CHARLES TOWN UTILITY BOARD
AGENDA

WEDNESDAY, FEBRUARY 5, 2025

Special Meeting | **661 South George Street, Charles Town, WV 25414** | **4:00 PM**

CALL TO ORDER

1. **PUBLIC COMMENT**
   This portion of the agenda is designed for members of the general public to share thoughts on items of interest in the community. By law, Board members may ask clarifying questions or discuss procedural matters but are not permitted to discuss the policy merits of any issue unless it is scheduled for discussion.

   The public is invited to attend this meeting in person or via webcast (www.ctubwv.com- Board Meeting - Meeting Agendas and Minutes 2025) or by accessing the following zoom link:

   https://us06web.zoom.us/j/89283657576?pwd=kxL9qw2WTFzBUPO38aYIu6N0bgNy6P.1

   Meeting ID: 892 8365 7576
   Passcode: 911451
   (301)715-8592

2. **UNFINISHED BUSINESS**
   a. Sidewinder Enterprises, LLC. Agreement Review for Water Service, Middleway – Possible Executive Session WV State Code Section §6-9A-4(b)(9) - To consider matters relating to developer agreement and submission to the Public Service Commission.
   i. Original Agreement
   Original Agreement.pdf
   ii. Proposed Redline to Original
   Proposed Redline to Original.pdf
   iii. Final Draft Clean Version
   Final Draft Clean version.pdf
   iv. Exhibit 1
   Exhibit 1.pdf
   v. Cost Analysis - Revised 01.23.25
   Cost analysis - Revised 01.23.25.pdf
   vi. Public Comments on Agreement 01.30.25
   Public Comments Received.pdf

3. **INFORMATION ONLY**
   a. Next Meeting - February 12, 2025 at 4:00 P.M.

4. **ADJOURNMENT**

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Sidewinder Enterprises, LLC. Agreement Review for Water Service, Middleway – Possible Executive Session WV State Code Section §6-9A- 4(b)(9) - To consider matters relating to developer agreement and submission to the Public Service Commission.

CHARLES TOWN UTILITY BOARD

Wednesday, February 5, 2025

Special Meeting

661 South George Street
Charles Town, WV 25414

Original Agreement

Attachments:

Original Agreement.pdf

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;

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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.

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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

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CHARLES TOWN UTILITY BOARD

Wednesday, February 5, 2025

Special Meeting

661 South George Street
Charles Town, WV 25414

Proposed Redline to Original

Attachments:

Proposed Redline to Original.pdf

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

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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 ensure~~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.

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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 water treatment plant, the finished water mains, trunk lines, pumping facilities and~~, 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 West Virginia ~~State~~ Bureau for Public Health (WVBPH).

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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 its~~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

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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 customers served by 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 pumping 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.

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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 one (1) year unless otherwise determined by Manufacturer Warrantytwo (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.

Section 5.03. The DEVELOPER agrees that after transfer of ownership of the Project, or any portion thereof, to CTUB, the DEVELOPER shall pay to CTUB monthly the applicable rates established in the City of Charles Town's Water Tariff for portable water consumed by DEVELOPER. Additionally, the DEVELOPER agrees to pay a transmission fee per thousand gallons of water conveyed through the raw water transmission line monthly to cover operation and maintenance costs of the raw water transmission line in accordance with the following rates:

Up to 250,000 gallons	$0.35 per 1,000 gallons
250,000 to 500,000 gallons	$0.17 per 1,000 gallons
500,000 to 750,000 gallons	$0.12 per 1,000 gallons

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Over 750,000 gallons $0.09 per 1,000 gallons

The transmission fee will be effective upon the date of transfer of ownership. At the end of the first three (3) year period, and subsequently every three (3) years thereafter, CTUB has the right to perform a rate evaluation to ensure that the transmission fee is adequate to cover Operation and Maintenance costs of the raw water transmission line and appurtenances. The DEVELOPER shall have the right to review and comment upon any findings made by CTUB as a result of the rate evaluation.

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, as referred to in Sections 4.02 and 4.03, 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.

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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.~~ The water treatment plant will be designed in accordance with the WVBPH requirements. In the event that the source water is determined to be Ground Water Under the Direct Influence of Surface Water, the plant will meet all WVBPH requirements. 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

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CHARLES TOWN UTILITY BOARD

Wednesday, February 5, 2025

Special Meeting

661 South George Street
Charles Town, WV 25414

Final Draft Clean Version

Attachments:

Final Draft Clean version.pdf

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

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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 ensure 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.

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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 water treatment plant, the finished water mains, trunk lines, pumping facilities andother 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 West Virginia Bureau for Public Health (WVBPH).

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 itsown 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, finished water mains for domestic service 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 customers served by 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 pumping 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.

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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.

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Section 5.03. The DEVELOPER agrees that after transfer of ownership of the Project, or any portion thereof, to CTUB, the DEVELOPER shall pay to CTUB monthly the applicable rates established in the City of Charles Town's Water Tariff for portable water consumed by DEVELOPER. Additionally, the DEVELOPER agrees to pay a transmission fee per thousand gallons of water conveyed through the raw water transmission line monthly to cover operation and maintenance costs of the raw water transmission line in accordance with the following rates:

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The transmission fee will be effective upon the date of transfer of ownership. At the end of the first three (3) year period, and subsequently every three (3) years thereafter, CTUB has the right to perform a rate evaluation to ensure that the transmission fee is adequate to cover Operation and Maintenance costs of the raw water transmission line and appurtenances. The DEVELOPER shall have the right to review and comment upon any findings made by CTUB as a result of the rate evaluation.

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.

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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, as referred to in Sections 4.02 and 4.03, 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.

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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. The water treatment plant will be designed in accordance with the WVBPH requirements. In the event that the source water is determined to be Ground Water Under the Direct Influence of Surface Water, the plant will meet all WVBPH requirements. 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.

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

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(a) If to DEVELOPER to:
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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

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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

CHARLES TOWN UTILITY BOARD

Wednesday, February 5, 2025

Special Meeting

661 South George Street
Charles Town, WV 25414

Exhibit 1

Attachments:

Exhibit 1.pdf

INTEGRITY FEDERAL SERVICES
CIVIL ENGINEERING • LANDSCAPE ARCHITECTURE • PLANNING
148 S. Queen Street, Suite 201 • Martinsburg, WV 25401 • Phone: 304-725-8456 • www.ifs-ae.com

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REVISIONS

WATER TREATMENT PLANT PARCELS AND LAYOUT EXHIBIT

SIDEWINDER ENTERPRISES LLC

JEFFERSON COUNTY, WEST VIRGINIA

SCALE:	HORIZ.: 1"=1000' VERT.:
DATE:	MARCH 5, 2024
JOB:	3138-0201
DRAWN:	CHECK:
CADD:	
NCS:	
SHEET:	1 OF 1

CHARLES TOWN UTILITY BOARD

Wednesday, February 5, 2025

Special Meeting

661 South George Street
Charles Town, WV 25414

Cost Analysis - Revised 01.23.25

Attachments:

Cost analysis - Revised 01.23.25.pdf

Cost Benefit Analysis for CTUB Agreement with Sidewinder - January 22, 2025

Near Term Cash Flow			
	Monthly (gallons)	Rate (per thousand gallons)	Annual Revenue
Domestic Commercial Service	10,000	$ 12.84	$ 1,541
	30,000	$ 10.73	$ 3,863
	560,000	$ 8.47	$ 56,918
Total Revenue			$ 62,322
O&M based on FY 24 (57%)			$ 35,524
Operating Cash Flow			**$ 26,798**

Future Cash Flow			
200 future customers ($57.78 per month)	900,000	$ 12.84	$ 138,672
Total Revenue			$ 138,672
O&M based on FY 24 (57%)			$ 79,043
Operating Cash Flow			**$ 59,629**

Transmission fee (Contractual Rate)			
O&M			**$ 31,710**
Total Expense			**$ 31,710**
Transmission fee (per 1,000 gallons)			
Up to 250,000 gallons			**$ 0.35**
250,000 to 500,000 gallons			**$ 0.17**
500,000 to 750,000 gallons			**$ 0.12**
Over 750,000 gallons			**$ 0.09**

Assumptions:
Using FY25 Budgets
$300/hydrant
$2.52/linear foot including:
Salaries/Wages
Materials/Supplies
Maintenance of Mains
Maintenance of Hydrants
Billing and Accounting

Notes:
1) Near term and Future Cash flow analysis assumes O&M costs for Operator (Wage and Benefit), Power, Chemical, General Maintenance Expense and Supplies Expense.
2) Future Project will be required for the extension to serve customers in Middleway. Projects costs will be recovered through Public/Private Borrowing, Internal Funding, Capacity Improvement Fees or any combination that is the most financially responsible method for project funding.
3) Transmission Fee was developed utilizing FY25 Budget on per linear foot and per hydrant basis for 9,000 linear foot raw water transmission project. Assumes 30 hydrants along project at 300' spacing.
4) Transmission Line is considered Contributed Capital therefore it does not include Annual Depreciation.

CHARLES TOWN UTILITY BOARD

Wednesday, February 5, 2025

Special Meeting

661 South George Street
Charles Town, WV 25414

Public Comments on Agreement 01.30.25

Attachments:

Public Comments Received.pdf

(1)

Charles Town Utility Board Meeting: January 8, 2025 – Public Comments offered by Jacquelyn Milliron

Good Afternoon,

1. **Sidewinder Enterprises LLC Project Agreement:**
   a. In May of 2021, CTUB Board of Directors granted that Berkeley County could provide both water and wastewater service to Sidewinder. At that meeting, it was made clear that CTUB reserved first right of refusal for any other service needs in that area. Additionally, the chairman at the time summarized that any other additional service needs would need to come back to the Board for approval inferring this a normal to policy.
   b. At the September 28, 2022 CTUB meeting, there was an unidentified executive session item where the Board took no action. Was that related to the Sidewinder agreement? W
   c. When was this agreement approved by the CTUB Board of Directors and subsequently posted at the Public Service Commission of West Virginia like all other development agreements?
   d. When was the unsigned agreement "created" compared to when the chairman signed it on April 26, 2024?
   e. The agreement as I understand it, contains a private well owned by Sidewinder, a pipe extension needing a WVDOH permit, and a water facility on leased land owned by Sidewinder. The pipe and facility would be conveyed to CTUB. The well and land the facility sits on would remain privately owned by Sidewinder.
   f. Is Sidewinder licensed and/or permitted to provide water to a codified water utility?
   g. If so, isn't there a substantial risk in CTUB not owning the water source?
   h. Who is responsible to operate and maintain a well, pipe, facility, and land? Will Sidewinder be a volumetric paying customer of CTUB? If so, how much volume of water will it be purchasing?
   i. Has CTUB required a report on water volume and quality and a feasibility assessment to ensure that depreciation, operation and maintenance costs are not violating the used and useful principle?
   j. How does the CTUB Sidewinder agreement not conflict with November 2024 PSCWV order related to service from Berkeley County?
   k. How many other secret development agreements have been signed by this public body?

2. **Gannett Contract:**
   a. Did CTUB retain at least three quotes for service? If so, where is the general written request for service?
   b. It's a fact that CTUB undercharged CIFs, used a corruptible policy, then propose to subtract debt out. How about adding in what the ratepayers had to subsidize for profit development because of inadequate CIFs. You would know that if you bothered to do a cost benefit analysis on these agreements.

(2)

Jefferson County WV Planning Committee:

Regards: Purposed water plant in Middleway

It doesn't take a lot of common sense to see that the purpose water bottling plant in Middleway is a bad idea. First off, the amount of water that is planned for extraction each day is far more than the property owned by Sidewinder at Lake Louisa can regenerate and is far more than they should be allowed to extract since they have only a small area to be used for regeneration compared to their neighbors that contribute for this purpose. Please see example:

District/Map/parcel	Acreage	Owners
7/22/34	13.25 ac	Sidewinders
3/33/9	8.31 ac	RLMHP LLC
7/22/32	2.01 ac	Sidewinders
7/22B/19.2	1.14 ac	Sidewinders
Total acreage	24.71 ac	
7/22/33	32.80 ac	Bill Hewitt
7/33/22	9.51 ac	Linda Newsom
7/33/14	10.31 ac	Linda Newsom
7/22/25	27.76 ac	Joseph & Donna White
7/22/31	137.45 ac	Frank & Mary Supplee
7/21/2	203.39 ac	David Liskey
7.21/1	90 ac	Bill & Kerry Grantham
7/21/3	96.85 ac	Bill & Kerry Grantham
7/21/4	103.54 ac	Phyllis Grantham
7/21/4.1	61.90 ac	Amon & Peggy Grantham
Total acreage	773.51	

773.51 divided by 24.71 = 1/31.30 or about 3%

Sidewinders total land only provided about 3% of the area of regeneration that their neighbors provided. Therefore, the maximum withdraw should not be the limit here.

If the water supply by the well is 1.7 million gallons per day, their take should only be about 3% or about 51,000 gallons per day but wait, they have 27 mobile homes which the EPA says an average household use is 300 gallons of water per day or 8100 gallons, so minus this usage, the number becomes 43,000 gallons. Please keep in mind that Turkey Run begins off Shirley Road near Keith Drive which is several miles upstream before Lake Louise and they too provided regeneration land which is not included in this

example. Keep in mind, this type of water extraction has never been attempted before and private water wells could dry up in Middleway. Let the lawsuits begin. Secondly, the groundwater contamination already on the Kodak site will likely start to move towards the extraction point once pumping begins and this will contaminate everyone's property in the village of Middleway and could eventually, contaminate Lake Louisa. Example: you place a water pump on your pool cover to pump off the winter's water, first the pump just runs but eventually the area around the other side of the cover starts to gets less water up to the point where what's left will start streaming towards the pump. This could be your contamination plume. Let the lawsuits continue. Thirdly, the tractor-trailer traffic is going to make the town's road more dangerous. These trucks will have to swerve into oncoming traffic at every turn which will make head-on collision more likely. Let the lawsuits continue. Our county roads are already become more dangerous within the past decade or two. Speed limit declines are be seen everywhere because of poor planning. Infrastructure needs to be first and not a knee jerking response to poor planning. I also personally don't want to think about the truck noise running around the clock in our village everyday of the week. 3M shipping and receiving department only worked first shift so trucks running after hours were rare. Everyone with common sense can see this is a bad idea. Please vote NO!

Respectfully,

Timothy Smith

132 No Name Lane

Middleway, WV 25430

(3)

CTUB meeting 1/8/24

From: Rosalind Welsh (welsharch@yahoo.com)

To: welsharch@yahoo.com

Date: Wednesday, January 8, 2025 at 02:08 PM EST

After reading the agreement April 26, 2024, I have many questions. This agreement is going around the rejection of Sidewinder's water proposal to the Planning Commission. This proposal prevents Jefferson County from participating in protecting Jefferson County resident's. By using the amount of water Sidewinder has proposed to the Planning Commission, there will be a significant effect on local wells in Middleway and surrounding areas. No water study by accredited hydrologists is included in this proposal.

The Developer has purchased land including Lake Louise and the existing trailer park. Rumor is that all the trailer park residents have been asked to leave. Since by code water cannot be pumped from a rural zoned area into a commercial zoned area, Sidewinder is offering an enormous expense to transport the raw water through 12" mains they will provide to a water treatment plant they will build at their expense on their property. When complete, these facilities are to be leased to CTUB for 100 years at $1/yr.

This bargain does not limit the amount of water Sidewinder can take from our aquifer at any time time, now or future. They are planning to expand to 1,000,000 square foot facility. It only includes available public water for 200 future homes. In the proposal before the Planning Commission, Sidewinder agreed to redrill dry wells for residents within 1000 feet of the property. Sidewinder also agreed to monitoring stations. None of the protections initially proposed are in this agreement.

Middleway, on the National Historic Register, will be destroyed by the constant vibrations from semis going through the center of town due to the vehicular traffic produced by this bottling plant. Stone foundations cannot support heavy duty road activity. There is no extra space since the homes are about 5' from Leetown Road. CTUB must be aware of the other problems not covered by this proposal before it signs any agreement.

How much bribery is necessary to donate unlimited amounts of our water, no future limit, to a commercial enterprise? They have stated they are donating $25,000 to Jefferson County Fair Board and $15,000 to 4H. If Sidewinder can offer the expense of all the construction for new 12" lines and a water treatment plant, how much water do you think they plan to steal from Jefferson County to sell? If CTUB needs to drill more wells to provide for Jefferson County needs, it should not be at the expense of Middleway District residents.

(4)

Shawn: A Collaborative Path Forward

Hello, I'm Shawn Franklin, a resident of Middleway, and I want to thank the board for recognizing the need to give this agreement the attention it deserves. I appreciate the opportunity to share my perspective today.

Honestly, I do not understand how CTUB can uphold the current agreement with Sidewinder Enterprises. To my knowledge, this agreement violates the West Virginia Open Governmental Proceedings Act, and should be considered null and void until an agreement can be reached following the legal public process.

Without proper public input and oversight of this agreement, there several questions left unanswered. Just to list a few:

- If Berkeley County already has a letter of intent to supply domestic water and sewer to this site, how and why did CTUB get involved?
- How and when will this project benefit the public and not just Sidewinder?
- Why is Sidewinder willing to lease the pipeline and water treatment facility, but not the wells?
- The benefits to Sidewinder are front and center of this agreement, but the public benefit seems to be an afterthought. If water is eventually supplied to residents, who will bear the cost of hooking up to the pipeline, and will the public subsidize Sidewinder's water usage?
- Why is the daily water allocation for residents assumed to be only 150 gallons per day, far below the average household use of 300 gallons? What happens when residential use of a household is higher than 150 gallons per day

This agreement prioritizes Sidewinder's immediate profit over the long-term sustainability of Middleway's resources. In an Economics Class, this would be a textbook example of the "Tragedy of the Commons."

We believe there is a way to move forward that benefits everyone, but it requires transparency, collaboration, and a commitment to protecting Middleway's resources and historic character.

We urge CTUB to halt this agreement until these critical issues are addressed, financial details are clarified, and meaningful public input is incorporated into the decision-making process. Middleway deserves nothing less.

(5)

Jessie: Historic and Infrastructure Impacts

Good afternoon. My name is Jesse Norris, and I'm proud to call Middleway home. I am also the President of the Middleway Conservancy. I want to thank the board for acknowledging that this agreement deserves thoughtful consideration and for providing a forum where our voices can be heard.

This project poses a direct threat to Middleway's historic district, which is listed on the National Register of Historic Places.

- Why does the proposed pipeline cut through the heart of our historic district without apparent consideration of alternative routes?
- Was the pipeline design dictated by Sidewinder? Does it reflect the needs of the community, or only Sidewinder's interests? The current pipeline route is only a couple feet from our Civil War Hospital and one of our oldest homes. It also goes incredibly close to buried civil war soldiers we have marked and through areas that we have not yet determined if anyone is still buried from the Civil War battles that took place in the area.

The infrastructure details are equally troubling:

- Are water towers planned for the 3M property? If so, what visual or environmental impact will they have on our community?
- The Exhibit 1 map shows the water treatment plant serviced by a "stub out" that doesn't appear connected to the pipe. What does this mean? Is it a future hookup? The agreement text and map don't align.
- If water capacity decreases in the pipeline, will residents and Sidewinder be impacted equally, or will residents bear the brunt of the burden?

Furthermore, Sidewinder promised fire hydrants along the pipeline for the Middleway Fire Department, but this is not included in the agreement. How will CTUB ensure this commitment is followed?

Our historic district and community infrastructure deserve better than vague promises and unanswered questions. We need clear, enforceable answers to these questions to ensure Middleway's infrastructure and historic character are preserved.

(6)

Nichole: Environmental and Water Resource Concerns

Hello, my name is Nichole Chapman, and I've lived in Jefferson County for 32 Years. I appreciate the board recognizing the importance of addressing this agreement and for taking the time to listen to community input.

We are deeply concerned about the impact this project could have on Middleway's water resources.

- Why hasn't CTUB conducted an independent water study to evaluate the sustainability of this project and its impact on surrounding homes and farms outside the CTUB network?
- The contract prioritizes Sidewinder's extraction rights even if CTUB expands its operations. Why won't Sidewinder agree to similar protections for local farmers and residents?
- Failing septic systems was a concern in a document in 2004. What has been done to show this is an issue in Middleway in the last 20 years?
- The Turkey Run Spring marl wetland, protected in part by farmland conservation easements, is threatened by this project. Who will be held liable for damages to this jurisdictional wetland?

Additionally, the toxic plume in this area presents serious risks:

- What happens if the toxic plume spreads due to water extraction?
- Who will monitor its movement, and how will affected residents not on the CTUB network be protected?

Water is a shared resource, and this agreement risks putting our community at the mercy of private interests without adequate safeguards in place. Without clear answers, this project threatens the long-term sustainability of Middleway's water resources and the health of our community.

(7)

Stacy: Transparency and Accountability

Good afternoon. My name is Stacy Chapman, and I'm a resident of Middleway. Thank you for the opportunity to share our concerns today.

We are troubled that a public utility company, funded by ratepayers, has advanced a major project without Transparency, public input or apparent board approval. This brings up multiple critical questions:

1. The pipeline application was submitted to the WVDOH on August 23, 2023, and approved just two weeks later on September 8th. However, the provided agreement is dated April 26, 2024 - eight months after the permit was submitted. Where is the original agreement from 2023? Additionally, the date appears overwritten. Were other changes made, and why was this version created months later?

2. Why are financial details missing? How will this project be funded, and who will bear the costs? CTUB ratepayers or Sidewinder?

3. Was the pipeline's design dictated by Sidewinder, with CTUB merely signing off? Why does it appear to solely reflect Sidewinder's interests and not address any resident interests or concerns?

4. If Sidewinder retains ownership of the pipeline and facility, will CTUB ratepayers be responsible for maintaining, operating, or expanding this infrastructure? Will these expenses, such as repairs or upgrades, be funded by ratepayers?

5. Middleway residents would be forced to pay for the water delivered through this pipeline to our homes. Will Sidewinder pay for the water they extract and transport through the CTUB pipeline? And if Sidewinder is charged only a low or nominal rate for this water, does that mean CTUB ratepayers are effectively subsidizing Sidewinder's private profits?

A project of this scale demands clear financial terms and community oversight. Without transparency, how can we trust that this agreement serves the public interest?

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Name:

Rebecca Thompson

Email:

beccatmail@gmail.com

Date:

01/09/2025

Requests/Comments:

To the Charles Town Utility Board,

I spoke at the CTUB meeting on January 8th regarding CTUB's agreement with Sidewinder developer for the Mountain Pure water bottling facility.

I HIGHLY URGE YOU TO RESUME AN AGREEMENT WITH SIDEWINDER, THAT WOULD ALLOW CTUB TO OWN AND OPERATE THE INFRASTRUCTURE!

It is far better for Jefferson County, if CTUB, a public utility, partners with and maintains an agreement with Sidewinder, rather than them having an agreement with a private utility.

I understand Sidewinder has sought out an agreement with CTUB in order to make it much easier for them to get an easement in the WV Division of Highways right of way, and therefore make it easier for them to proceed with their role as developer.
But, I am very concerned that if you do not recommit to an agreement with them, they will seek to enter into an agreement with the private utility, American Water.

American Water would be more than happy to have an agreement with Sidewinder. However, this would be devastating for the county and the people in it. The only thing American Water cares about is making as much of a profit as possible and exploiting and taking advantage of the people and the county's resources.
CTUB, on the other hand, could act responsibly, with the best interest of the public and county in mind.

To be clear, I am completely against the Mountain Pure water bottling facility. It would be disastrous for the whole county, including farmers, everyone on well water, horsemen, those that raise livestock, etc.
It would also negatively affect the county's economy, as a significant part of our economy is tourism and agriculture.

But, if the water bottling facility is somehow approved, it is paramount that CTUB have and maintain an agreement with Sidewinder, not American Water or any other private entity!

At the meeting on January 8th, I was happy to see that several people on the board genuinely seemed to have the county's best interest in mind. They seemed willing to be more transparent and have a better relationship with the public going forward.
I truly appreciate your effort and willingness to act in the best interest of the people!

Sincerely,
Rebecca Thompson
Summit Point resident

Sent from Charles Town Utility Board

1/22/25

Name:

Robert Palmatier

Email:

palmatier@gmail.com

Requests/Comments:

I am in Favor of giving Sidewinder or Mountain Pure a Contract for the Pipeline and water. We need more Business in the County!

Sent from Charles Town Utility Board

1/22/25

Name:

Cecil Foster

Email:

cfoster@gmail.com

Date:

01/22/2025

Requests/Comments:

NEW Business in Jefferson County is vital to our survival. I ask that you work out an agreement with Sidewinder that allows them to proceed with their plan. Thank you

Sent from Charles Town Utility Board

CHARLES TOWN UTILITY BOARD

Wednesday, February 5, 2025

Special Meeting

661 South George Street
Charles Town, WV 25414

Next Meeting - February 12, 2025 at 4:00 P.M.