

**WATER SUPPLY AND INFRASTRUCTURE PLANNING AND DEVELOPMENT
SERVICES AGREEMENT BETWEEN WESTERN VIRGINIA WATER AUTHORITY
AND BOTETOURT COUNTY**

THIS WATER SUPPLY AND INFRASTRUCTURE PLANNING AND DEVELOPMENT SERVICES AGREEMENT (the “Agreement”) is made and entered into as of the date the last party executes this Agreement, as indicated on the signature pages (the “Effective Date”), by and between the **WESTERN VIRGINIA WATER AUTHORITY**, a public service authority formed and existing in accordance with the Virginia Water and Waste Authorities Act, Chapter 51 of Title 15.2 of the Code of Virginia, 1950, as amended (the “Authority”), and **BOTETOURT COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “County”). The County and the Authority individually may be referred to as a “Party” and collectively may be referred to as the “Parties”.

RECITALS

WHEREAS, the Authority, in accordance with the Virginia Water and Waste Authorities Act (the “Act”) and its Second Amended and Restated Articles of Incorporation, performs a governmental function for a public purpose by providing water and wastewater services to its member localities, the City of Roanoke, Roanoke County, Franklin County, and the County, and its customers within or without those localities (collectively, the “Service Area”); and

WHEREAS, in exercising its governmental function, the Authority must account for current and future water and wastewater requirements for population and economic growth throughout its Service Area in its overall water supply planning and infrastructure development; and

WHEREAS, the County, as part of an economic development project (the “Project”) to be located on Botetourt County Tax Parcel No. 88(26)3 in the Botetourt Center at Greenfield business park (the “Property”), requests that the Authority, as a service for the County, extend and expand its water and wastewater system (the “System”) in the County to make available to the Project and its Owner, as hereinafter defined, on or about January 1, 2028, a water supply capacity of 2 million gallons per day (mgd) and a wastewater service capacity of 0.57 mgd (the “Day 1 Solution”); and

WHEREAS, the Day 1 Solution exceeds (i) the current water supply capacity available to the Property utilizing the Authority’s existing infrastructure and (ii) the future water supply capacity available to the Property under the Authority’s current long-range planning for water supply capacity; and

WHEREAS, the provision of the water supply capacity for the Day 1 Solution to the Property is essential to the successful development and operation of the Project by the company developing the Project (the “Owner”), and to the County’s animating purposes for the Project, including increasing its the tax base; and

WHEREAS, because the water infrastructure required to meet the Day 1 Solution for the Project does not currently exist and is not accounted for in the Authority’s current long-range planning, the Parties will collaborate with the Owner to develop the required Day 1 Solution water infrastructure, provided that neither the County nor the Authority will be responsible for any of the

costs associated with the Day 1 Solution water infrastructure, as provided under state law and current County ordinances; and

WHEREAS, the Parties understand the Owner may eventually expand the Project and request an increase in the water supply capacity at the Property up to 8 total mgd at some unspecified date in the future (the “Day N Solution”); and

WHEREAS, the Day N Solution exceeds (i) the current water supply capacity available to the Property utilizing the Authority’s existing infrastructure and (ii) the future water supply capacity available to the Property under the Authority’s current long-range planning for water supply capacity; and

WHEREAS, the provision of the water supply for the Day N Solution to the Property will be essential to the successful expansion of the Project by the Owner, and to the County’s animating purposes for the Project, including increasing its tax base; and

WHEREAS, because the water infrastructure required to meet the Day N Solution for the Project does not currently exist and is not accounted for in the Authority’s current long-range planning, and because the water infrastructure required for the Day N Solution likely will not make use of the Day 1 Solution water infrastructure, the Parties will collaborate with the Owner to develop the required Day N Solution water infrastructure, provided that neither the County nor the Authority will be responsible for any of the costs associated with the Day N Solution water infrastructure, as provided under state law and current County ordinances; and

WHEREAS, in the interim between the commissioning of the Day 1 Solution water infrastructure and the commissioning of the Day N Solution water infrastructure, available water supply capacity in the 1385 and 1580 HGL pressure zones, and other pressure zones connected thereto, and generally in the area of the County located southeast of Interstate 81 and to the west of U.S. Route 220A and northwest of Interstate 81 along the U.S. Route 220 corridor, will be fully utilized and, in the absence of other water infrastructure improvements, more than nominal additional connections to the System will not be possible, and the County therefore requests that the Authority, as a service for the County, develop additional water infrastructure, including the Day N Solution water infrastructure, and extend the System to address this potential shortfall in water supply in the County; and

WHEREAS, providing the Day N Solution to the Property for the Project will limit the water supply available to the Authority’s member localities across the Service Area and will impair economic and other development opportunities in those localities that are dependent on water supply and, therefore, the County recognizes that new water supply sources must be identified, accessed, and developed for the System in order to replace the water supply the Owner requests for the Day N Solution and to supplement the water supply available to the Service Area; and

WHEREAS, the Day N Solution will require the Authority to accelerate its long-range planning for additional water supply capacity for the Service Area, to identify and plan for access to new water supply sources for the Service Area, and to develop new water infrastructure to connect those new water supply sources to the System, and the County therefore requests that the Authority, as a service for the County, extend the System by developing new water supply sources and infrastructure to address potential shortfalls in the water supply for the Service Area resulting, at least

in substantial part, from the Day N Solution and supplement the water supply available to the Service Area; and

WHEREAS, the Parties acknowledge that the development of new water supply sources for the System will be a lengthy and costly project and that the animating purposes for this Agreement include: (i) for the Authority to develop a regional water and sewer supply plan within the meaning of Virginia Code § 15.2-2243; (ii) for the Authority to provide essential services for the governmental functions and public purposes of extending the Authority's System and developing new water supply sources for the System to serve the entire Service Area, including identifying new water supply sources for the System and developing new water infrastructure to connect those new water supply sources to the System; (iii) for the County to make a binding commitment to pay all costs associated with the development of the new water supply sources for the System, except as otherwise provided herein, despite current uncertainties as to where the new water supply sources will be located, how the new water supply sources will be connected to the System, and when the new water supply sources must be available for the System; and (iv) for the Parties to cooperate on the foregoing; and

WHEREAS, under the Parties' Comprehensive Agreement, dated July 1, 2015, the Authority and the County may contract with each other to provide such services as they deem appropriate for a reasonable fee; and

WHEREAS, the Parties' Comprehensive Agreement also provides for cost sharing agreements between the Parties when the County requests extensions of the Authority-owned System; and

WHEREAS, § 15.2-5114 of the Act authorizes the Authority and the County to, *inter alia*, enter into contracts that provide for or relate to the furnishing of services and facilities for the Authority's water and wastewater system and the transfer or conveyance of real or personal property to the Authority; and

WHEREAS, this Agreement: (i) provides for and relates to the furnishing of services and facilities for the Authority's water System in the Service Area, which will provide a substantial public benefit for all of the Authority's member localities; (ii) transfers and conveys real and personal property from the County to the Authority; (iii) provides services for the County that the County and the Authority deem appropriate for a reasonable fee; and (iv) provides cost sharing to fund the development of System extensions and new water supply sources, as requested by the County; and

WHEREAS, the County's governing body, by approving this Agreement, finds this Agreement to be a proper manner for allocating County funds and property to the Authority as permitted under Virginia Code § 15.2-1205.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth in this Agreement, including the recitals set forth above which are incorporated into this Agreement as a material part of this Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. General Obligations for Development of Day 1 and Day N Solutions

- A. The Parties acknowledge that all new developments adjacent to Authority water mains in the County must connect to such mains as provided in the Code of Virginia, Botetourt County Code, and the Authority's Rules and Regulations (as defined below) and this obligation carries with it the legal requirement that a developer, such as the Owner, must pay all costs of necessary easements and rights-of-way, pumping stations, gravity sewer lines, water mains, force mains, lift stations, access equipment, and storage necessary to serve it.
- B. The Owner will, as a matter of course under the Botetourt County Code, be required to submit engineering plans and designs, acceptable to the Authority under the Rules and Regulations, as required to provide water and sewer service to the Project as a condition of receiving subdivision or site plan approval. Such plans must be submitted with its application, and must be reviewed and approved by the Authority prior to the County granting approval of the plats or plans, as applicable. Such plat or plan approval also requires infrastructure development agreement(s) between or among the County, the Authority, and the Owner, providing for timelines, designs, and surety.
- C. Because of the extensive nature of the water and sewer utility improvements required by the Owner's proposed developments, the County and the Authority contemplate entering into one or more infrastructure development agreement(s) with the Owner (each a "Development Agreement") to provide, among other things, for the allocation to the Owner of those responsibilities set forth below that properly belong to the Owner under applicable law and policies. The following provisions are set forth with the understanding that they may be assigned to the Owner, and may be the financial or operational responsibility of the Owner, as provided in the Development Agreement(s). However, in the event any responsibility set forth below is assigned to the Owner, it shall be subject to the notice provisions provided herein.

Section 2. The County's Obligations

In consideration for the County's request that the Authority, as ongoing services to the County, extend the System for the Day 1 and Day N Solutions, identify, acquire, develop, and construct new water supply sources, infrastructure, and facilities for the System as provided herein, and carry out the other service obligations required under Sections 3 and 4 below, the County covenants and agrees to undertake the following obligations:

- A. Responsibilities Upon Execution of Agreement. The following responsibilities of the County are unconditional, and shall be carried out upon execution of this Agreement:
 - 1. The County will reasonably cooperate with the Authority in public relations efforts associated with the Project. No statements or information released by the County will be attributed to the Authority without the Authority's prior written consent. The County will not make any statements concerning water supply issues associated with the Project without the Authority's prior written consent. The County shall not be construed to violate this subsection in the event that it concludes, in good faith and following consultation with counsel, that it must release a document pursuant to the provisions of the Virginia Freedom of Information Act.

2. In order to serve the Property as requested by the County, the County will acquire and convey to the Authority in fee simple a site reasonably acceptable to the Authority for the location of a pump station needed for the System. This site must be approximately one acre in size, relatively flat and square, and located in reasonably close proximity to Botetourt County Tax Parcel No. 101-68C near U.S. Route 220's intersection with Commons Parkway and Wesley Road. The County will be responsible for all costs associated with erosion and sediment control requirements, stormwater requirements, and wetlands mitigation requirements needed to develop the pump station site. After the pump station site has been identified and acquired, the Parties will determine whether the County will perform the foregoing erosion and sediment control, stormwater, and wetlands mitigation work at its own expense or whether the Authority will perform the work and the County will reimburse the Authority for the cost of that work. The County will act as promptly as reasonably possible to acquire the subject site and convey it to the Authority, with the understanding that the site must be conveyed to the Authority before the Day 1 Solution water infrastructure can be developed.
 3. In order to serve the Property as requested by the County, the County will acquire and convey to the Authority in fee simple a site reasonably acceptable to the Authority for the location of a water storage tank and pump station needed to extend the System to support the Day 1 Solution. The County acknowledges the site must be located near the intersection of U.S. Route 220 and Interstate 81. The County will be responsible for all costs associated with erosion and sediment control requirements, stormwater requirements, and wetlands mitigation requirements needed to develop the site. After the site has been identified and acquired, the Parties will determine whether the County will perform the foregoing erosion and sediment control, stormwater, and wetlands mitigation work at its own expense or whether the Authority will perform the work and the County will reimburse the Authority for the cost of that work. The County will act as promptly as reasonably possible to acquire the subject site and convey it to the Authority, with the understanding that the site must be conveyed to the Authority before the Day 1 Solution water infrastructure can be developed.
- B. Day N Solution Responsibilities. The following responsibilities of the County are contingent and shall become binding and unconditional County obligations on the date the Owner notifies the County, which shall in turn notify the Authority, or the Authority that it intends to expand the Project in a manner that would require more water supply capacity than is provided for in the Day 1 Solution:
1. In order to serve the Property as requested by the County, the County will acquire and convey to the Authority in fee simple a site reasonably acceptable to the Authority for the location of a water storage tank and pump station needed to extend the System to support the Day N Solution. The County acknowledges the site must be located near the intersection of U.S. Route 220 and Interstate 81. The County will be responsible for all costs associated with erosion and sediment control requirements, stormwater requirements, and wetlands mitigation requirements needed to develop the site. After the site has been identified and acquired, the Parties will determine whether the County will perform the foregoing erosion and sediment control, stormwater, and wetlands

mitigation work at its own expense or whether the Authority will perform the work and the County will reimburse the Authority for the cost of that work. The County will act as promptly as reasonably possible to acquire the subject site and convey it to the Authority after receiving notice from the Owner of its intention to expand the Project, with the understanding that the site must be conveyed to the Authority before the Authority can execute a development agreement with the Owner to undertake the planning and development of the Day N Solution water infrastructure.

2. To the extent the Owner fails or refuses to make improvements to docks and piers at Carvins Cove to the Authority's satisfaction, the County will undertake to make or pay for such improvements as reasonably requested by the Authority.

C. Provisions Applicable to Both Solutions. The following Day 1 Solution responsibilities are unconditional and shall be carried out upon execution of this Agreement while the following Day N Solution responsibilities are contingent and shall become binding and unconditional County obligations upon the occurrence of the triggering event set forth in Section 2.B. above.

1. In order to serve the Property as requested by the County, the County will acquire and convey to the Authority in fee simple any additional sites reasonably acceptable to the Authority that the Authority reasonably determines are necessary for the development of additional infrastructure to support the Day 1 Solution or the Day N Solution, as identified during the engineering, design, and planning for the Day 1 Solution of the Day N Solution, as the case may be. The County will be responsible for all costs associated with erosion and sediment control requirements, stormwater requirements, and wetlands mitigation requirements needed to develop the sites. After the sites have been identified and acquired, the Parties will determine whether the County will perform the foregoing erosion and sediment control, stormwater, and wetlands mitigation work at its own expense or whether the Authority will perform the work and the County will reimburse the Authority for the cost of that work. The County will act as promptly as reasonably possible to acquire these additional sites and convey them to the Authority once the Authority has notified the County in writing of the need for the sites for either the Day 1 Solution or the Day N Solution, with the understanding that the sites must be conveyed to the Authority before the additional infrastructure can be developed.
2. In order to serve the Property as requested by the County, the County will acquire and grant to the Authority any water, sewer, or access easements, on such terms and conditions as are reasonably required by the Authority, that the Authority determines are necessary for the development of additional infrastructure to support the Day 1 Solution or the Day N Solution, as identified during the engineering, design, and planning for the Day 1 Solution or the Day N Solution, as the case may be. The County will act as promptly as reasonably possible to acquire these easements and grant them to the Authority once the Authority has notified the County in writing of the need for the easements for either the Day 1 Solution or the Day N Solution, with the understanding that the easements must be granted to the Authority before the additional infrastructure can be developed. The Authority will reasonably cooperate with the County's efforts to obtain any required easements, including the provision of any required technical data or information.

3. The Parties acknowledge that the route of new water infrastructure needed to supply the Day N Solution to the Property may require that the infrastructure pass over, under, or through property controlled by the National Park Service (the “NPS”), thereby necessitating an NPS Right-of-Way Permit. The County will be responsible for all aspects of NPS permitting, including communicating with NPS, providing all information requested by the NPS, holding any required public meetings, and paying any required fees and expenses associated with the NPS Right-of-Way Permit. The Authority will reasonably cooperate with the County’s efforts to obtain any required NPS Right-of-Way Permit, including the provision of any required technical data or information.
- D. The County will perform the ongoing County services and obligations set out in Section 4, including without limitation the obligations to deposit funds in the Fund (as defined below), or otherwise make payments to the Authority as provided herein, in consideration for the Authority’s performance of services required to extend the System and to carry out the Water Supply Project (as defined below).
 - E. The County will reasonably cooperate with the Authority in the Authority’s performance of its service obligations under Sections 3 and 4 below.
 - F. The County acknowledges that the Authority could not extend the System to meet the Day N Solution without impairing its ability to provide water to customers in the Service Area unless the County commits to fund, as provided herein, the Water Supply Project and, therefore, the County covenants and agrees that each of its obligations under this Section 2 and Section 4 must be satisfied in order for the Authority to provide ongoing services to the County to extend the System and to carry out the Water Supply Project. The County may perform these obligations directly or indirectly through the Owner or the Botetourt County Economic Development Authority (the “EDA”); provided, however, the County must provide the Authority with written notice when specific obligations are assigned to the Owner or the EDA and such assignment shall not relieve the County of its ultimate responsibility for these obligations.

Section 3. The Authority’s Service Obligations

In consideration for the County’s undertakings as set out in Section 2 above and Section 4 below, the Authority covenants and agrees to perform the following services requested by the County:

- A. The Authority will reasonably cooperate with the County in public relation efforts associated with the Project. No statements or information released by the Authority will be attributed to the County without the County’s prior written consent. The Authority shall not be construed to violate this subsection in the event that it concludes, in good faith and following consultation with counsel, that it must release a document pursuant to the provisions of the Virginia Freedom of Information Act.
- B. Following the triggering event set forth in Section 2.A. above, the Authority will, as a service to the County, undertake or assist in the undertaking of the engineering, planning, design, permitting, development, construction, and dedication of the Day 1 Solution water

infrastructure in coordination with the County and the Owner, provided the Owner agrees to be responsible for all costs associated with the Day 1 Solution water infrastructure and the Owner agrees to notice requirements similar to those set forth in Section 4.G. The Parties covenant and agree that the services to be provided by the Authority under this Subsection exceed the mere plan review and identification of deficiencies, corrections, or modifications the Authority might otherwise be obligated to perform under Virginia Code § 15.2-2259 or other similar section of the Code of Virginia. The means and methods to be used by the Parties and the Owner for the engineering, planning, design, permitting, development, construction, and dedication of the Day 1 Solution water infrastructure will be negotiated among them and will be memorialized in the Development Agreement.

- C. Following the triggering event in Section 2.B. above, the Authority will, as a service to the County, undertake or assist in the undertaking of the engineering, planning, design, permitting, development, construction, and dedication of the Day N Solution water infrastructure in coordination with the County and the Owner, provided the Owner agrees to be responsible for the costs associated with the development and construction of the Day N Solution water infrastructure. The Parties covenant and agree that the services to be provided by the Authority under this Subsection exceed the mere plan review and identification of deficiencies, corrections, or modifications the Authority might otherwise be obligated to perform under Virginia Code § 15.2-2259 or other similar section of the Code of Virginia. The means and methods to be used by the Parties and the Owner will be negotiated between them and be memorialized in the Development Agreement.
- D. Commencing no later than ninety (90) days following the execution of the Agreement and continuing for so long as required under this Agreement, the Authority will perform the services set out in Sections 3.B. and 3.C. above, as well as the continuing Water Supply Development Services (as defined in Section 4 below) for the Water Supply Project, all of which are being performed for and at the request of the County.
- E. The Authority will deposit funds in the Fund as provided in Section 4.
- F. The Authority will reasonably cooperate with the County in the County's performance of its obligations under Sections 2 and 4.
- G. The Authority may perform these service obligations directly, or indirectly through the Owner; provided, however, the Authority must provide the County with written notice when specific obligations are assigned to the Owner.

Section 4. Water Supply Development Services

To provide for: (i) accelerated long-range water supply planning to identify and plan for access to new water supply sources for the Service Area that will provide the System with at least the volume of water being made available to the Project for the Day N Solution, and such additional water supply for the Service Area as the Parties may agree, all of which must be in addition to all water supply sources the Authority used prior to the Effective Date of this Agreement (the "New Water Supply Sources"); (ii) the acquisition and development of the New Water Supply Sources; (iii) the planning and design of the new water supply infrastructure that will be required to connect the New Water Supply Sources to the System (the "New Water Supply Infrastructure"); (iv) the construction and

dedication to the Authority of the New Water Supply Infrastructure; (vi) development of a general water and sewer improvement program, and (vi) the financing of items (i) through (iv), including the issuance of debt in such amounts and on such schedules, terms, and conditions as may reasonably be necessary ((i) through (vi) collectively may be referred to herein as the “Water Supply Project,” and the various services the Authority will perform to carry out the Water Supply Project may be referred to herein as the “Water Supply Development Services”), the Parties covenant and agree as follows:

A. The Parties’ intent is for the Authority, as a service to the County, to identify and develop future water supply sources for the Service Area that will replace the volume of water ultimately required for the Day N Solution and provide such greater water supply capacity in the Service Area as the Parties may agree during or following engineering and planning. The Water Supply Project, which is an animating purpose for this Agreement and will provide a substantial public benefit for the Service Area, must be carried out in order for the Parties to meet the Day N Solution. The Water Supply Development Services that the Authority will provide to the County include, but are not necessarily limited to, the items listed in Schedule A. Unless otherwise provided in this Section 4, the County will be responsible for the timely payment of all costs for the Water Supply Development Services upon the provision of such services, including all costs associated with engineering, planning, design, permitting, development, construction, dedication, and financing of the Water Supply Project (the “Costs”). For the avoidance of confusion, Authority services for which the County will be responsible for paying the Authority will include, but not necessarily be limited, to engineering, design, planning, and consulting expenses, environmental expenses, property acquisition expenses, including title examinations, title insurance, appraisal costs, closing costs, and eminent domain costs, permitting expenses, and construction and inspection expenses, and financing expenses, including costs of issuance, as well as legal expenses associated with any of the foregoing. With regard to the Water Supply Development Services, the Parties further agree:

1. On or before March 31 of each year, the Authority will advise the County of the estimated costs the Authority anticipates incurring during the next fiscal year in the performance of Water Supply Development Services under this Agreement.
2. The Authority will invoice the County quarterly, in arrears, for the Costs of Water Supply Development Services under this Agreement. The quarterly invoice shall be for Costs the Authority actually incurred prior to the invoice date. The invoice amount shall reflect a credit to the County for any funds the Authority has withdrawn from the Fund (as defined below) to pay for any portion of the Costs. If any balance of Costs remains due on the invoice after the Authority has withdrawn funds from the Fund, the County shall deposit the invoice amount in the Fund to reimburse the Authority for the Costs no later than ninety (90) days following the date of the invoice.
3. On or before September 30 of each year, the Authority will submit to the County a summary report identifying the Authority’s services providing during the prior fiscal year, describing overall progress on the Water Supply Project, noting Costs to date toward completion of the Water Supply Project, and describing the remaining major service components and estimated Costs expected to be necessary in future years to accomplish the Water Supply Project to meet the County’s request.

- B. The Authority will, as a further service to the County, establish and the Parties will fund a Water Supply Source Development Fund (the “Fund”) in order to collect, segregate, and account for funds that will be used exclusively for paying the Authority’s Costs for providing the Water Supply Development Services, and to assist the County with budgeting by providing certain fixed payments for services. The Fund will be established and funded as follows:
1. The Authority will establish and administer the Fund in cooperation with the County and supply accounting records as needed for audit purposes. The Authority will keep the funds in the Fund separate and apart from its other funds. The funds will be deposited in an interest-bearing account or other authorized investment, and all interest or income earned thereon will become part of the Fund. The Authority will keep records of all deposits to and withdrawals from the Account and will make those records available to the County upon request. The Authority may withdraw funds from the Fund to pay for Costs incurred performing Water Supply Development Services, provided the Authority credits the County for such withdrawals.
 2. The County will budget and appropriate the following amounts to be deposited into the Fund upon to the occurrence of the referenced event:
 - i. \$ 1,000,000 not later than ninety (90) days following the execution of this Agreement.
 - ii. \$ 2,000,000, not later than the County’s issuance of a building permit for the Day 1 Solution Project on the Property.
 - iii. \$ 1,000,000, not later than the Authority’s acceptance of the dedication of the Day 1 Solution water infrastructure into the System.
 - iv. \$ 1,000,000, not later than the County’s issuance of a certificate of occupancy for the Day 1 Solution Project on the Property.
 - v. \$ 2,000,000, not later than the Authority’s and/or the County’s execution of a Development Agreement with Owner for the development of the Day N Solution water infrastructure.
 - vi. \$ 1,000,000, not later than the Authority’s acceptance of the dedication of the Day N Solution water infrastructure into the System.
 3. The County also will budget and appropriate the following annual deposits into the Fund:
 - i. \$ 500,000, with the first deposit being made before December 31, 2028, and subsequent annual deposits being made before each December 31 thereafter until the earlier of: (i) the year in which the Day N Solution is commissioned or (ii) the year in which the Owner provides the County and the Authority with an irrevocable letter of intent that it will not expand the Project and, therefore, will not require the Day N Solution; and
 - ii. \$ 1,000,000, with the first deposit beginning before the December 31 of the year in which the Day N Solution is commissioned, and subsequent annual deposits being made before each December 31 thereafter until the year in which the New Water Supply

Sources and New Water Supply Infrastructure are commissioned and dedicated to, and accepted by, the Authority.

4. The Authority will budget and appropriate \$250,000 each year to be deposited in the Fund, with the first payment being made before December 31, 2028, and subsequent deposits being made before each December 31 thereafter until the County's obligation to make annual deposits under this Section 4.B. expires.
 5. Any portion of the cost of the Water Supply Project paid by the Owner or any other person, whether such payment is made to the County or the Authority, shall be deposited into the Fund.
 6. Beginning five years after the Effective Date of this Agreement, the amounts of the deposits to be made by the County and the Authority to the Fund under this Section 4 will increase by the greater of 4% or the Prime Rate as reported by the Wall Street Journal per annum.
 7. To maintain consistency in budgeting to the extent practicable, the County may, at its discretion, make additional deposits into the Fund.
- C. The Parties anticipate that annual Costs for Water Supply Development Services may become such that the Authority, as the entity initially advancing the Costs, and the County, as the entity ultimately responsible for reimbursing the Authority for the Costs, would prefer to utilize alternative means and methods, other than annual County appropriations, for paying for such Costs. The Parties will reasonably cooperate in identifying and implementing alternative means and methods for financing any Costs not covered by the deposits in the Fund, subject at all times to the County's ultimate obligation to pay all Costs of the Water Supply Project, unless otherwise provided herein. The Parties may agree that either the County or the Authority may, from time to time, issue debt for the carrying out the Water Supply Project or any part thereof. In determining which Party will issue debt, when debt will be issued, the structure of such debt, and how much debt will be issued, the Parties will consider such issues as the location of the New Water Supply Sources, the estimated costs for the Water Supply Project, the Parties' relative bonding capacity, arbitrage rules, the then-existing interest rate environment, the availability of Authority and/or County revenues to support the debt service, and other relevant criteria.
- D. If the Parties are unable to agree on financing arrangements for funding all or any portion of the Costs of the Water Supply Project, then the Authority shall have the right, but not the obligation, to finance all or any portion of the Water Supply Project on such terms and conditions and using such means and methods, including the issuance of debt, as the Authority deems appropriate, which may include a moral obligation or general obligation pledge by the County, subject to the requirements of the Public Finance Act of 1991, as amended. The Parties acknowledge that the Authority will be pursuing the Water Supply Project and performing the Water Supply Development Services as services requested by the County and that all Costs associated with the Water Supply Project, even Costs the Authority initially pays with borrowed funds, will be the County's responsibility, unless otherwise provided herein, and the County will reimburse the Authority for all Costs associated with the Water Supply

Project and Water Supply Development Services within ninety (90) days after the Authority's delivery to the County of an invoice for any portions of those Costs.

- E. Whether funded through the Fund under Subsection B, an agreed alternative financing method under Subsection C, or a financing method determined by the Authority under Subsection D, or some combination of the foregoing, the County's maximum financial obligation for the Water Supply Project will be as follows: (i) 100% of all Costs of the Water Supply Project up to \$100,000,000; (ii) 75% of all Costs of the Water Supply Project over \$100,000,000 and up to \$175,000,000; (iii) 50% of all Costs of the Water Supply Project over \$175,000,000 and up to \$225,000,000; and (iv) 25% of all Costs of the Water Supply Project over \$225,000,000 and up to \$300,000,000. Beginning five years after the Effective Date of this Agreement, the thresholds established in (i) through (iv) will increase by the greater of 4% or the Prime Rate as reported by the Wall Street Journal per annum. The Authority will be responsible for the remaining Costs of the Water Supply Project. Any pro rata contributions to the Water Supply Project by third parties will be prorated as between the respective obligations of the County and the Authority based on the percentage of responsibility given the Costs incurred on the Water Supply Project at the time of the pro rata contribution.
- F. Intentionally Blank.
- G. The Parties will maintain constant communication with the Owner concerning the Owner's intentions to proceed with the Day N Solution and will request, as part of the Development Agreement(s) among the County, the Authority and the Owner, that the Owner provide biannual updates of its intentions concerning the Day N Solution, provide as much written notice as reasonably possible of its intent to proceed with the Day N Solution, and provide an irrevocable letter of intent once it determines it will not expand the Project and, therefore, will not require the Day N Solution. If the Project does not proceed to the Day N Solution within thirty (30) years of the execution of this Agreement, the expansion will be considered abandoned and the Agreement will be subject to termination under Section 9.C.i.
- H. If, after the commissioning and dedication of the Day 1 Solution, the Owner provides the County and the Authority with an irrevocable letter of intent that it will not expand the Project and, therefore, will not require the Day N Solution, then the Authority will use the funds in the Fund to develop additional water infrastructure for the area along U.S. Route 220 north and west of its intersection with Interstate 81 that will have limited water supply capacity following the commissioning of the Day 1 Solution, or for such other purposes as the Parties may agree. The County will reasonably cooperate and be consulted in these efforts.
- I. The County and the Authority represent, warrant, covenant, and agree that the cost of the services to be provided by the Authority to the County under this Agreement are difficult to ascertain and the Parties have arrived at the County's future deposit obligations in this Section 4 as a reasonable and fair estimate of the costs for the services that the Authority will have rendered for the County under this Agreement prior to the time of the required deposit, at least until such time as the Authority begins design and construction of New Water Supply Sources and New Water Supply Infrastructure. For so long as the County makes the deposits and payments required in this Section 4 to pay for the services furnished by the Authority in carrying out the Water Supply Project, or otherwise incurs debt to pay for such services, the Authority will continue to provide those services until the New Water Supply Sources and

New Water Supply Infrastructure are commissioned and dedicated to, and accepted by, the Authority. The Authority shall have no obligation to the County to provide any of the services set out in this Agreement, and may immediately discontinue such services, if the County fails to timely make any deposit or payment required for services under this Agreement, or fails to make alternative payment arrangements for such services, or challenges the validity of any part of this Agreement. As a further remedy, in the event the County fails to timely make any deposit or payment under this Agreement or, in the alternative, fails to incur debt to pay for such services, or challenges the validity of any part of this Agreement, the Authority may, to the maximum extent permitted by law, restrict available water supply capacity in the County in order to ensure that equitable water supplies are available to other customers in the Service Area. The Parties further covenant and agree that the County's obligations under this Agreement may be enforced through an action seeking relief in the form of specific performance, mandatory injunction, mandamus, or other equitable relief.

Section 5. Disposition of funds in the Fund

Upon the termination of this Agreement, any funds remaining in the Fund will be released to the Authority to use, in accordance with Section 4.H.

Section 6. County Representations and Warranties

The County represents and warrants to the Authority that the following statements are true and correct as of the date hereof:

A. Authority Relative to this Agreement

The County has the power and authority to execute and deliver this Agreement and to perform its duties and obligations under this Agreement. The County's execution and delivery of this Agreement and the performance by the County of its obligations under this Agreement have been duly authorized by the County's governing body. This Agreement constitutes a valid and legally binding obligation of the County, enforceable in accordance with its terms.

B. Recitals, Acknowledgements, and Board approval

The recitals to this Agreement are true and correct. Without limiting the foregoing, the County represents, warrants, and acknowledges as follows: (i) this Agreement provides for and relates to the furnishing of services and related facilities for the System under Virginia Code § 15.2-5114(11); (ii) this Agreement provides for the conveyance of real and personal property from the County to the Authority under Virginia Code § 15.2-5148; (iii) this Agreement provides for the allocation of County funds and property to the Authority in a manner deemed proper by the County Board of Supervisors under Virginia Code § 15.2-1205; (iv) the County, for its benefit and in furtherance of the animating purpose for the Project, has requested the Authority perform the services to extend the System as stated in this Agreement for the Day 1 Solution water infrastructure, the Day N Solution water infrastructure, the New Water Supply Sources, and the New Water Supply Infrastructure, and the cost sharing arrangement set out in this Agreement, including the payments and other obligations of the County, are reasonable in light of the services the Authority is to perform for the County and the scope of the requested System extensions; (v) the deposits and payments required from the County under this Agreement are payments for prior services rendered and are not debts of the County,

provided, however, that to the extent they are construed to be debts, they are moral obligations of the County only, payable from funds lawfully available therefor, and not general obligations of its full faith and credit; and (vi) the Authority would not be able to accelerate its long-range planning for the New Water Supply Sources and New Water Supply Infrastructure but for the payments to be made by the County under this Agreement. To the extent required under Section 6.4(a) of the Parties' Comprehensive Agreement or applicable law, the Botetourt County Board of Supervisors consents to and approves the Day 1 Solution water infrastructure, the Day N Solution water infrastructure, the New Water Supply Sources, and the New Water Supply Infrastructure. The Board of Supervisors agrees to initiate necessary changes to its Comprehensive Plan necessary to achieve the goals of this Agreement at appropriate times as relevant facts and plans become known.

C. Non-Contravention

To the best of the County's knowledge, the County's execution and delivery of this Agreement and its performance of its obligations under this Agreement do not and will not: (i) violate or constitute a default under the terms, conditions, or provisions of any note, bond, mortgage, lien, lease, contract, agreement, license, indenture, instrument, or other instrument or obligation (collectively, "Instruments") to which the County is a party or by which the County is bound, or (ii) violate any order, writ, injunction, arbitration award, judgment, decree, statute, rule or regulation applicable to the County; (iii) violate or conflict with any provision of any federal, state, or local constitution, law, statute, rule, ordinance, or regulation applicable to the County.

D. No Litigation

There are no actions, suits, claims, investigations, or proceedings (legal, administrative or arbitral) pending, or to the best of the County's knowledge, threatened, whether at law or in equity and whether civil or criminal in nature, before any court, arbitrator, or any governmental department, commission, agency or instrumentality which: (i) challenge or otherwise could adversely affect the validity of this Agreement; or (ii) challenge or otherwise could adversely affect the County's ability to perform its obligations under this Agreement. Furthermore, to the best of the County's knowledge, there are no existing judgments, orders, or decrees of any such court, arbitrator, governmental department, commission, agency, or other instrumentality which have or could have an adverse effect as described in the preceding sentence.

E. Consents and Approvals

The County is not aware of any notice, consent, approval, waiver, or other action of any kind that is required to be obtained by the County by virtue of the County's execution of this Agreement or the performance of its obligations under this Agreement.

Section 7. Authority Representations and Warranties

The Authority represents and warrants to the County that the following statements are true and correct as of the date hereof:

A. Authority Relative to this Agreement

The Authority has the power and authority to execute and deliver this Agreement and to perform its

duties and obligations under this Agreement. The Authority's execution and delivery of this Agreement and the performance by the Authority of its obligations under this Agreement have been duly authorized by the Authority's governing body. This Agreement constitutes a valid and legally binding obligation of the Authority, enforceable in accordance with its terms.

B. Non-Contravention

To the best of the Authority's knowledge, the Authority's execution and delivery of this Agreement and its performance of its obligations under this Agreement do not and will not: (i) violate or constitute a default under the terms, conditions, or provisions of any Instruments to which the Authority is a party or by which the Authority is bound, or (ii) violate any order, writ, injunction, arbitration award, judgment, decree, statute, rule or regulation applicable to the Authority; (iii) violate or conflict with any provision of any federal, state, or local constitution, law, statute, rule, ordinance, or regulation applicable to the Authority.

C. No Litigation

There are no actions, suits, claims, investigations, or proceedings (legal, administrative or arbitrative) pending, or to the best of the Authority's knowledge, threatened, whether at law or in equity and whether civil or criminal in nature, before any court, arbitrator, or any governmental department, commission, agency or instrumentality which: (i) challenge or otherwise could adversely affect the validity of this Agreement; or (ii) challenge or otherwise could adversely affect the Authority's ability to perform its obligations under this Agreement. Furthermore, to the best of the Authority's knowledge, there are no existing judgments, orders, or decrees of any such court, arbitrator, governmental department, commission, agency, or other instrumentality which have or could have an adverse effect as described in the preceding sentence.

D. Consents and Approvals

The Authority is not aware of any notice, consent, approval, waiver, or other action of any kind that is required to be obtained by the Authority by virtue of the Authority's execution of this Agreement or the performance of its obligations under this Agreement.

Section 8. The Authority's Development Rules and Regulations

Nothing herein is intended to limit the application of the Authority's Development Rules and Regulations, the Western Virginia Regional Design and Construction Standards, Virginia Department of Health requirements, or other customarily applicable laws, rules, regulations, or standards (collectively, the "Rules and Regulations") to the Day 1 Solution water infrastructure, the Day N Solution water infrastructure, the New Water Supply Sources, and the New Water Supply Infrastructure.

Section 9. Term and Termination

The Term of this Agreement shall commence on the Effective Date and shall terminate as provided in this Section.

- A. This Agreement shall terminate as provided in any subsequent agreement of the Parties, provided the subsequent agreement is approved by the Parties' governing bodies and, if the Project has advanced beyond the Day 1 Solution, the subsequent agreement provides for the Water Supply Project.
- B. This Agreement shall terminate upon the dedication to, and acceptance by, the Authority of the New Water Supply Sources and New Water Supply Infrastructure, which must provide a sufficient new volume of water to the System, in addition to all water supply sources the Authority used prior to the Effective Date of this Agreement, to replace the volume of water the Owner requests for the Day N Solution and when any debt financing issued for the New Water Supply Sources and New Water Supply Infrastructure is fully satisfied.
- C. Otherwise, either Party may terminate this Agreement immediately by providing written notice to the other Party under the following conditions:
 - i. By either Party, if (a) the Owner provides the Authority and the County with an irrevocable letter of intent that it will not expand the Project and, therefore, will not require the Day N Solution and (b) the Authority and the County have satisfied their obligations under Section 4.H. above;
 - ii. By the Authority, if it determines, based on the content of engineering studies and reports that the anticipated impacts the Day 1 Solution and/or the Day N Solution will have on the future availability of water supply in the Service Area, is prohibitive;
 - iii. By the Authority, if, after the dedication and acceptance of the Day 1 Solution water infrastructure, the Authority determines, based on the content of engineering studies and reports and other available information that the anticipated costs for the New Water Supply Sources and/or the New Water Supply Infrastructure is prohibitive notwithstanding the cost sharing arrangement contained herein;
 - iv. By the County, if the Authority ceases to provide services under this Agreement, provided the County must provide the Authority with written notice of the cessation of services and the Authority shall have ninety (90) days to resume services under this Agreement;
 - v. By either Party, upon a default by the other Party as described in the following Section.
- D. Notice of termination under Subsection C may be served by one Party upon the other Party at the address provided in this Agreement.

Section 10. Default

If either Party is in default as to any material term or condition of this Agreement at the time or in the manner provided for, the non-defaulting Party may provide written notice detailing the default to the defaulting Party and the defaulting Party must remedy the default within thirty (30) days of its receipt of the notice, provided, however, that if the default cannot be remedied within thirty (30) days, the defaulting Party must promptly commence efforts to remedy the default and diligently pursue such remedy until the default has been remedied; provided, however, the cure period will not be extend

more than ninety (90) days following the non-defaulting Party's receipt of the written notice of default. The written notice must set forth with specificity the nature of the alleged default the items to be cured. If the defaulting Party does not remedy the default as provided in the foregoing sentence, then the non-defaulting Party may terminate this Agreement and pursue such other remedies as it may have available to it at law or in equity.

Section 11. Independent Contractors

The Parties are independent contractors and are not agents, partners, or joint venturers. Neither Party shall have the ability to bind the other to any contract with a third party and neither Party shall hold itself out to any third party as having the right to bind the other Party to any contract.

Section 12. No Third-Party Beneficiaries

The Agreement is entered into solely between and for the benefit of, and may be enforced only by, the Parties. The Parties covenant and agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the Authority and the County; (iii) no other individual or entity shall obtain any right to make any claim against the Authority or the County under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

Section 13. Legal Compliance

The Parties will comply with all federal, state and local laws, statutes, ordinances, and regulations, now in effect or hereafter adopted, that apply to this Agreement or the provision of water and wastewater for the Project.

Section 14. Notices

All notices and communications required or permitted to be given pursuant to this Agreement shall be in writing and (i) hand delivered, (ii) mailed by United States Postal Service, certified or registered mail, return receipt requested and postage prepaid or (iii) sent by recognized overnight carrier that provides proof of delivery such as Federal Express, with delivery charges prepaid, addressed as follows:

County:

Botetourt County, Virginia
Attention: County Administrator
57 South Center Drive
Daleville, VA 24083
Telephone: 540-928-2000
Email: glarrowe@botetourtva.gov

Authority: Western Virginia Water Authority
Attention: Executive Director
601 S. Jefferson Street
Roanoke, VA 24011
Telephone: 540-853-5700
Email: michael.mcevoy@westernvawater.org

Notices and communications herein provided for or relating to this Agreement will be in writing and will be deemed to have been sufficiently given to the parties on the day of delivery if delivered by hand, one (1) day after having been deposited for overnight delivery with a nationally-recognized overnight courier, or five (5) business days after having been mailed, postage prepaid, by first class mail. Notices also shall be effective upon receipt or refusal.

The telephone numbers listed above are for purposes of providing the same to overnight delivery services and are not to be otherwise used for notice purposes. A Party may change the address or addresses to which notices to such Party must be sent by giving notice of such new address or addresses to the other Party in accordance with this Section.

Section 15. Assignment

Neither Party shall assign any of its rights, duties, or obligations under this Agreement without prior written consent of the other Party or as expressly permitted herein. If the Authority consents to an assignment, the assignment will not in any way release or relieve the County from any of the covenants, obligations, or undertakings contained in this Agreement and the County will remain liable for compliance with the terms of this Agreement for the entire term of the Agreement.

Section 16. Successors; Permitted Assigns

The Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective executors, administrators, heirs, successors-in-title, successors, and permitted assigns.

Section 17. Severability

If any term, provision, clause, sentence or paragraph of this Agreement or its exhibits or the application thereof to any person or circumstance, shall be unenforceable in any respect as written, such term, provision, clause, sentence or paragraph shall be modified or limited so as to render it valid and enforceable to the fullest extent allowed by law. Any such provision that is not susceptible of such reformation shall be ignored so as to not affect any other term or provision thereof, and the remainder of this Agreement shall be enforced to the fullest extent permitted by law.

Section 18. Non-Waiver

No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement, nor shall any such waiver be a continuing waiver. A Party's failure to insist upon strict performance of any of the terms, covenants, conditions or agreements contained in this Agreement shall not be deemed a waiver of any rights or remedies that said Party may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained in this Agreement by the same Party. Except as

expressly provided in this Agreement, no waiver shall be binding on any Party to this Agreement unless executed in writing by the Party making such waiver.

Section 19. Binding on Future Governing Bodies

This Agreement shall be binding upon and inure to the benefit of the County and the Authority, and each of the future governing bodies of the County and the Authority, to the extent permitted by law, and upon any successor to either the County or the Authority, until terminated as provided in Section 9.

Section 20. Recitals

The Parties incorporate the Recitals contained in this Agreement as material representations, warranties, and terms of this Agreement that are binding on the Parties.

Section 21. Headings

The Section headings contained in this Agreement are inserted only as a matter of convenience and for reference, and they do not define, limit, or modify the scope or intent of any provisions of this Agreement, nor do they in any way affect this Agreement.

Section 22. Entire Agreement

This Agreement constitutes and contains the Parties' entire understanding concerning the subject matter hereof, it supersedes any and all prior negotiations, correspondence, understandings, and agreements between the Parties concerning the subject matter hereof, and no other terms, conditions, promises, undertakings, statements or representations, express or implied relating to the subject matter of this Agreement, but not contained in this Agreement, shall have any force or effect.

Section 23. Governing Law; Forum Selection

This Agreement shall be construed, governed, and enforced in accordance with the laws of the Commonwealth of Virginia. Any dispute arising from in connection with this Agreement or the performance or lack thereof by any Party to this Agreement must be brought exclusively in a court of appropriate jurisdiction located in the City of Roanoke, Virginia.

Section 24. No Strict Construction

The Parties have participated collectively in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted collectively by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 25. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature and acknowledgment pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single

or multiple original(s) of this Agreement. In order to expedite the transaction contemplated herein, facsimile or electronic signatures, including, without limitation, by DocuSign, may be used in place of original signatures on this Agreement, as allowed by applicable Laws. The Parties hereto intend to be bound by the signatures on the facsimile or electronic document, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the use of a facsimile or electronic signature; provided, however, that the Parties hereby agree to execute and provide to each other original signatures, upon the request made by either Party to the other.

Section 26. No Covenants of Officials

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

Section 27. Covenant of Authority

All Parties warrant that the signatories below have full authority, and have undertaken such legal actions as may be necessary to ensure such authority, to bind the entities of which they are representatives to the full extent permitted by law.

Section 28. Performance; Cooperation; Further Assurances

- A. The Parties hereto agree to cooperate in carrying out the services and other performance obligations under this Agreement, and each of them will, at the written request of the other, join in taking any action which, though not specified herein, may be reasonably required to be taken in order to carry out the intent of this Agreement.
- B. The Parties agree to undertake and perform the obligations and agreements made in this Agreement in good faith. The Parties shall, upon the execution of this Agreement, collaborate, cooperate and communicate to carry out the services and other performance obligations required under this Agreement. The Parties shall refrain from any act intended, or otherwise tending, to terminate, impair, invalidate, supersede, preempt, circumvent, supplant, collaterally attack, frustrate, or otherwise diminish the validity, performance, or effect of the obligations and agreements made in this Agreement.
- C. The Parties shall prepare, execute, and deliver such additional instruments of assignment and conveyance and other documents and take such other actions as may be necessary or appropriate to carry out the intent of this Agreement and to vest title or convey rights as provided for herein. Without limiting the generality of the foregoing, the Parties shall collaborate in good faith to prepare, execute, deliver and record deeds conveying real property or granting easements pursuant to the terms of this Agreement and, to the extent necessary, related property descriptions, plats and surveys

Section 29. Amendment

This Agreement may be amended, altered or supplemented only by a written instrument signed by an authorized representative of each Party.

Section 30. Force Majeure

Neither Party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under this Agreement due to an event outside the reasonable control and not the fault of the affected Party (a "Force Majeure Event"). Examples of a Force Majeure Event include, but are not limited to, natural disasters, acts of God, terrorism, war, civil disorder, fire, flood, explosion, riot, insurrection, labor disputes or strikes, any act or order of any governmental authority, failures of sources of supply for needed improvements, other impacts on the supply chain, lockouts or work stoppages of any kind, unavailability of labor, facilities or materials, moratoriums, theft, windstorm, earthquakes, lightening, landslides, hurricanes, tornadoes, storms, droughts, water, vandalism, failure of power or utilities, pandemics, epidemics, or other similar causes, beyond the control of the affected Party which delays or prevents the performance of the Agreement. It is understood that both Parties shall exercise due care and prudence to avoid a Force Majeure Event. A Force Majeure Event shall not constitute a default under this Agreement. If either Party is prevented, wholly or in part, from performing its obligations under this contract as a result of a Force Majeure Event, then that Party shall promptly give notice to the other Party of the Force Majeure Event and take reasonable steps to mitigate the impact of Force Majeure Event on contract performance. Upon such notice, all obligations of the affected Party under the Agreement which are reasonably related to the Force Majeure Event shall be suspended as long as the affected Party takes reasonable steps to mitigate the impact of Force Majeure Event on contract performance until the Force Majeure Event no longer exists.

Section 31. Remedies Cumulative

In addition to the remedies set forth in this Agreement, each Party shall have all other remedies provided by law or equity to the same extent as if fully set forth in this Agreement word for word except as specifically limited by this Agreement. No remedy available to any Party shall exclude any other remedy available to such Party under this Agreement or provided by law or equity. All remedies shall be cumulative.

Section 32. Attorneys' Fees

Should any claim, action, or proceeding (including, for the avoidance of doubt, any alternative dispute resolution procedure, if any; and including any appeals of a claim, action, or proceeding) be commenced between the Parties concerning any provision of this Agreement or the rights or duties of any person or entity in relation thereto, the American Rule shall apply and each Party shall bear its own fees and costs (including, without limitation, attorneys' fees, accounting fees, expert witness fees, consulting fees, court costs, and all other costs) to the extent incurred in prosecuting or defending such claim, action, or proceeding against the other Party. There shall be no fee shifting under this Agreement.

Section 33. WAIVER OF CONSEQUENTIAL AND OTHER DAMAGES

IN NO EVENT SHALL THE AUTHORITY OR THE COUNTY BE LIABLE TO THE OTHER PARTY FOR THE COUNTY'S OR THE AUTHORITY'S INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST INCOME, LOST REVENUES (INCLUDING LOST TAX REVENUES), BUSINESS INTERRUPTION, OR LOST BUSINESS ARISING FROM OR RELATED TO THIS AGREEMENT BETWEEN THE AUTHORITY AND THE COUNTY, THE CONDUCT OF BUSINESS UNDER, OR BREACH OF, THIS AGREEMENT, OR THE TERMINATION OF THIS AGREEMENT, REGARDLESS OF WHETHER THE OTHER PARTY SEEKS DAMAGES UNDER ANY THEORY OF LAW AND EVEN IF THE PARTY ADVISES OF THE POSSIBILITY OF SUCH DAMAGES. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

Section 34. Survival of Representations, Warranties and Agreements

The representations, warranties and continuing agreements of the Parties made in this Agreement will survive the termination of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth under the signatures of the Parties below.

WESTERN VIRGINIA WATER AUTHORITY

Michael T. McEvoy
By: Michael T. McEvoy
Its: Executive Director
Date of execution: 9/17/2025

BOTETOURT COUNTY, VIRGINIA

Gary Larowe
By: GARY LAROWE
Its: County Administrator
Date of execution: 10/8/2025

SCHEDULE A

Authority Water Supply Development Services to be performed by the Authority under this Agreement will include but not necessarily be limited to the following:

1. The Authority will develop a regional water and sewer supply plan within the meaning of Virginia Code § 15.2-2243.
2. Following receipt of an ongoing preliminary engineering report intended to identify possible new water supply sources, the Authority will prepare or have prepared an intermediate water supply study to further narrow the field of viable water supply sources.
3. Following receipt of the intermediate water supply study, the Authority will prepare or have prepared a final water supply study to identify the selected New Water Supply Sources.
4. In conjunction with the intermediate and/or final water supply study and the identification of the New Water Sources, the Authority will prepare or have prepared engineering reports and studies to identify the best available methods for connecting the New Water Supply Sources to the Authority's System, including available routes and required system components.
5. The Authority will prepare or have prepared engineering reports and studies that will identify infrastructure and permitting needed to develop the New Water Supply Sources, including infrastructure and permitting needed for any proposed water removal, water impoundment, and/or water treatment.
6. The Authority will prepare or have prepared engineering reports and studies that will identify the infrastructure and permitting needed to construct the New Water Supply Infrastructure required to deliver water along the selected route from the New Water Supply Sources to the Authority's System, including required storage tanks, required pump stations, and other system components.
7. The Authority will engage in environmental studies and testing required for the development and construction of the New Water Supply Sources and the New Water Supply Infrastructure.
8. The Authority will identify real estate and rights-of-way that must be acquired for the development of the New Water Supply Sources and the construction of the New Water Supply Infrastructure.
9. The Authority will design or have designed the New Water Supply Sources.
10. The Authority will design or have designed the New Water Supply Infrastructure.
11. The Authority will construct or have constructed the New Water Supply Sources.
12. The Authority will construct or have constructed the New Water Supply Infrastructure.

The Parties anticipate the Authority will provide additional services and deliverables as part of the Water Supply Development Services. The various reports, studies, and test results referenced above will be delivered to the County as they are finalized. The specific timing and sequencing of the foregoing Water Supply Development Services are uncertain and various services may be combined and/or separated during development of the Water Supply Project; provided, however, the Authority will perform all the foregoing services and deliver the foregoing reports, studies, and tests to the County as part of the completion of the Water Supply Project.