

AGREEMENT

THIS AGREEMENT (the “Agreement”) is made and effective this _____ day of _____, 2025, by and between the **CITY OF CHARLES TOWN, by and through the CHARLES TOWN UTILITY BOARD**, (hereinafter, “CTUB”) and **SIDEWINDER ENTERPRISES, LLC** (hereinafter, “Developer”).

WHEREAS, the City of Charles Town, by and through CTUB operates a combined water and sewer system pursuant to the provisions of Chapter 8, Article 20 of the Code of West Virginia and has been authorized by the Public Service Commission of West Virginia to develop a water supply system throughout areas within Jefferson County, West Virginia, including certain areas near the Village of Middleway in Middleway District of Jefferson County; and

WHEREAS, the DEVELOPER is planning to develop certain lands within the Middleway District of Jefferson County for commercial and industrial purposes; and,

WHEREAS, the planned development of the DEVELOPER'S property is contingent upon DEVELOPER having proper water treatment and distribution facilities for a potable water supply for the development of its property; and,

WHEREAS, the DEVELOPER has identified a source of water on its property that it intends to use for a raw water supply and to make available to CTUB for treatment and sale of potable water to CTUB’s utility customers; and,

WHEREAS, CTUB desires to obtain a water source for treatment and sale to DEVELOPER and to the other customers; and,

WHEREAS, the parties are willing to bear the expense of making public water treatment and distribution facilities available to the DEVELOPER, as well as for ultimate distribution by CTUB to its customers;

NOW, THEREFORE, for and in consideration of the covenants and agreements set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, CTUB and the DEVELOPER agree:

ARTICLE I

DESIGN

Section 1.01. Owner has acquired by deed of record in the Jefferson County Clerk's Office in Deed Book 1256, Page 360, land in Middleway District, Jefferson County, West Virginia ("Development"). The Development is comprised of five (5) separate parcels of real estate, identified in the Jefferson County tax records as Map 22, Parcels 3.01, 9, 32, 34 and Map 22B, Parcel 19.02. The DEVELOPER intends to drill and construct up to three (3) groundwater wells to supply the development. The DEVELOPER also has access to existing water rights as detailed in Deed Book 1271, Page 212 that will also be used to supply the Development. The DEVELOPER hereby agrees to employ qualified professional engineers to design a raw water transmission pipeline to a water treatment plant to be constructed by the DEVELOPER, and a water main of sufficient length and capacity to provide finished metered water service to the DEVELOPER'S property ("Project"). The location of the wells, the proposed raw water line, the proposed treatment plant, and the proposed finished water line are identified on Exhibit 1 attached to this Agreement. The design of the Project shall be developed solely at the DEVELOPER'S expense and shall be designed to meet all applicable State, Federal and local regulations.

Section 1.02. CTUB shall have the right to inspect and approve, prior to the start of construction under this Agreement, the design and specifications of the Project, to insure that the Project satisfactorily meets its objectives, is in accordance with all applicable regulations and the terms of this Agreement, minimizes leakage, and is designed using sound engineering standards. CTUB may reasonably require such revisions of said plans and specifications as it reasonably feels are necessary before giving its approval to the Project. The DEVELOPER must receive prior approval of CTUB in writing before submitting Project plans to the West Virginia Bureau of Health. CTUB shall sign all permit applications for the Project.

Section 1.03. The DEVELOPER shall, at its own expense, submit the plans and specifications to the appropriate State, Federal, and local agencies having jurisdiction over the Project for their approval. The DEVELOPER shall make such changes as are reasonably required by said agencies, at the DEVELOPER'S expense.

ARTICLE II

CONSTRUCTION AND INSPECTION

Section 2.01. The DEVELOPER will construct all of the facilities comprising the Project, including but not limited to, the raw water main, the finished water mains, trunk lines, pumping facilities, or other necessary appurtenances. The DEVELOPER shall obtain, at its own expense, all necessary permits, authorizations and approvals of State, Federal, and local agencies during the construction phase and shall make such changes as are required by said agencies during this phase. The DEVELOPER shall obtain all necessary rights-of-way and take all other such actions, including but not limited to, legal action, as are necessary to complete the facilities, at the DEVELOPER'S own expense. CTUB shall take such actions as are permitted by law to aid in obtaining the necessary easements on land not owned by the DEVELOPER, including, but not limited to, legal action. The cost of any said action by CTUB shall be borne by the DEVELOPER.

Section 2.02. CTUB shall bear no financial or other responsibility for the construction of the DEVELOPER'S Project. However, CTUB shall have the right to inspect and approve, prior to the implementation of service under this Agreement, the construction of the DEVELOPER'S Project to insure that water will be satisfactorily distributed to the Development in accordance with applicable regulations and the terms of this Agreement, and that the Project is being constructed using sound engineering and construction standards, and using materials in compliance with CTUB'S standards and specifications.

Section 2.03. The DEVELOPER will be required at its expense to conduct pressure tests and water quality and safety tests in accordance with the laws of the State of West Virginia and the regulations of the State Bureau for Public Health. In conjunction with the testing and prior to placing it in service, the Project will be cleaned, flushed and disinfected in accordance with applicable standards and methods of the American Water Works Association and the State Bureau for Public Health.

Section 2.04. The DEVELOPER shall provide to CTUB a complete set of plans for the facilities and continually update these plans through the design and construction of the Project. Upon completion of construction, the DEVELOPER shall provide to CTUB reproducible mylars of "as built" plans for the Project.

Section 2.05. At all times during the construction of said facilities, the DEVELOPER shall maintain sole ownership of said facilities.

ARTICLE III

TRANSFER OF OWNERSHIP

Section 3.01. Upon completion of the construction of the Project, the DEVELOPER shall obtain such State, Federal, and local certifications, authorizations, or approvals as required, at DEVELOPER'S expense. After said certifications, authorizations or approvals are obtained, and the facilities are completed in all respects, the DEVELOPER shall provide CTUB written notice of said completion. As used in this and subsequent Sections, "completed in all respects" includes, but is not limited to, the Project being physically complete, all engineers, materialmen, contractors and subcontractors of the DEVELOPER being paid for their work on said system, all legal disputes regarding the Project being resolved, and no outstanding liens or potential liens on said system existing.

Section 3.02. Upon receipt of the written notice described in Section 3.01, CTUB shall have 45 days to inspect the Project and all of its associated facilities and conduct any additional tests, at CTUB'S expense, as CTUB feels are appropriate and necessary to determine that the Project is functioning in accordance with the design plans. Not later than 45 days after receipt of the DEVELOPER'S notice hereunder, CTUB shall provide to the DEVELOPER, in writing, a list of changes, repairs, or additions which CTUB believes are necessary to place the DEVELOPER'S Project in good and proper working condition, and a list of other actions which the DEVELOPER must take so that the Project is complete in all respects. The DEVELOPER, at his own expense, shall make said changes, repairs and additions and take said actions which are directed by CTUB. Once said changes, repairs and additions have been made and actions taken, the DEVELOPER will provide CTUB with an additional written notice as set forth in Section 3.01 and CTUB shall have the same rights as it had upon receipt of the initial notice.

Section 3.03. If, after receipt of the notices set forth in Section 3.01 and upon CTUB'S determination that the DEVELOPER has completed the changes, repairs and additions and actions which as directed by CTUB under Section 3.02, and CTUB further determines that the DEVELOPER'S Project is in good and proper working condition, that no other changes, repairs, or additions are necessary, and that the Project is completed in all respects, the DEVELOPER shall deliver, and CTUB shall accept, ownership of the Project, including rights-of-way, and all real property and easements (including those easements referenced in Section 1.01 and shown on Exhibit 1) necessary for the ownership, operation and maintenance of the Project. The transfer of ownership

of the Project shall occur fifteen (15) days after the expiration of CTUB'S right of inspection and testing, set forth in Section 3.02 unless such transfer is delayed to a later mutually agreeable date.

Section 3.04. Upon completion of the construction of the Project, the DEVELOPER shall lease to CTUB the site upon which the water treatment facilities are located, and convey, free of all liens and encumbrances, the raw water transmission line and the water treatment plant. The Lease shall be for a term of one hundred (100) years at an annual rental rate of one dollar (\$1.00).

ARTICLE IV

OPERATION OF WATER WELLS

Section 4.01. DEVELOPER shall pump water from the wells for CTUB to treat and sell to its customers, an amount sufficient to serve the DEVELOPER'S potable supply requirements on the Development plus an additional amount to serve 200 equivalent dwelling units (EDUs). The DEVELOPER'S requirements on the Development and the additional amount shall be collectively referred to herein as "CTUB Customers". For purposes of this Agreement an equivalent dwelling unit shall be equal to 150 gallons per day. Any increase in the allocation to CTUB shall be subject to agreement by CTUB and DEVELOPER.

Section 4.02. DEVELOPER agrees that if it intends to seek a third party to operate and maintain its wells and facilities necessary to supply raw water to its Development, it will offer to CTUB the right of first refusal to contract with the DEVELOPER for such operation and maintenance.

Section 4.03. DEVELOPER further agrees that in the event it should decide to discontinue operation of the wells or seek to transfer ownership to the wells and facilities necessary to supply raw water to its Development, it will offer to CTUB the right of first refusal to purchase said wells and facilities.

Section 4.04. If DEVELOPER desires to sell one or more of its parcels to a West Virginia Public Service Commission (WV PSC) regulated utility, then (a) DEVELOPER shall provide CTUB with a signed term sheet for such sale and (b) CTUB shall have the right to elect to purchase such parcel(s) on the terms and conditions set forth in such term sheet by giving DEVELOPER written notice within ten (10) days after CTUB's receipt of such term sheet. If CTUB fails to exercise such right to purchase or if CTUB thereafter fails to consummate such purchase for any reason whatsoever, then CTUB shall have no further rights under this Section 4.04.

Section 4.05. If DEVELOPER or DEVELOPER's assignees fails to perform its express

maintenance and repairs obligations set forth in this Agreement and if such failure continues for a period of thirty (30) days (or such longer period so long as DEVELOPER or DEVELOPER's assignee is diligently prosecuting to cure the maintenance and repair obligations), then CTUB may, as its sole right, undertake such maintenance and repair in which event CTUB shall have rights to perform such maintenance at DEVELOPER's cost.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

Section 5.01. CTUB represents and warrants that the execution, delivery, and performance of this Agreement by CTUB will have been duly authorized, and this Agreement by CTUB will have been duly authorized, and this Agreement constitutes a valid and binding obligation of CTUB enforceable in accordance with its terms.

Section 5.02. The DEVELOPER represents and warrants that the facilities will be designed and constructed in accordance with CTUB'S specifications, and in a proper workmanlike manner using sound principles of engineering and construction. The DEVELOPER hereby warrants the DEVELOPER'S work on said treatment, pumping facilities, storage facilities and other necessary appurtenances for two (2) years from the date the facilities are placed into operation by CTUB and will make such changes, repairs and additions, at the DEVELOPER'S expense, as are needed to maintain the facilities in a proper operation condition. All underground pipe in the Project will be accepted by CTUB "as is" at the time of the transfer of ownership of the Project.

ARTICLE VI

SUBSEQUENT CONNECTIONS

Section 6.01. The DEVELOPER shall construct one metered water service for the Development. Future subdivision or off-sale of a portion of the Development may require the construction of additional metered connection(s), including public main and/or service line extension(s) thereto, in accordance with the requirements of the Public Service Commission of West Virginia Rules and Regulations for the Government of Water Utilities, 150CSR7. Nothing in this Agreement shall be construed to require CTUB to be responsible for fees relating directly to DEVELOPER's customers.

Section 6.02. The DEVELOPER shall insure that each additional CUSTOMER connection connected to CTUB'S facilities located on the Development shall have a water meter installed prior to connection to CTUB's public water system. Said water meter, and its installation, must be approved by CTUB.

Section 6.03. The DEVELOPER hereby agrees that in the event that the DEVELOPER transfers any portion of the DEVELOPER'S property in the Development, or the ownership of the wells and facilities necessary to supply raw water to its Development, to any individual, corporation, or other entity, the DEVELOPER shall require, as a term of said transfer, that said individual, corporation, or other entity assume the obligations of this Agreement.

ARTICLE VII

OPERATION OF FACILITIES

Section 7.01. DEVELOPER shall operate and maintain the wells at its expense and shall pump water to the treatment plant for CTUB to treat and sell to its customers. CTUB shall operate and maintain the raw water main and the treatment plant at its expense and in accordance with all federal, state and local regulatory requirements. It is understood that the water treatment will be designed to treat true-groundwater sources only and will not be a filtration plant. CTUB shall not make any construction modifications to the raw water transmission main and shall not shut down the raw water transmission main for any purpose without prior notice to the DEVELOPER other than in the event of an emergency that poses imminent risk of injury to persons, material damage to property or cessation of the operation of the facilities, as determined solely by CTUB, that necessitates raw water transmission main shut down.

Section 7.02. Except as provided in Section 5.02, after transfer of ownership to CTUB of the Project, CTUB shall be responsible for the costs of any and all operations and maintenance changes, as well as capital changes and upgrades to all federal, state and local governmental regulations. CTUB has the right, at its sole expense to expand the capacity of the treatment plant when such expansion may be necessary for public use provided that (a) CTUB performs Phase I and Phase II environmental assessments to prove that the expansion of the capacity (including the drilling of new wells) will not impair the quality of the existing water wells, (b) such expansion would not limit the yield or capacity of water products with respect to DEVELOPER's customers ; and (c) nothing herein shall preclude DEVELOPER from producing water from other wells on other

properties that DEVELOPER now or in the future may own. Should the DEVELOPER require expansion of the plant for dedicated use, assessment of Capacity Improvement Fees may apply.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.01 Nothing in this Agreement shall be construed to make CTUB liable or responsible for any obligations of the DEVELOPER.

The DEVELOPER hereby agrees to save and indemnify and keep harmless CTUB against all liability claims and judgments or demands for damages arising from accidents to persons or property occasioned by the DEVELOPER, his agents or employees, and against all claims or demands for damages arising from accidents to the DEVELOPER, its agents or employees, whether occasioned by said DEVELOPER or his employees or by CTUB or its employees or any other person or persons and the DEVELOPER will defend any and all suits that may be brought against CTUB on account of any such accidents and will make good to, and reimburse CTUB for any expenditures that CTUB may make by reason of such accidents.

The DEVELOPER hereby agrees to save and indemnify and keep harmless CTUB from all claims, demands, causes of action, or suits of whatever nature arising out of the labor and materials used by the DEVELOPER and his contractors or subcontractors, and from all laborers', materialmen's and mechanics' liens upon the system or upon the property upon which the system is located arising out of the labor and materials used by the DEVELOPER and his contractors or subcontractors, and the DEVELOPERS shall keep the system and said property free and clear of all liens, claims, and encumbrances.

Section 8.02. To the extent permitted by law, CTUB hereby agrees to save and indemnify and keep harmless the DEVELOPER against all liability claims and judgments or demands for damages arising from accidents to persons or property occasioned by CTUB, its agents or employees, and against all claims or demands for damages arising from accidents to CTUB, his agents or employees, whether occasioned by said CTUB or its employees or by DEVELOPER or its employees or any other person or persons and CTUB will defend any and all suits that may be brought against DEVELOPER on account of any such accidents and will make good to, and reimburse, DEVELOPER for any expenditures that DEVELOPER may make by reason of such accidents.

Section 8.03. CTUB will not reimburse the DEVELOPER for the cost of installation or any other cost associated with the construction of the Project. The DEVELOPER expressly waives

any right to reimbursement under the Public Service Commission of West Virginia Rules and Regulations for the Government of Water Utilities, 150CSR7, Rule 7.5.5, Extension of Mains, a copy of which is attached hereto as Exhibit A and made a part hereof, and understands that CTUB'S extension of service outlined in this Agreement herein shall be construed as an exemption to Rule 7.5.5 Extension of Mains. The DEVELOPER will collect reimbursement through appropriate pricing of real estate within its development.

Section 8.04. Upon transfer of ownership to CTUB, nothing in this Agreement shall be construed to provide the DEVELOPER with any ownership or other interest in the facilities, which will become the exclusive property of CTUB.

Section 8.05. This Agreement constitutes the entire agreement between CTUB and the DEVELOPER with respect to the matters addressed and may be amended only in a subsequent writing executed by both parties.

Section 8.06. This Agreement shall be binding on all successors and assigns and may not be assigned by either party without the prior written consent of the other party.

Section 8.07. The article and section headings in this Agreement are merely for the convenient reference of the parties and shall not affect the meaning or interpretation of this Agreement.

Section 8.08. Except as required by law, neither party shall make any public disclosure with respect to this Agreement without prior written notice to, and consultation with, the other party. All documents and information exchanged between the parties in connection with this Agreement shall be kept confidential and shall be disclosed to only those individuals whose assistance in the preparation and consummation of the Agreement is in good faith deemed essential.

Section 8.09. Any notices given between the parties hereto, desired or required to be given under this Agreement, shall be in writing and shall be deemed delivered (i) when hand delivered to a party; (ii) when delivered to United States Post Office if by certified or registered mail, return receipt requested, postage prepaid; or (iii) if by national prepaid, overnight delivery service when deposited with the overnight delivery company.

- (a) If to DEVELOPER to:
SIDEWINDER ENTERPRISES, LLC
Attn:

4340 Von Karmen, Suite 380
Newport Beach, CA 92660

Copy to:

(b) If to CTUB to:
CHARLES TOWN UTILITY BOARD
Attn: Kristen Stolipher, Utility General Manager
661 S. George Street, Suite 101
Charles Town, WV 25414

Copy to:
Robert R. Rodecker, Esq.
707 Virginia Street East
Suite 1500
Charleston, West Virginia 25301

Section 8.10. The parties represent and warrant that the execution, delivery and performance of this agreement by them has been duly authorized and this agreement constitutes a valid and binding obligation of the parties in force full and accordance with its terms.

Section 8.11. Should any provision of this Agreement be found to be void or unenforceable, it shall be severable from the rest of the Agreement and the remaining terms shall be enforced as if the unenforceable term had not existed.

Section 8.12. This Agreement supersedes all prior agreements between DEVELOPER and CTUB or any of their respective affiliates (written or oral) relating to the subject matter, is intended as an entire and complete statement of the terms of the Agreement between the parties and may be amended or modified only by a written instrument executed by DEVELOPER and CTUB.

**CITY OF CHARLES TOWN, by and through
the CHARLES TOWN UTILITY BOARD**

By: _____
Its: Chairman

ATTEST:

Its Clerk

SIDEWINDER ENTERPRISES, LLC

By: _____

Its: _____

ATTEST:

Its Secretary

DRAFT

Exhibit 1

