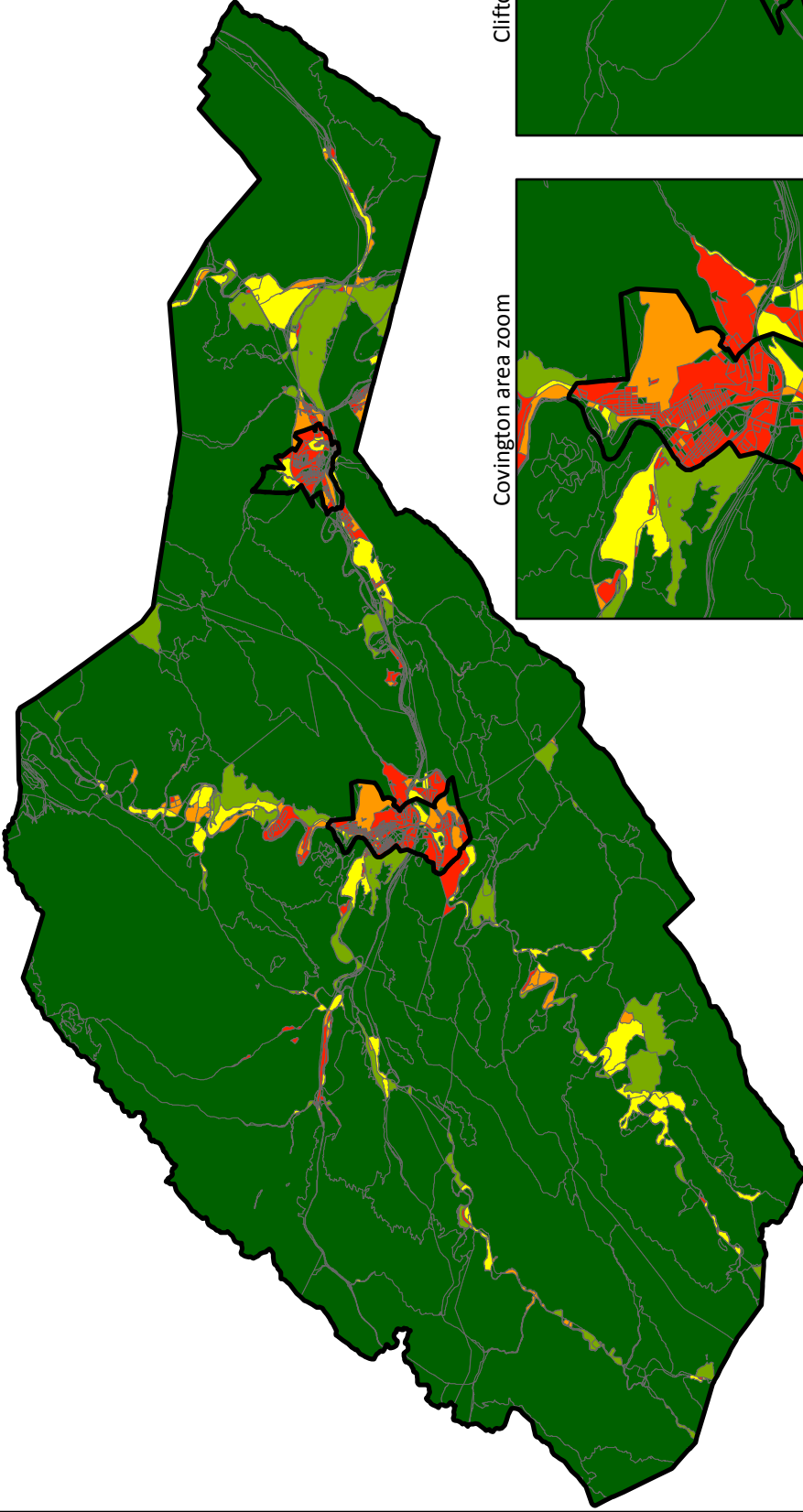
(State Law reference: Va. Code § 15.2-4903.)

**Sec. 2-\_\_\_\_. Development areas.**

The [County/City] hereby exercises its power, under § 15.2-4903 subsection (A) of the Code of Virginia, 1950, as amended, to limit the type and number of facilities that the Industrial Development Authority of Covington – Alleghany County, Virginia, may finance under this Article. Within any Development Area, as defined and designated in the Joint Economic Development and Revenue-Sharing Agreement adopted by the City of Covington and Alleghany County on \_\_\_\_\_. Within any Development Area, the Authority may only finance such facilities as may be provided for in a Performance Agreement as set forth in the Joint Economic Development and Revenue-Sharing Agreement.

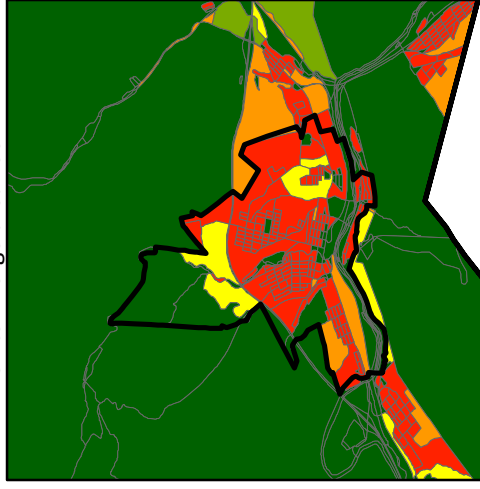
(State Law reference: Va. Code § 15.2-4903.)

# Allegheny Highlands: 2010 Population Density

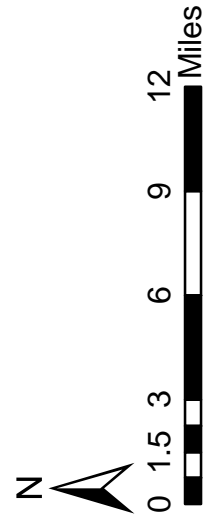
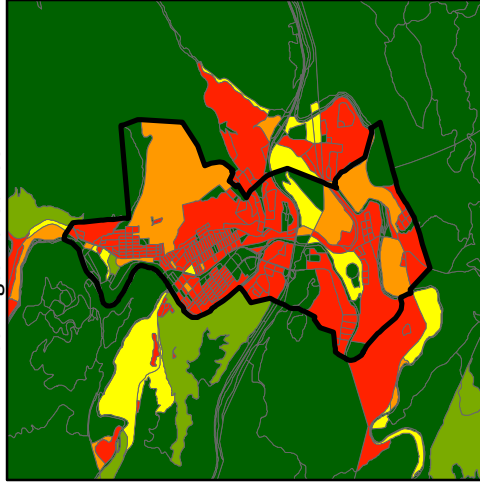


## Appendix C

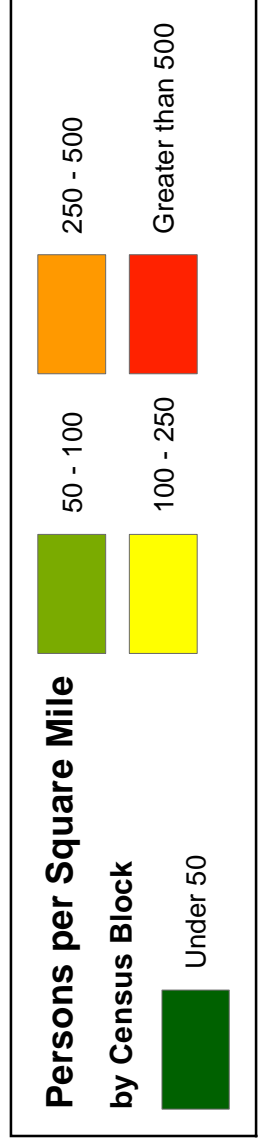
Clifton Forge area zoom



Covington area zoom



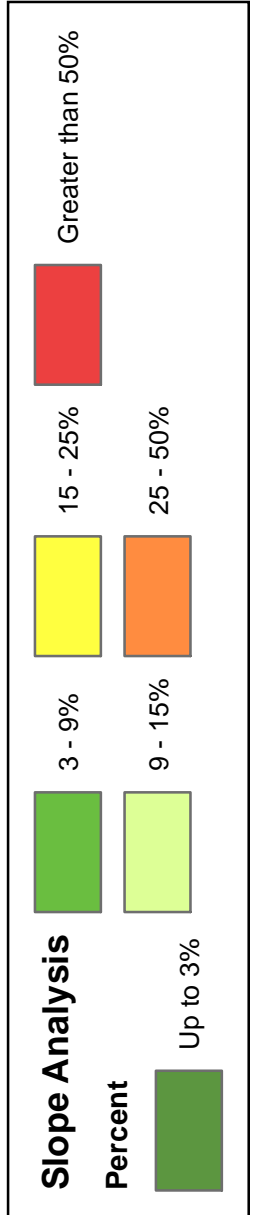
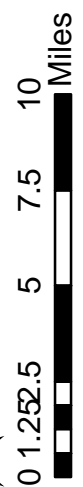
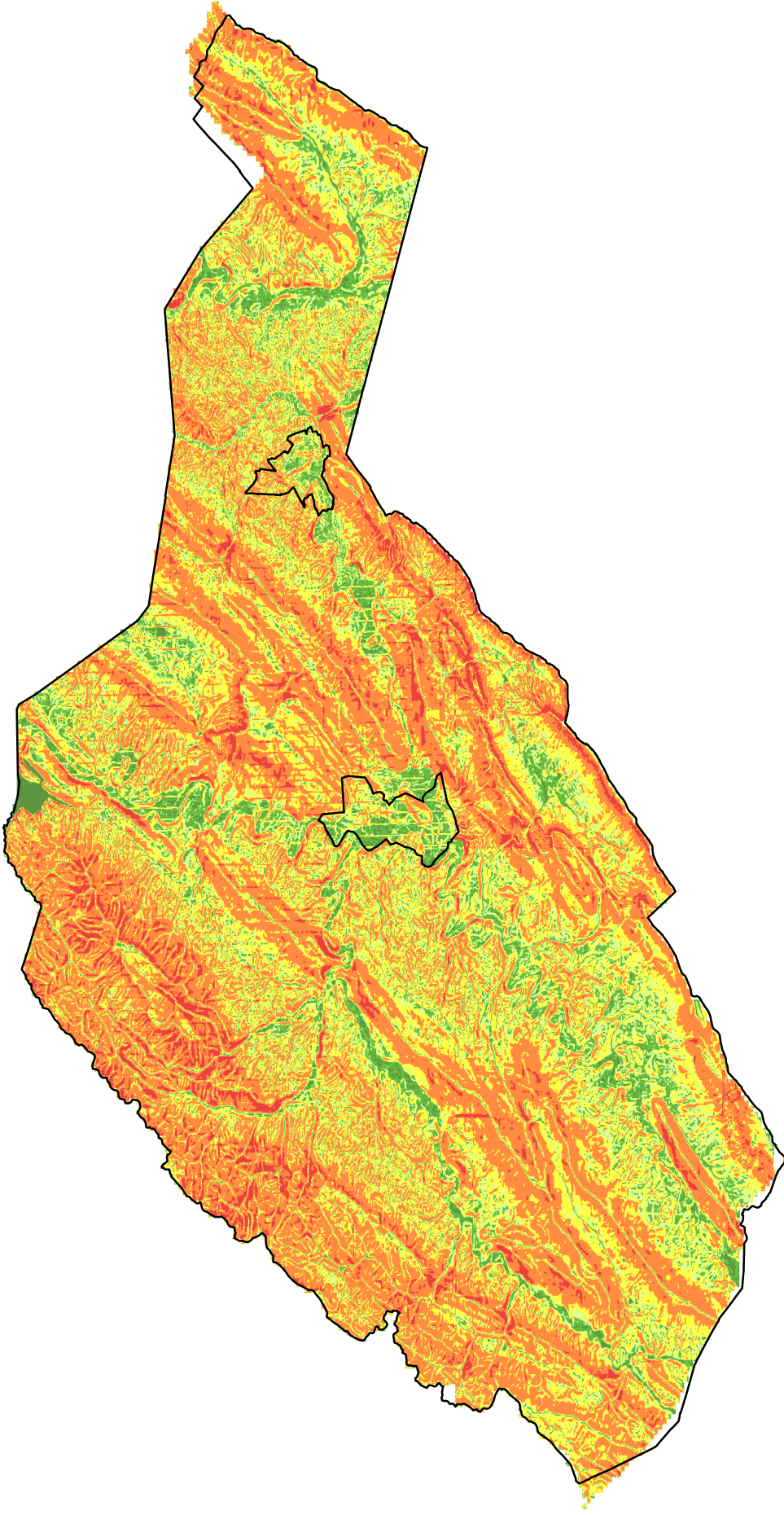
Source: 2010 Census



4/18/2017

# Allegheny Highlands: Developable Area Analysis - Slopes

Appendix D

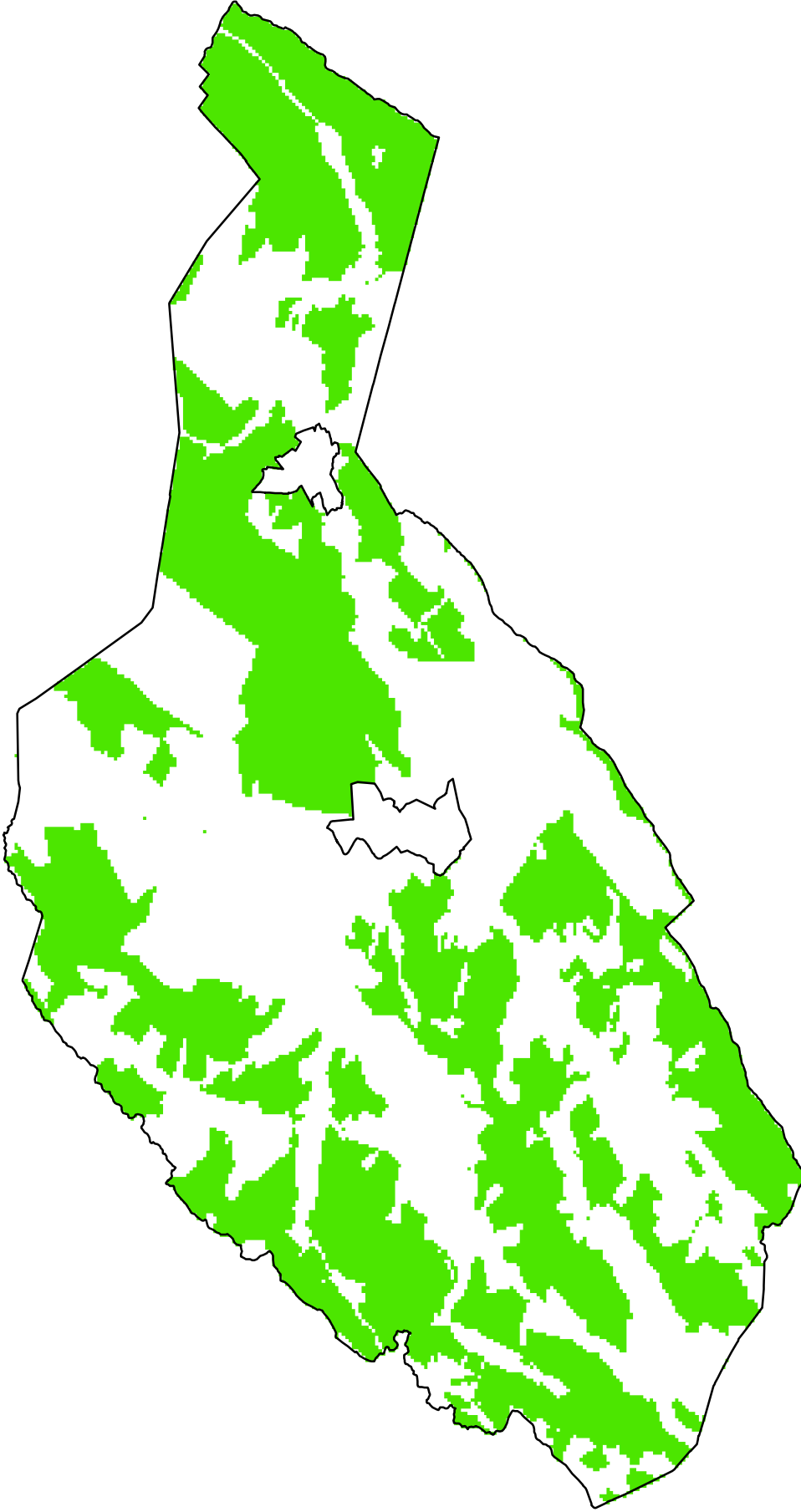


4/18/2017

Source: National States' Geographic Information Council, City of Covington, Allegheny County


# Allegheny Highlands: Developable Area Analysis - National Forests

Appendix D




4/18/2017

**National Forests**




National Forests

N



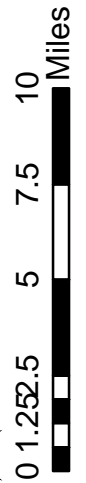
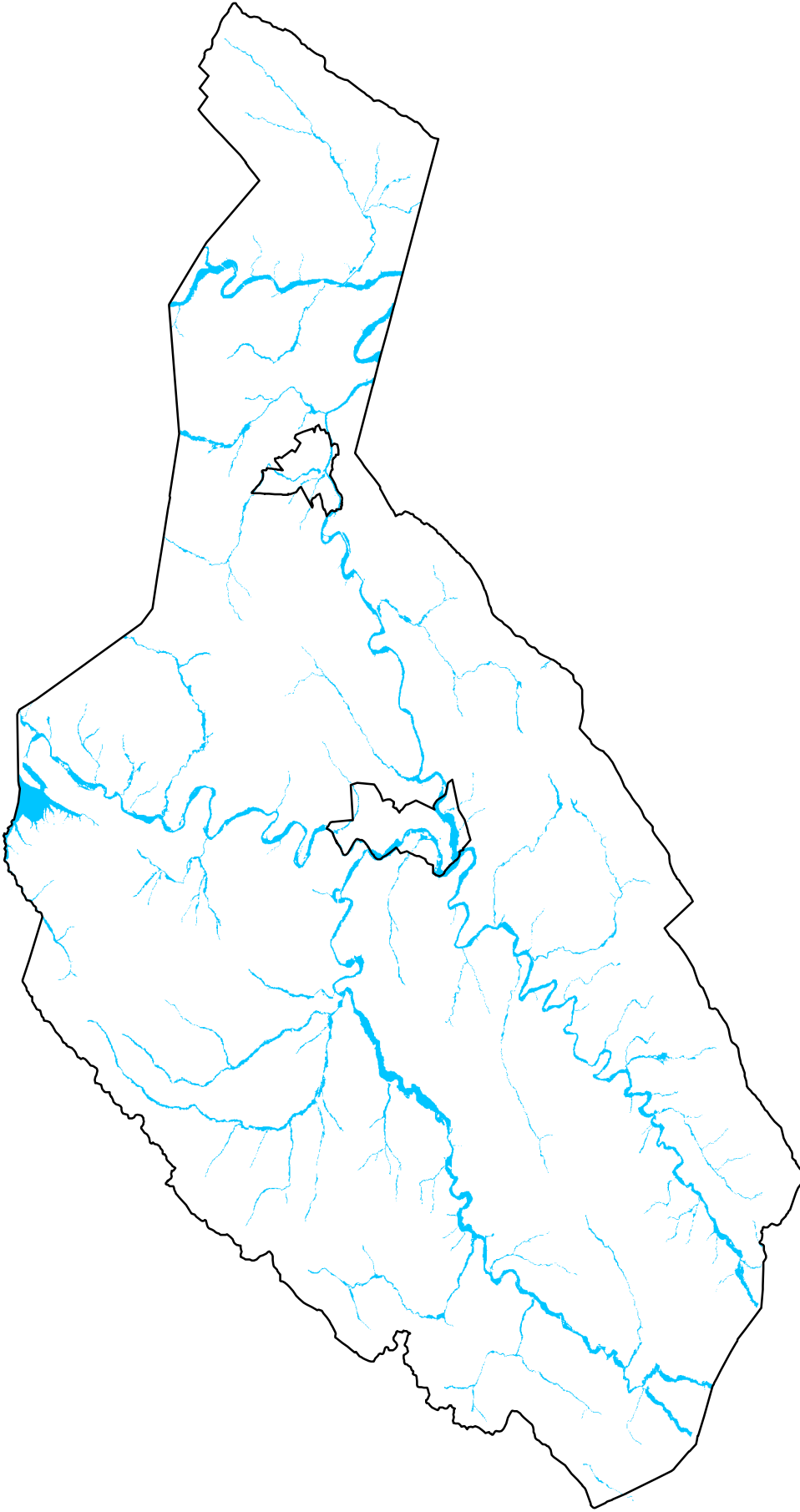
0 1.25 2.5 5 7.5 10 Miles



Source: City of Covington, Allegheny County

# Allegheny Highlands: Developable Area Analysis - Floodplain

Appendix D



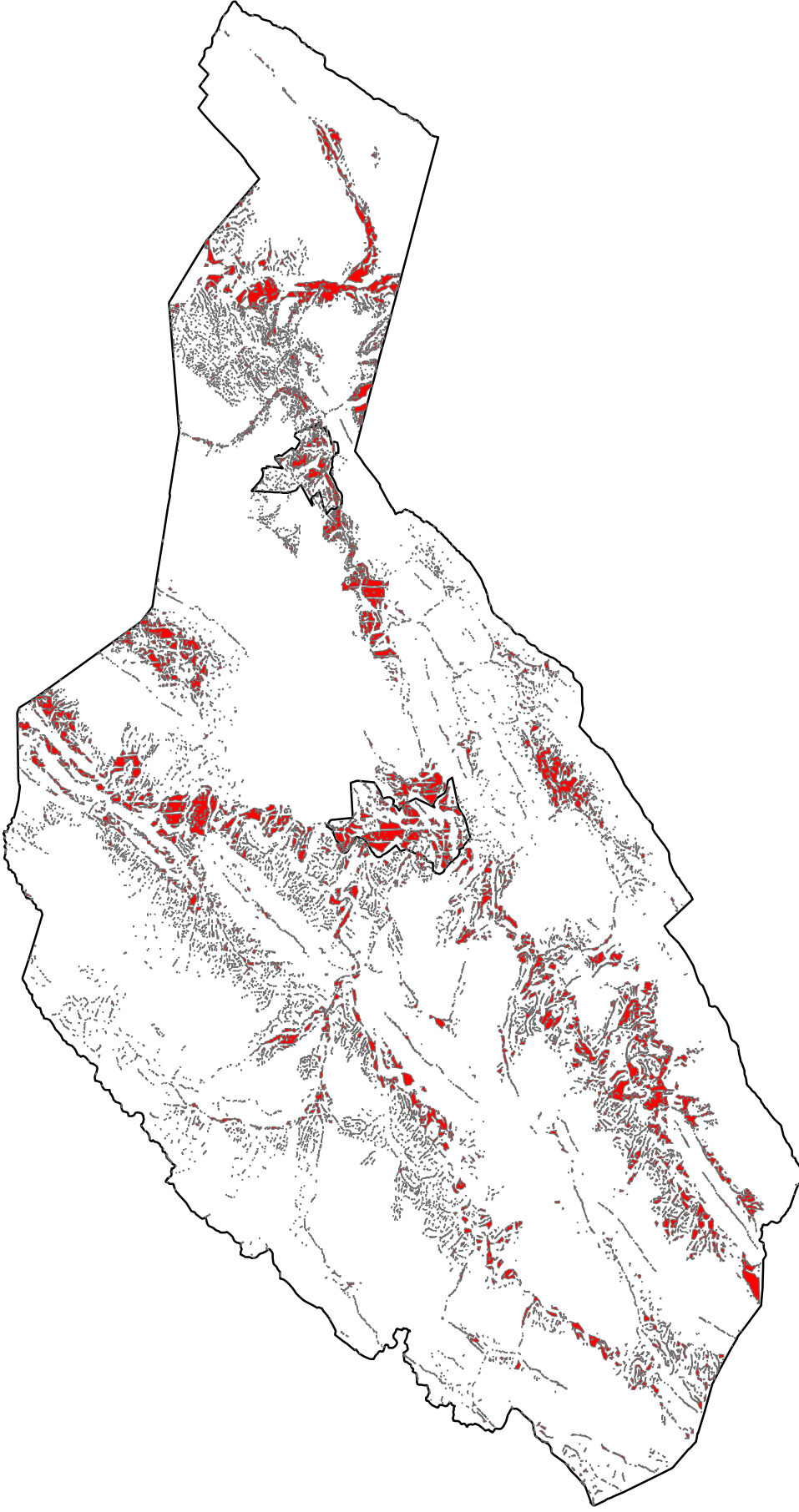
4/18/2017

Source: Federal Emergency Management Agency



# Allegheny Highlands: Developable Area Analysis - Aggregated Developable Areas

Appendix D



Aggregated Developable Areas



4/18/2017

Source: National States' Geographic Information Council, Federal Emergency Management Agency, City of Covington, Allegheny County

# Appendix E

## PERFORMANCE AGREEMENT

THIS PERFORMANCE AGREEMENT ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Covington, Virginia, a municipal corporation of the Commonwealth of Virginia (the "City"), Alleghany County, Virginia, a political subdivision of the Commonwealth of Virginia (the "County"), the Industrial Development Authority of Covington and Alleghany County, a political subdivision of the Commonwealth of Virginia under the Industrial Development and Revenue Bond Act (the "Authority"), and \_\_\_\_\_ (the "Company"; collectively, the "Parties").

WHEREAS, the City and County have entered an economic development and revenue sharing agreement pursuant to § 15.2-1301 of the Code of Virginia, 1950, which provides for them to make joint investments in and share revenues from investments in economic development of a regional nature in their localities; and

WHEREAS, [details on project and planning process]

WHEREAS, the Parties do hereby find and declare that this Agreement will serve the public health, safety, general welfare and prosperity of the inhabitants of the Commonwealth of Virginia by promoting industry and developing trade by inducing manufacturing, industrial, and commercial enterprises to locate in or remain in the City and the County and further the use of the Commonwealth's agricultural products and natural resources:

NOW THEREFORE, in consideration of the above recitals and of the mutual promises and obligations contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually covenant and agree as follows:

1. *Site Preparation & Infrastructure; Obligations of City & County.*
  - a. *Infrastructure Extensions.* [would set forth here what infrastructure each locality would provide. Examples: water, sewer, gas, internet]
  - b. *Site Preparation.* [would set out here other investments]
2. *Acquisition of Property by Authority.* [how Authority would get control of the property]
3. *[Conveyance/Lease] to Company by Authority.* [this would reference requirement of Authority to sell or lease land to Company. Sale would be upon terms as agreed. Lease would generally be ground lease or triple-net, as appropriate]
4. *Covenants of Company.* [would include capital investment, job creation, and wage targets, as appropriate]
5. *Local Discretionary Grant.* Subject to the terms of this Agreement, the City and the County will appropriate and pay to the Authority an amount up to, but not to exceed [total], with [50% of total] being paid by the County and [50% of total] being paid by the City for the purposes of promoting economic development in the Alleghany Highlands region. The Authority

**Comment [MWL1]:** As appropriate.

**Comment [MWL2]:** Applicable if the localities want to make a cash incentive grant.



## Appendix E

will make an economic development grant to the Company of up to [total] for the construction of the Facility or the purchase of equipment or machinery for the Facility, or reimbursement for the same, provided that the Company is in compliance with the terms, provisions, and requirements of this Agreement; provided, however, that this is not intended to limit the uses of this discretionary performance grant, but to illustrate its expected and potential uses. This discretionary performance grant will be disbursed upon the following triggering events: [fill in amounts to be disbursed upon reaching milestones].

6. **Local Revenue Performance Grants.** The Authority will make annual Local Revenue Performance Grants to the Company as set forth in this Section 6.

**Comment [MWL3]:** Applicable if the localities wish to rebate taxes.

- a. **Local Levy.** The fair market value and classification of all property segregated and designated for local taxation in the [City/County] is determined by the Commissioner of the Revenue as of January 1 of each year. The applicable tax rates are set by the [Board of Supervisors/City Council] not later than June 30 of each year. The product of the fair market value of all Capital Improvements and the tax rate applicable thereto represents the total tax payable to the Treasurer for each tax year, which is referred to herein as the "Local Levy." The "Local Levy" is further subdivided into the "Real Estate Levy" and the "Machinery and Tools Levy," based upon whether the tax is a levy on the real estate or the machinery and tools, as those terms are defined by law.
- b. **Base Amount of Local Revenue Performance Grants.** The annual base amount of Local Revenue Performance Grants shall be determined by multiplying the Local Levy by the Incentive Ratio for each year, as set forth in **Exhibit \_\_** hereto. In no case, however, will a Local Performance Revenue Grant exceed the Local Levy paid by the Company for the applicable Grant Year.
- c. **Application for Local Revenue Performance Grants.** After July 1 of each year, but not later than August 31, Company shall make a Local Revenue Performance Grant request in substantially the form set forth in **Exhibit \_\_** hereto. Such request shall be accompanied by Sufficient Documentation to allow the City, the County, and the Authority to establish and verify the number of New Jobs (cumulative) and minimum Capital Investment (cumulative). Company shall also provide confirmation that the Local Levy for the Grant Year has been paid in full. The Authority may disapprove any request that does not comply with the requirements of this Agreement or require that a revised request or additional documentation be submitted by the Company. The Authority will notify the Company of its determination within thirty (30) days of receipt of the Company's grant request. If the grant request is not accepted, the Company will then have thirty (30) days from receipt of the Authority's notice to submit a revised request and/or additional documentation to the Authority. Should the Company not request the above Local Revenue Performance Grant funds for a particular Grant Year as set forth above, then the Company will not be entitled to receive any grant funds for that Grant Year.

## Appendix E

- d. *Appropriation to Authority.* If the Authority approves the Company's request, the Authority will make a written request to the [City/County] for the distribution to the Authority of the Local Revenue Performance Grant funds. Upon receipt of the Authority's request for grant funds, the [City/County] will respond to such request within thirty (30) days of receipt of the Authority's request. The Authority will disburse to the Company the funds that the Authority receives from the [City/County] within thirty (30) days after receipt of such funds from the [City/County].
- e. *Capital Investment and New Jobs Commitments.* In order to obtain the Local Revenue Performance Grant, the Company shall make Capital Investments in the Site and the Facility and meets its New Jobs commitments. The minimum amounts (cumulative) and required timing of such Capital Investments and New Jobs shall be as set forth in the schedule attached hereto as Exhibit \_\_. The Local Revenue Performance Grant shall only be available to the Company during the [time] period set forth in Exhibit \_\_. The Company may only make a Local Revenue Performance Grant request after the Local Levy has been paid for the applicable Grant Year.
- f. *Duration and Sum of Local Revenue Performance Grants.* The Local Revenue Performance Grants to Company shall end as set forth in Exhibit \_\_ on the end of the [time] Grant Year or as otherwise provided for in this Agreement or by law. The [time] Grant Years referred to above consist of [time] consecutive calendar years with the first Grant Year starting on January 1, [date], and ending on December 31, [date]. The [date] and final Grant Year shall start on January 1, [date], and end of December 31, [date].
- g. *Diminution for Failure to Meet New Jobs and/or Capital Investment Commitments.* Notwithstanding the foregoing, should the Company fail to meet either ninety percent (90%) of the minimum New Jobs (cumulative) required for each Grant Year or ninety percent (90%) of the minimum Capital Investment (cumulative) for the applicable Grant Year, as set forth in Exhibit \_\_ (the "Target") then the amount of the grant that the Company may receive for a Local Revenue Performance Grant for that Grant Year shall be reduced as hereinafter set forth. For purposes of calculating any reduction in the amount of a Local Revenue Performance Grant for a Grant Year, fifty percent (50%) of the total of the Local Levy for that Grant Year as shown on Exhibit \_\_ shall be allocated towards the Capital Investment Target for that Grant Year. If the Company fails to meet either Target for the applicable Grant Year, the Local Revenue Performance Grant for that Grant Year shall be reduced by a percentage equal to the percentage by which the Company failed to meet either or both Targets, such reduced amount being forfeited by the Company without further obligation by the Authority, the City, or the County notwithstanding the Company's meeting any future year Targets.

Comment [MWL4]: As appropriate

By way of example only, for Grant Year 2, Company's Targets will be [100] cumulative New Jobs and [\$40,000,000] in cumulative Capital Investments,

Comment [MWL5]: Example

Comment [MWL6]: Example



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with [\$20,000,000] being real estate, and [\$20,000,000] being machinery and tools. The estimated Local Levy for Grant Year 2 would be \$950,000. For purposes of calculating any reduction in the amount of the Local Revenue Performance Grant, one-half of the Local Levy for Grant Year 2 (\$475,000) would be allocated towards meeting the New Jobs Target and one-half (\$475,000) towards meeting the Capital Investment Target. If the Company met at least ninety percent (90%) of its New Jobs Target for Grant Year 2, but confirmed only \$30,000,000 in cumulative Capital Investments (i.e., 75% of its cumulative Capital Investment Target), then the maximum grant of \$475,000 allocated to the Capital Investments Target for Grant Year 2 would be reduced by 25%. In such event, the maximum Local Revenue Performance Grant available to the Company for Grant Year 2 would be reduced by \$118,750 (i.e., 25% of \$475,000).

**Comment [MWL7]:** Example.

**Comment [MWL8]:** Example.

**Comment [MWL9]:** Based on RE tax rate of \$0.75/\$100 and M&T tax rate of \$4.00/\$100 at 100% of FMV.

The Parties specifically agree that this procedure and calculation process shall apply to each Grant Year in connection with each Local Revenue Performance Grant request Company may make in accordance with this Agreement.

- h. *Release.* The obligations of the Company, and the obligations of the other Parties to the Company, shall terminate as of December 31, [date], and this Agreement shall thereafter be construed as relating only to the City, County, and the Authority.

7. **Lease Revenue Sharing.** The Company and the Authority shall enter a lease for the Site in substantially the form attached hereto as Exhibit \_\_. Not later than May 1 of each calendar year, the Authority shall submit to the City and the County a proposed budget for management of the Lease on the Site for the subsequent fiscal year. Not later than 30 days following the close of each fiscal year, the Authority shall give an accounting to the City and the County for its management of the Lease for the previous fiscal year. The City and the County shall act upon the budget and may approve, disapprove, or modify the Authority budget for management of the Site under the Lease. Any surplus, after expenses for management of the Site are covered with a margin for contingencies, shall be distributed to the City and the County in accordance with the Budget.

**Comment [MWL10]:** Only applicable if property is leased rather than sold to prospect.

8. **Tax Revenue Sharing.** The City and the County agree to share revenue realized from the project on a 50/50 basis.

- a. *Calculation of Local Levy & Incentives.* The Local Revenue Performance Grant under Section 6, if any, shall be taken from the Local Levy before any revenue-sharing. In the event that the Local Revenue Performance Grant is less than the amount of the Local Levy, the amount of the remainder shall be allocated ratably to the Base Tax that is not shared, and the Tax Increment that is shared. By way of example only, if the Grant Ratio for the Local Revenue Performance Grant is 75%, and the Company meets all targets and timely applies for the Grant, then the locality entitled to the Base Tax revenue shall receive 25% of the Base Tax revenue, and the localities shall each receive 12.5% of the Tax Increment revenue. The Revenue Sharing Basis is defined

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for the purposes of this Section as the Tax Increment portion of the Local Levy, less any amounts paid out as Local Revenue Performance Grants.

- b. *Appropriation of Funds.* In the annual budget process for the fiscal year following collection of any Shared Revenue, the [City/County] shall appropriate a sum equal to 50% of the Local Levy to the [City/County], which amount shall be paid not later than July 15 of that calendar year (i.e., 15 days after the beginning of the fiscal year following the year of collection).
- c. *Unpaid Taxes & Litigation.* In the event that taxes are not timely paid, the amount of such taxes shall be deducted on the same basis from both localities' revenue-sharing portion. In the event of any tax collection action, the City and the County shall share in any proceeds ratably. If any tax assessment is challenged in court, the City and the County shall share ratably in the costs of any defense of the assessment and cooperate in such defense such that each continues to receive an equal proportion of the Base Tax and Tax Increment revenue, as well as in the cost of any refund of taxes that may be ordered by any court or administrative body.
- d. *Termination of Revenue Sharing.* This Agreement shall terminate upon the earliest of:
  - i. Agreement by the Parties to end the Agreement; or
  - ii. A substantial change in the use of the Site.

9. *Compliance with Laws.* The Company agrees to comply with all applicable federal, state, and local laws, rules, and regulations in the performance of this Agreement, including but not limited to obtaining and maintaining a [City/County] business license. The Company shall file all appropriate and applicable real estate taxes, personal property taxes, machinery and tools taxes, and other tax forms and notices with the [County/City Commissioner of the Revenue], and Company shall pay all such taxes to the [City/County] when due and not claim any exemptions from real estate taxes, personal property taxes, or other taxes for any periods of time for which any local grant funds are requested. Company shall also ensure that the owner of the Building and any entity that may operate and/or manage the Facility, if different from the Company, also complies with all the obligations of this Section and other applicable provisions of this Agreement.

Comment [MWL11]: As appropriate

Comment [MWL12]: As appropriate

Comment [MWL13]: As appropriate

### 10. *Definitions.*

- a. *Base Assessed Value* means the assessed value of the Site and any improvements thereon, including all real estate and machinery and tools, as of January 1, [year; should be Grant Year 1 or the year before if agreed; only if incentives are given].
- b. *Base Tax* means the product of the Base Assessed Value and the levy laid by the City Council or Board of Supervisors in any given year.



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- c. *Capital Investment* means a capital expenditure by or on behalf of the Company in taxable real property, taxable personal property, taxable machinery and tools, or combination of them at the Facility.
- d. *Machinery and Tools* means all property that is subject to machinery and tools tax segregated for local taxation under Article 2 of Chapter 35 of Title 58.1 of the Code of Virginia, 1950, as amended.
- e. *Maintain* means that New Jobs will continue without interruption from the date of creation through [date], allowing for the movement of positions to different shifts and position to accommodate changes in work flow. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in Company's employment levels (so long as there is active recruitment for open positions); (ii) strikes; and (iii) other temporary work stoppages.
- f. *New Jobs* means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by the Company for the employee, and for which Company pays an average annual wage of [amount]. Each New Job must require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions and positions with construction contractors, vendors, suppliers, and similar multiplier and spin-off jobs do not qualify as New Jobs.
- g. *Shared Taxes* means real estate taxes, taxes on personal property subject to local taxation, and machinery and tools taxes.
- h. *Substantial Change in Use* means a change in the use of the Site such that the essential purposes of this Agreement are frustrated. Entry by two or more of the Parties into a new Performance Agreement, not an amendment of this Agreement, is a Substantial Change in Use. The City and County may also, by concurrent resolutions, stipulate that the Site has changed use. Otherwise, in order for a Substantial Change in Use to occur, the following must occur: (1) a change in use such that a new zoning permit and/or site plan is required; (2) an investment in such change in use (whether by one of the Parties or some third party) that exceeds 75% of the Capital Investment Target, as adjusted by the consumer price index (CPI-U) published by the United States Department of Labor Bureau of Labor Statistics; and (3) invocation by at least one of the remaining Parties of this clause.
- i. *Sufficient Documentation* means written documentation and/or electric data that the Company shall supply to the Authority without any cost to the Authority that will allow the Authority to determine that the Company has met the particular requirements for which such documentation is being submitted and which will be sufficient to allow the Authority to verify that the contents

**Comment [MWL14]:** This definition would need to be adjusted, depending on the initial capital investment targets.

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of such documents and/or electronic data are accurate and correct. Furthermore, if the Authority reasonably determines that Sufficient Documentation has not been provided or that additional documentation is needed, the Authority may request further documentation from the Company, which shall be provided by the Company within thirty (30) days of receipt of the request for such further documentation.

- j. *Tax Increment* means the amount by which the current assessed value of all property subject to Shared Taxes exceeds the Base Assessed Value.

11. *Reports to City, County & Authority.* [annual/semi-annual reports would be provided for here].

12. *Performance; Notice & Cure.* Except for a failure to meet the Target for New Jobs and Capital Investment that is exclusively governed by Section \_\_ above, if the Company fails to comply with any of its obligations under this Agreement, as determined by the Authority in its reasonable discretion, then, subject to the notice and cure period hereinafter provided, the Company will not be entitled to be eligible for and/or receive and/or continue to be eligible for and/or receive any local grants or performance grants under this Agreement. Action to declare the Company ineligible for such grants shall only occur after the Authority has provided written notice to the Company setting forth the nature of the Company's non-compliance and the Company has failed to cure such non-compliance within thirty (30) days of such notice from the Authority. However, if the nature of the non-compliance is such that it cannot be cured within thirty (30) days, the Company shall be in default only if it does not commence the curing of such non-compliance within the said thirty (30) day period and carry it, in good faith, to prompt completion, in any event no later than sixty (60) days from the date of notice from the Authority. If there is any inconsistency between this Section and Section \_\_, Section \_\_ shall control.

13. *Closing & Attorney's Fees.* The settlement on the conveyance of the Site to the Company or its designee by the Authority (the "Closing") shall be held at the [Covington City Hall at 333 West Locust Street, Covington, Virginia 24426/Alleghany County Governmental Center at 9212 Winterberry Avenue, Covington, Virginia 24426] Company will pay its attorney for costs associated with a title search and/or title insurance, and will pay all such recording fees and taxes as are customarily paid by purchasers. The City, County, and Authority will such costs as it may incur in having their attorneys review or give counsel with regard to this transaction and any documentation involved.

**Comment [MWL15]:** Change, mutatis mutandis, if a lease is contemplated.

**Comment [MWL16]:** Choose as appropriate.

14. *Confidentiality of Proprietary Information.* The Company waives its protections under Section 58.1-3 of the Code of Virginia, 1950, as amended, to such extent, and only to such extent, as is necessary for the City, County, and Authority (1) to verify the Company's compliance with this Agreement and (2) to ensure accurate appropriations pursuant to Section 7 of this Agreement. The Parties hereby covenant and agree that financial information relating to the Company is confidential, and is, without limitation, exempt from the Virginia Freedom of Information Act under Section 2.2-4705.6(3) of the code of Virginia, 1950, as amended. In any case, the Parties hereto shall make all reasonable efforts to maintain the confidentiality of the Company's proprietary financial information that is subject to Section 58.1-3, as amended, including resisting any FOIA request, subpoena duces tecum, document production request, or

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other request for production, and informing the Company of any such request as soon as practicable but in any case not later than three business days of receipt.

15. *Representations.* The Company represents and warrants, as of the date of this Agreement and the date of the Closing, to the City, County, and Authority that all documents delivered by or on behalf of the Company in connection with this Agreement and the transactions contemplated by it are true and complete in all material respects; all information furnished by or on behalf of the Company to the City, County or Authority in connection with this Agreement and the transactions contemplated hereby do not contain any untrue statement of material fact and do not fail to state any material fact necessary to make the statements made, in the context in which they are made, not false or misleading; there is no fact which the Company has not disclosed in writing to the City, County, and the Authority which may materially adversely affect the ability of the Company to perform this Agreement.

16. *Indemnity.* The Company agrees to indemnify and hold harmless the City, the County, and the Authority, and their officers, directors, supervisors, councilors, and employees free and harmless from any and all claims, causes of action, damages or liability of any type, including reasonable attorney's fees, actually incurred and arising out of the Company's material breach of its representations and warranties in this Agreement.

17. *Integration.* This Agreement, including the exhibits hereto, constitutes the full and complete agreement of the Parties respecting its subject matter, and any prior or contemporaneous agreements or understandings, written or oral, are hereby merged into and superseded by the provisions of this Agreement. This Agreement may only be amended or supplemented by a subsequent writing of equal dignity except where expressly set forth herein. This Agreement may not be assigned by any Party without the prior written consent of the other Parties.

18. *No Covenants of Officials.* No obligation or promise under this Agreement shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Authority, the City or the County in his or her individual capacity, and neither City officials, nor County officials nor directors of the Authority nor any officer, employee or agent thereof executing this Agreement or any related instrument shall be liable personally on this Agreement or such instrument or be subject to any personal liability or accountability by reason of the execution and delivery thereof. No director, councilor, supervisor, officer, employee or agent of the City, County or the Authority shall incur personal liability with respect to any other action taken by him or her pursuant to this Agreement or the Industrial Development and Revenue Bond Act or any of the transactions contemplated hereby or thereby, provided he acts in good faith.

19. *Not a pledge of full faith and credit.* Any obligation of the City or County to pay, set aside, or otherwise appropriate funds for performance of this Agreement shall be construed to be subject to appropriation, and shall not be construed to be in derogation of Article VII, § 10 of the Virginia Constitution. The obligations of the Authority under this Agreement are not general obligations of the Authority, the City or the County, or the Commonwealth of Virginia, but are limited obligations payable solely from, and to be performed solely to the extent of, the revenues received by the Authority pursuant to this Agreement. The obligations of the Authority, the City,



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and the County hereunder shall not be deemed to constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof, including the Authority, the City, and the County.

20. *Rule of construction as to dates.* If any action is required to be performed, or if any notice, consent or other communication is given on a day that is a Saturday or Sunday or a legal holiday in the Commonwealth of Virginia, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first business day following such Saturday, Sunday or legal holiday. Unless otherwise specified herein, all references in this Agreement to a "day" or "days" shall refer to calendar days and not business days.

21. *Notices.* All notices hereunder shall be in writing and given by personal delivery or sent by (i) certified mail return receipt requested, postage prepaid, (ii) nationally recognized overnight courier service, or (iii) electronic means to the addresses set forth below (unless changed in accordance herewith). Notice as given hereunder shall be sufficient notice for the initiation of any suit to enforce this Agreement. Notice will be deemed received on the earlier of (a) actual receipt, (b) three business days after deposit in the U.S. Mail, (c) the first business day after deposit with an overnight courier, or (d) the first business day after transmission by electronic means.

To Company:	[name and address]
To City:	Richard Douglas, City Manager City of Covington, Virginia 333 W. Locust Street Covington, Virginia 24426 rdouglas@covington.va.us
With a copy to:	Theresa Fontana, City Attorney Guynn & Waddell, P.C. 415 S. College Ave. Salem, Virginia 24153 theresaf@guynnwaddell.com
To County:	Jonathan A. Lanford, County Administrator Alleghany County, Virginia 9212 Winterberry Avenue Covington, Virginia 24426 jlanford@co.alleghany.va.us
With a copy to:	Jim H. Guynn, Jr., County Attorney Guynn & Waddell, P.C. 415 S. College Ave. Salem, Virginia 24153 jimg@guynnwaddell.com



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To Authority: Melissa Munsey, Secretary/Treasurer  
Alleghany County Governmental Complex  
9212 Winterberry Avenue  
Covington, Virginia 24426  
mmunsey@co.alleghany.va.us

With a copy to: Christopher Kulp, Authority Counsel

The addresses at which notice shall be given may be amended by giving notice in accordance with this Section without need of formal amendment to this Agreement.

22. *Choice of Law.* This Agreement shall be construed according to the laws of the Commonwealth of Virginia without regard to its principles of conflicts of laws. The Parties consent to exclusive venue and jurisdiction in any state or federal court of competent jurisdiction within the Commonwealth of Virginia.

23. *Attorney's Fees.* The Parties agree that, except as specifically provided in this Agreement, if any Party pursues legal action to enforce the terms of this Agreement, the American Rule shall apply and each Party shall bear its own attorneys' fees and expert costs and no fee shifting shall occur.

24. *Mutual Cooperation in Defense.* In the event that any action or suit, judicial or administrative, is filed or credibly threatened that would directly interfere with the performance of any obligation under this Agreement by any Party, the Parties hereby agree that they will use all reasonable efforts to cooperate in the defense of any such action or suit.

25. *Drafter & Severability.* This Agreement has been jointly drafted by the Parties and is to be construed as jointly drafted and not to be construed against any of the Parties as the drafter. This Agreement is severable, and if any provision is found to be invalid by any court of competent jurisdiction, the remainder shall survive. The section and paragraph headings in this Agreement are for convenience of reference only and do not modify or restrict any provisions hereof.

26. *Covenant of Authority.* All Parties warrant that the signatories below have full authority, and have undertaken such legal actions as may be necessary to ensure such authority, to bind the entities of which they are representatives to the full extent permitted by law. The Company agrees that, during the term of this Agreement, it shall not allow its certificate of authority to do business in the Commonwealth of Virginia to be revoked at any time.

27. *Time of the Essence.* Time is of the essence of all obligations set forth herein for which a time is stated.

28. *Waiver.* The failure of any Party to this Agreement to insist upon strict compliance with any term herein shall not be construed to be a waiver of that requirement.

29. *Survivability.* The Parties agree that the rights and obligations set forth in this Agreement shall not be merged into the deed to be delivered to the Company pursuant to Paragraph 3 above, but shall survive the Closing.

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30. *Assignment of Agreement.* Any obligation under this Agreement may be assigned to a third party with the prior written consent of all Parties and upon such terms as may be set forth in such consents. Any such assignment, however, shall not relieve the Company from any of its obligations under this Agreement.

31. *Approval as to form.* This Agreement has been approved as to form by the County Attorney for Alleghany County, Virginia, and the Department of Law of the City of Covington, Virginia. Any amendment, except as to the persons and addresses set out in Paragraph 16, that is not approved by the County Attorney and the City Department of Law is void and of no force and effect.

32. *Counterparts.* This Agreement may be executed in one or more counterparts, by facsimile, electronic, or original signature, each of which shall be construed to be an original and production of all of which shall not be necessary to prove the contents of this Agreement.

**IN WITNESS WHEREOF**, see the following signs and seals:

# Appendix E

**EXHIBIT \_\_**

[DEED OF LEASE LANGUAGE]

# Appendix E

## EXHIBIT \_\_

### Local Revenue Performance Grants Schedule

<b>Grant Year</b>	<b>New Jobs</b>	<b>Capital Investment</b>	<b>Machinery &amp; Tools and Personal Property Incentive Ratio</b>	<b>Real Estate Incentive Ratio</b>
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1

[Schedule listing, for each Grant Year, the required number of New Jobs and the required Capital Investment, as well as the percentages of real estate and Business Personal Property Tax eligible for a Local Revenue Performance Grant]

***DRAFT/FORM PERFORMANCE AGREEMENT  
ALLEGHANY-COVINGTON ED PROJECTS***

# Appendix E

## DRAFT/FORM PERFORMANCE AGREEMENT ALLEGHANY-COVINGTON ED PROJECTS

### EXHIBIT \_\_\_\_\_ Local Revenue Performance Grant Application

Tax Year: \_\_\_\_\_  
Grant Year: \_\_\_\_\_

- A Local Machinery & Tools Levy: (attach tax bill and receipt evidencing payment of tax bill) \$ \_\_\_\_\_
- B Local Real Estate Levy: (attach tax bill and receipt evidencing payment of tax bill) \$ \_\_\_\_\_
- C Total Local Levy: (from A and B above) \$ \_\_\_\_\_
- D Total New Jobs Target for Grant Year: (from Ex. F) \_\_\_\_\_
- E Total New Jobs Created in Grant Year: (attach Sufficient Documentation) \_\_\_\_\_
- F Total Capital Investment Target for Grant Year: (from Ex. F) \$ \_\_\_\_\_
- G Total Actual Capital Investment in Grant Year: (attach Sufficient Documentation) \$ \_\_\_\_\_
- H Local Real Estate Levy Incentive Percentage if both Targets are met: (from Ex. F) \_\_\_\_\_ %
- I Local Machinery & Tools Tax Levy Incentive Percentage if both Targets are met: (from Ex. F) \_\_\_\_\_ %

#### Local Grant Calculation:

- 1 Local Machinery & Tools Levy (from A above) Multiplied by Percentage in I above: \$ \_\_\_\_\_
- 2 Local Real Estate Levy (from B above) Multiplied by Percentage in H above: \$ \_\_\_\_\_
- 3 Achievement of New Jobs Performance Guarantee:  
a. New Jobs: (from E above) \_\_\_\_\_  
b. New Jobs Target: (from D above) \_\_\_\_\_  
c. Percentage of New Jobs Target met in Grant Year: (if over 100%, write 100%) \_\_\_\_\_ %
- 4 Achievement of Capital Investment Guarantee:  
a. Capital Investment: (from G above) \$ \_\_\_\_\_  
b. Capital Investment Target: (from F above) \$ \_\_\_\_\_  
c. Percentage of Capital Investment Target met in Grant Year: (if over 100%, write 100%) \_\_\_\_\_ %
- 5 Calculation of Local Grant Request:  
i. If the percentages in 3c and 4c are both 100%, then the Local Grant Request for this Year will be the sum of Line 1 and Line 2. That amount is \$ \_\_\_\_\_. This amount should be carried forward to line 6  
ii. If either percentage in 3c or 4c above is less than 100%, the Total Local Levy in C above shall be divided by two. That quotient is \_\_\_\_\_ (the "Allocation"). Multiply the percentage by which the Target was not met in 3c by the Allocation \$ \_\_\_\_\_ (the "Jobs Grant"). Multiply the percentage by which the Target was not met in 4c by the Allocation \$ \_\_\_\_\_ (the "Capital Grant"). The Local Grant Request will be the total of the Jobs Grant and the Capital Grant. This amount should be carried forward to Line 6.
- 6 Grand Total Local Grant Request: \$ \_\_\_\_\_

I CERTIFY THAT THE FOREGOING, AND ALL ATTACHMENTS HERETO, ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND I HAVE ACTUAL AUTHORITY TO MAKE SUCH REPRESENTATION: