

AGREEMENT

THIS AGREEMENT dated this 13th day of March, 1990, by and between the Town of Cape Charles, Virginia, a municipal corporation of the Commonwealth of Virginia, (hereinafter Town), and Brown & Root I, Inc., a Delaware corporation authorized to conduct business in Virginia, (hereinafter Brown & Root).

WHEREAS, Brown & Root is the owner of approximately Two Thousand acres of land partially located within the existing corporate limits of the Town and the balance of which is located in Northampton County immediately adjacent to the southern boundary of the Town; and

WHEREAS, Brown & Root desires to develop its property in cooperation with the Town and therein desires to incorporate the balance of its property, currently located outside the jurisdiction of the Town, within the corporate limits of the Town; and

WHEREAS, the Town desires to participate in the zoning and permitting of Brown & Root's property and to cooperate with Brown & Root in the development of its property as a resort, second home/retirement community; and

WHEREAS, Brown & Root desires to have its property annexed by the Town and the Town desires to annex all of Brown & Root's property into the Town's boundaries; and

WHEREAS, Brown & Root acknowledges that the Town has not agreed to rezone its property and that nothing contained herein obligates or requires the Town to rezone Brown & Root's Property.

NOW THEREFORE, for and in consideration of the following mutual covenants and agreements the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. The Town agrees to petition to have the property shown in the attached Exhibit A, (hereinafter Property), annexed as a part of the Town of Cape Charles pursuant to the applicable provisions of the Code of Virginia, (hereinafter Annexation Suit). Brown & Root agrees to support the Annexation Suit and to provide the Town's legal representation and pay for any consulting fees associated with filing and prosecuting the Annexation Suit.

2. Brown & Root agrees that within six (6) months of the effective date of the annexation of all of the Property into the Town, Brown & Root will submit a rezoning application to the Town for all of its property currently within the Town limits north of Washington Avenue and East of Fig Street, together with the balance of its property currently outside the jurisdiction of the Town. The application shall be in substantial compliance with the preliminary development plan attached hereto as Exhibit B.

3. Brown & Root shall be responsible for the cost of planning the development of its property including the cost of studies by qualified planners, environmental engineers, golf course architects, marina consultants, and other experts retained for the development of Brown & Root's property. Brown & Root agrees to

use the results of these studies on coordinated projects with the Town.

4. The Town covenants and agrees that it shall not discriminate against any portion or parcel of the Property in the application and enforcement of any laws, ordinances or regulations following annexation and that it shall provide to the Property all Town services furnished to other properties within the Town limits unless such services are reduced or waived in writing by Brown & Root.

5. The Town covenants and agrees that it shall tax the Property according to Virginia Code Section 15.1-1047.1 following annexation. The Town further agrees that at such time as the Town assumes assessment responsibilities of Brown & Root's property it shall continue the existing policy of maintaining assessed values of property until the issuance of occupancy permits for the parcel of property for which the permits are sought. Nothing contained herein shall in any way interfere with the Town's ability to approve a general tax increase or reassess the value of all property within the Town.

6. The Town agrees to fully comply with local ordinances and state statutes in the review and approval of Brown & Root's site plans, subdivision plats, zoning applications, building and other permits associated with the use of Brown & Root's property. To the extent possible, the Town agrees to the expeditious review of said plans and applications from Brown & Root. The Town further acknowledges its support of Brown & Roots' proposed development, as shown in Exhibit B, and the Town will to the

extent allowed by law, support Brown & Root's permit applications with various state and federal agencies for proposed marina basin on the southern tract, their improvements to Kings Creek Marina and their proposed 36 hole golf course.

7. The Town agrees to incorporate within its zoning, subdivision and site plan ordinances, the regulations adopted by the Chesapeake Bay Local Assistance Board on September 20, 1989, or as amended. The Town agrees that in amending its Ordinances based on these regulations, that it will: a) adopt the buffer area requirements contained within the Board's regulations; ~~b)~~ recognize the creation of a channel and marina basin on Brown & Root's southern tract shown on Exhibit B, as a water dependent facility; c) provide as other localities have done, that Resource Protection Areas (RPA's) shall not apply to man made features such as the marina basin; and d) designate Kings Creek Marina and the adjacent proposed commercial area as an Intensely Developed Area (IDA) provided Brown & Root complies with at least one of the preconditions necessary for the establishment of an IDA in the Board's regulations and provided further that Brown & Root utilizes best management practices (BMP's) in the design of the facilities located within the IDA.

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8. Brown & Root agrees that to the extent it employs either onshore or offshore preservation measures for the protection of its shores on the Chesapeake Bay, it will design and/or deploy said measures in a manner that will not endanger or threaten the Town's Chesapeake Bay Beach during normal tidal conditions. Brown & Root further agrees that upon receipt of the necessary dredging

permits from the appropriate state and federal agencies for the dredging of the channel into King's Creek Marina, it will, contingent on availability, make all beach quality sand resulting therefrom, in excess of that desired by Brown & Root for the enhancement of its beach on its northern tract, available for the Town. The excess amount of such sand estimated to be available for the Town is 9000 cubic yards.

9. Brown & Root acknowledges its desire not to jeopardize the downtown area of the Town by its proposed development. As a result, Brown & Root agrees to coordinate the location of retail and commercial uses on its property based on need and good planning practices in conjunction with the Town.

10. Contingent on available natural resources, the Town agrees to extend water and sewer treatment capabilities to Brown & Root's properties and to reserve for Brown & Root water and sewer treatment capabilities in sufficient capacities to serve the completed development on the Brown & Root property as depicted in Exhibit B in accordance with state regulations. Brown & Root agrees to pay the cost of the physical expansion of the Town's sewer and water treatment systems i.e. collection, distribution and treatment, to accommodate the additional treatment demands of the Brown & Root Property beyond the limits of the Town's current permitted capacities. Brown & Root agrees to construct the necessary physical improvements within its property to accommodate sewer and water services in a coordinated fashion with the Town's proposed improvements to its existing sewer and water treatment facilities. Brown & Root agrees to dedicate the treatment system

improvements i.e. collection, distribution and treatment and the sewer and water lines within the Brown & Root property to the Town. The Town agrees that its water and sewer treatment systems will be operated by qualified and licensed professionals and that the plant(s) will be operated to a standard at least equivalent to that prescribed by state and federal regulations. The provisions of this paragraph shall run with the land and be binding upon the Town or any entity that assumes the responsibility for sewer and/or water treatment services for the Brown & Root property. In the event the Town conveys or receives compensation for the water and/or sewer treatment systems, following improvements to either of those systems by Brown & Root, Brown & Root shall receive a share of said compensation in direct proportion to the Brown & Root share of funded flow capacity. ^{system}

11. Brown & Root agrees that all vehicular access roads within its development, that are dedicated to the Town and/or State, shall be constructed to state standards, except as modified to not require curb, gutter and/or sidewalks. If said dedicated roads do not contain curb and gutter, Brown & Root agrees to record deed restrictions assigning the responsibility for the maintenance of the resulting swales to a home owners association or adjacent property owners. ^{??} Brown & Root further agrees that any sewer and water system improvements i.e. collection, distribution, treatment and lines that it is required to construct per this Agreement will be built in accordance with state standards.

12. The Town acknowledges the potential public benefit of extending Fig Street from its current terminus in the southern

right-of-way line of Mason Avenue to the southern tract of the Brown & Root property in the annexed area to accommodate an at-grade crossing of the railway right-of-way of Eastern Shore Railroad, (hereinafter Extension). If requested by Brown & Root, and the funds are available for the Extension, the Town agrees to exercise its condemnation powers, if necessary, to obtain the necessary right-of-way for the Extension and to construct the newly extended Fig Street. The Town agrees to request the Virginia Department of Transportation to add the Extension to its six year plan. The Town shall not be responsible for any costs for either the acquisition or construction of the Extension. Brown & Root agrees to participate in the cost of the Extension. To the degree the Extension impacts the existing Little League fields south of the railway, Brown & Root agrees to relocate the Little League fields on the same property adjacent to the newly extended Fig Street.

This refers to flattening the "hump," probably a moot point now.

13. The Town agrees to develop the property owned by the Town at the intersection of Route 642 and the Delmarva power utility easement, as shown on Exhibit C, into a wetlands park. Brown & Root agrees to include and dedicate to the Town a triangular portion of property adjacent to the Town's property for inclusion in the wetlands park. The Town agrees to develop the wetlands park with nature trails, indigenous wildlife and exhibits. Brown & Root agrees to provide 25% of the cost of developing the wetlands park, excluding grants, to the Town in yearly installments, over a 5 year period running from the date of the start of construction. The Town agrees to grant Brown & Root drainage

This went away a dead issue

retention and access rights to the wetlands park. Brown & Root agrees to file a Rezoning Application for 10 acres of its Property adjacent to the property owned by the Virginia Port Authority, to light industrial. If all or portions of the rezoned light industrial property are not utilized within 10 years of said rezoning, Brown & Root reserves the right to submit a rezoning application to the Town for this 10 acre area to a more appropriate category. Should the Town grant a rezoning application for Brown & Root's property, following annexation, the Town agrees to grant density credit to Brown & Root for the property dedicated for the wetlands park, at the same unit per acre ratio as that approved by the Town for the balance of Brown & Root's property.

14. Brown & Root and the Town agree to jointly support the creation of a special zoning district along Route 184 into the Town and along Route 13 within one mile of each direction of the intersection of Route 13 and Route 184. The Town and Brown & Root agree to urge reasonable restrictions on commercial development, sign restrictions, increased setbacks, landscaping requirements and other measures to encourage quality development within the this area.

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15. Brown & Root covenants and agrees that the obligations set forth herein shall run with the land and be binding upon the owners of its property, their successors and assigns.

16. The Town hereby expressly waives any defenses available to it by statute such as sovereign immunity with respect to obligations made by the Town herein. The Town represents that it intends to fulfill its obligations in this Agreement and will

continue to use its best efforts to comply with all its obligations contained herein.

17. Should an election within the Town be required by Section 15.1-1054, immediately following the annexation of the Property, Brown & Root agrees to reimburse the Town for cost of said election up to \$2,500.00.

18. The provisions of this Agreement other than paragraph 1 shall be contingent upon the approval of the Annexation Suit filed by the Town and the annexation of all of Brown & Root's property at one time into the Town. Brown & Root's obligations with respect to the improvement or replacement of public facilities shall be expressly contingent upon receipt of the necessary local, state and federal approvals for the development of its property in accordance with the preliminary development plan (Exhibit B) attached hereto.

19. The Town agrees that upon receipt and review of the zoning application submitted by Brown & Root in accordance with paragraph 2 herein, it will not require proffers or contributions from Brown & Root other than those contained in this Agreement, with the following exceptions:

96 ✓ a) Brown & Root shall provide the local share of the Town's grant match for planning or engineering design for break waters for the Town's Chesapeake Bay Beach. *done*

b) Brown & Root shall provide the local share of the Town's grant match for planning the redevelopment of the "Old Town Park" i.e., old school site, if and when the County School Board vacates said site. *(still to be done)*

*Indicate
proposed
YES*

✓ c) Within 18 months of the date of annexation of the Property, if feasible from an engineering standpoint, Brown & Root agrees to provide funds to the Town for aesthetically enhancing the appearance of the Town's proposed new water tower, as a lighthouse, by installing a catwalk and light-beam structure at the top of the tank, and painting the tank and enhancements to give the appearance of a lighthouse. The Town shall be responsible for maintenance of the water tower and improvements.

*Office
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1/10/95*

✓ d) Within 18 months of the effective date of annexation of the Property, Brown & Root shall construct a Cape Charles Welcome Center on the same site as that containing the Town's enhanced water tower. The Center shall be used by the Town to welcome visitors and display points of interest within the Town. Brown & Root shall retain title to the Center and reserves the right to use a portion of the Center for sales purposes. The Town shall be responsible for maintenance of the Center.

✓ e) Within 12 months of the effective date of annexation of the Property, Brown & Root shall install sidewalks on the north, south and west borders of its property at the corners of Mason Avenue and Bay Avenue. The sidewalks shall be consistent in design and materials to the sidewalks adjacent to the site.

✓ f) Within 24 months of the effective date of annexation of the Property, Brown & Root shall construct 2 regulation size, laykold surface tennis courts and 4 shuffleboard courts at a mutually agreed upon location within the corporate limits of the Town immediately prior to the time of the filing of the Annexation Suit. If, prior to the start of construction of the tennis

courts, the Town requests that the tennis courts be lighted, Brown & Root shall also provide the funds for said lighting.

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✓^{a^b}g) Within 12 months following the effective date of the annexation of the Property, Brown & Root agrees to donate to the Town, \$1,000.00 for multi media equipment for the Cape Charles Municipal Library.

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machine.*

20. This agreement is intended to benefit only the parties hereto and no other person or entity has or shall acquire any rights hereunder.

21. If any provision of this Agreement is determined to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the provisions of this Agreement shall remain in full force and affect and shall in no way be affected or invalidated thereby.

22. All exhibits to which references are made are hereby incorporated in this Agreement whether or not actually attached hereto. Those exhibits consist of:

- 1. Exhibit A - Map of Proposed Annexation;
- 2. Exhibit B - Preliminary Plan of Development;
- 3. Exhibit C - Proposed Wetlands Park.

23. This Agreement may be recorded by either party in the Clerk's Office of Northampton County, by indexing it in the name of both Brown & Root and the Town of Cape Charles, Virginia.

TOWN OF CAPE CHARLES,
a municipal corporation

By Richard Barton

BROWN & ROOT I, INC.

BY

T. E. Knight

STATE OF VIRGINIA
NORTHAMPTON COUNTY to-wit:

The foregoing was subscribed and sworn to before me, the undersigned Notary Public, in and for the aforesaid Town and State, by Richard Barton on behalf of The Town of Cape Charles, a municipal corporation, this 13th day of March, 1990.

Colleen Marie Cdom
Notary Public

My commission expires:

August 10, 1990

STATE OF TEXAS
CITY OF HOUSTON, to-wit:

The foregoing was subscribed and sworn to before me, the undersigned Notary Public, in and for the aforesaid City and State, by T. E. Knight, on behalf of Brown & Root I, Inc., this 22 day of March, 1990.

Barbara Jean Swartz
Notary Public

My commission expires:

