

JOINDER AGREEMENT

among

TOWN OF BLACKSBURG, VIRGINIA,

TOWN OF CHRISTIANSBURG, VIRGINIA,

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY,

MONTGOMERY COUNTY, VIRGINIA

and

BLACKSBURG-CHRISTIANSBURG-V.P.I. WATER AUTHORITY
(TO BE RENAMED NRV REGIONAL WATER AUTHORITY)

Dated as of _____, 2012

JOINDER AGREEMENT

THIS JOINDER AGREEMENT, dated as of _____, 2012 (the “Agreement”), is made among the **TOWN OF BLACKSBURG, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“Blacksburg”), the **TOWN OF CHRISTIANSBURG, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“Christiansburg”), **VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY**, a political subdivision of the Commonwealth of Virginia (“Virginia Tech”), **MONTGOMERY COUNTY, VIRGINIA**, a county of the Commonwealth of Virginia (“Montgomery County”) and the **BLACKSBURG-CHRISTIANSBURG-V.P.I. WATER AUTHORITY (TO BE RENAMED NRV REGIONAL WATER AUTHORITY)** (the “Authority”), a water and sewer authority organized and existing under Chapter 51 of Title 15.2 of the Code of Virginia, 1950, as amended (the “Virginia Water and Waste Authorities Act”), (Blacksburg, Christiansburg, Virginia Tech and Montgomery County being referred to herein from time to time as a “Member” or the “Members” or as “Public Body” or the “Public Bodies” and the Members or Public Bodies and the Authority being referred to herein from time to time as a “Party” or as “the Parties”);

WITNESSETH:

WHEREAS, Blacksburg, Christiansburg and Virginia Tech have been the members of the Authority since 1955, and have operated the Authority as a wholesale source of drinking water for their citizens and students, each purchasing water in bulk from the Authority and distributing it to their customers through storage and distribution systems owned, operated and maintained by each; and,

WHEREAS, Montgomery County has requested that it become a member of the Authority on an equal basis with Blacksburg, Christiansburg and Virginia Tech, and that it be permitted to purchase water from the Authority on the same terms as Blacksburg, Christiansburg and Virginia Tech; and,

WHEREAS, the Act provides full authority for Montgomery County to join and become a member of the Authority in accordance with the provisions of §15.2-5112 of the Act; and

WHEREAS, each party has been given a copy of the Act at the time of execution and delivery of this Agreement; and

WHEREAS, the Parties have determined that Montgomery County will join the Authority and the Authority has agreed to such reorganization in accordance with the terms and conditions set out in this Agreement; and,

WHEREAS, in reorganizing the Authority, the Parties agree that the purposes for which the Authority was created are to exercise all the powers granted in the Act to public service authorities to acquire, finance, construct, operate, manage and maintain a water withdrawal, treatment and wholesale transmission facility for the sole purpose of selling bulk water to its members, and all other powers granted by the Act.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, and agreements contained herein, the Parties agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions.

The following words and terms have the following meanings unless the context otherwise requires:

“Amended and Restated Water Agreement” means that Amended and Restated Water Agreement dated as of _____ ____, 2012 among the Parties and the MCPSA.

“Authority” means the Blacksburg-Christiansburg-V.P.I. Water Authority (to be renamed NRV Regional Water Authority).

“Blacksburg” means the Town of Blacksburg, Virginia.

“Board” means the governing body of the Authority.

“Board member” or “Board Members” means the individual members of the Board. The term “Board Member” should not be confused with “Member.”

“Christiansburg” means the Town of Christiansburg, Virginia.

“Member” means the Members of the Authority, which are Blacksburg, Christiansburg and Virginia Tech prior to the approval of the application to the Virginia State Corporation Commission for the entry of Montgomery County as a Member, and will include Montgomery County after such approval. The term “Member” should not be confused with “Board Member.”

“Montgomery County” means Montgomery County, Virginia.

“MCPSA” means the Montgomery County Public Service Authority.

“Obligation to Purchase” means the obligation of Montgomery County to purchase its membership interest in the Authority, the terms of which are described in Section 2.4.

“Virginia Tech” means Virginia Polytechnic Institute and State University.

“Water Agreement” means the Parties’ and the MCPSA’s Amended and Restated Water Agreement, the form of which is attached hereto as Exhibit B, which the Parties and the MCPSA will execute and deliver on the effective date of this Agreement.

“Water System” means the Authority’s existing water transmission system as it currently exists and may be further developed in the future.

“Wheelage” means the charges for transmission of water through a Member’s distribution system to be delivered to another Member, calculated and administered in accordance with Section 2.6 and with Section 5.5 of the Water Agreement.

ARTICLE II GOVERNANCE AND PURCHASE

Section 2.1. Name.

The name of the Authority shall be changed to NRV Regional Water Authority. It will amend its bylaws to reflect this change.

Section 2.2. Board of Directors; Voting.

Each Member of the Authority shall have the authority to appoint one Board Member to the Board of the Authority. Board Members shall each have one vote. The Board will consist of 6 Board Members, 4 of which will be appointed one each by Blacksburg, Christiansburg, Virginia Tech and Montgomery County, the other 2 of which will be “at large” Board Members appointed by the Members of the Authority. At the time either of the current “at large” Board Member positions are vacated, the Authority will reduce the number of Board Members of the Board to 5. Upon Montgomery County’s becoming a Member, the Members will amend the Bylaws of the Authority in accordance with this agreement.

Section 2.3. Water Agreement.

The Parties agree to amend and restate the current Water Agreement (the “Water Agreement”) dated March 1, 1977 between Blacksburg, Christiansburg and Virginia Tech, as amended by an Agreement dated February 13, 1979 between the Authority and Blacksburg, to provide that Montgomery County and MCPSA will become signatories to the Water Agreement.

Section 2.4. Purchase of Membership Interest by Montgomery County.

For admission as a member of the Authority, Montgomery County agrees to purchase, with funds to be provided by the MCPSA pursuant to Section 6.3 of the Water Agreement, its membership interest for \$1,300,000 to be paid over 40 years at an interest rate of 2.0% per year, in annual installments of \$47,522.47 to be paid on July 1 of each year beginning July 1, 2013, and on each following July 1 until paid in full, which deferred purchase obligation may be prepaid at any time without penalty. In the event Montgomery County should fail, after ninety (90) days, to make any payment required by this Section 2.4, neither Montgomery County nor the MCPSA shall be permitted to purchase water from the Authority.

Section 2.5. Meter Responsibilities.

All master meters shall be read by the Authority. All customer meters shall be read by Members. The Authority shall, after the Transitional Meter Settings (as defined in the Amended and Restated Water Agreement) have been completed, be responsible for placing master meters so as to measure input to Members' distribution systems and outflow to a consecutive Member.

Section 2.6. Wheelage.

Each Member of the Authority may charge wheelage for water transmitted and stored through its storage and distribution facilities and delivered to another Member of the Authority; provided; however' that wherever in the Water System water is transmitted to such Member from a transmission source with a two-way metering system, no wheelage shall be charged.

ARTICLE III

WARRANTIES AND REPRESENTATIONS

Section 3.1. Authority Relative to This Agreement.

The Parties warrant and represent that they each have the power and authority to execute and deliver this Agreement, to admit Montgomery County as a Member of the Authority, to carry out their duties and obligations under this Agreement and to consummate the transactions contemplated hereby. Montgomery County warrants and represents that its Obligation to Purchase is valid and binding. The execution and delivery of this Agreement by the Parties and the consummation by the Parties of the transactions contemplated hereby have been duly authorized by the Parties' governing bodies. No other proceedings on the part of the Parties are necessary to authorize this Agreement and the transactions contemplated herein.

Section 3.2. Non-Contravention.

The execution and delivery by the Parties of this Agreement does not, and the consummation of the transactions contemplated hereby will not, (i) violate or result in a breach of any provision of Blacksburg's, Christiansburg's or Virginia Tech's charters, (ii) violate or constitute a default under the terms, conditions or provisions of any note, bond, mortgage, lien, lease, agreement, license, indenture, instrument, or other instrument or obligation to which the Parties are a party or by which any of the Parties is bound, or (iii) violate any order, writ, injunction, arbitration award, judgment, decree, statute, rule or regulation applicable to any of the Parties.

Section 3.3. No Litigation.

There are no actions, suits, claims, investigations or proceedings (legal, administrative or arbitrative) pending, or to the best of Parties' 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 would have a material adverse affect upon: (i) any license, grant, assignment, franchise, right-of-way, easement, or right reasonably necessary for the ownership and operation of the Water System; or (ii) the ability of each Party to perform its obligations under this Agreement. Furthermore, there are no existing judgments, orders, or decrees of any such court, arbitrator, governmental department, commission, agency or other instrumentality which have or would have a material adverse effect as described in the preceding sentence.

Section 3.4. Consents and Approvals.

Other than as contemplated herein, no notice, consent, approval, waiver or other action of any kind is required to be obtained by the Parties by virtue of the execution hereof by the Parties or in connection with the consummation of any of the transactions contemplated herein.

Section 3.5. Licenses and Permits; Compliance with Laws.

The Authority has obtained and holds all licenses, certificates, permits, franchises, approvals and rights from appropriate federal, state or other public authorities required to own and operate the Water System and to conduct its business as such business is now being conducted and for the services it provides.

Section 3.6. No Violations of Law.

To the best of the Parties' knowledge, their participation in this Agreement does not cause a violation of any federal, state or local law, statute, rule, regulation or ordinance related to or in any way connected with matters contained in this Agreement.

**ARTICLE IV
COVENANTS OF THE AUTHORITY**

Section 4.1. Secure Necessary Consents.

The Authority will use its best efforts to obtain all consents, approvals and agreements required on its part to carry out the transactions contemplated by this Agreement.

Section 4.2. Services and Rates.

The Authority agrees that it shall provide wholesale water service to the Parties using the Water System, and any new additions or improvements to the Water System as it may undertake, at a uniform rate to all Members. The cost of water will not be immediately increased to the Members, though increases may result from the debt service necessary to provide for the Transitional Financing (as defined in the Amended and Restated Water Agreement).

On and after the effective date of this Agreement, the Authority will be responsible for imposing and collecting fees and charges sufficient to operate the Water System, as established by the Authority.

**ARTICLE V
CLOSING AND EFFECTIVE DATE**

Section 5.1. Effective Date.

This Agreement shall take effect when the Authority's application for Montgomery County to become a Member is approved by the Commonwealth of Virginia State Corporation Commission.

Section 5.2. Re-execution of Joinder Agreement.

The Authority will re-execute this Joinder Agreement once Montgomery County has become a Member and its name has been changed to NRV Regional Water Authority.

**ARTICLE VI
MISCELLANEOUS**

Section 6.1. Expenses; Closing Costs.

All reasonable expenses incurred by or on behalf of the parties hereto in connection with the authorization, preparation, execution and consummation of this Agreement, including, without limitation, all fees and expense of agents, representatives, counsel, engineers and accountants employed by the Parties hereto, shall be borne by the Authority and reimbursed by Montgomery County, which will, when and as it is able, reimburse the Parties such expenses as they each may have incurred, except as otherwise expressly provided in this Agreement.

Section 6.2. Cooperation.

The parties hereto agree to cooperate in making effective the transactions contemplated hereby, and each of them will, at the request of the other, join in taking any action which, though not specified herein, may be reasonably required to be taken in order to consummate the transactions contemplated hereby.

Section 6.3. Further Assurances.

From time to time after the Closing, the Parties will execute 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 in and to the Water System in the Authority.

Section 6.4. Notices.

Any and all notices herein provided for or relating to the transactions herein provided for will be in writing and will be deemed to have been sufficiently given to the Parties if delivered by hand or mailed, postage prepaid, by first class mail, addressed to:

Town of Blacksburg
300 South Main Street
Blacksburg, Virginia 24060
Attention: Town Manager

Town of Christiansburg
100 East Main Street
Christiansburg, Virginia 24073
Attention: Town Manager

Montgomery County, Virginia
755 Roanoke Street
Christiansburg, Virginia 24073-3181
Attention: County Administrator

Virginia Polytechnic Institute and State University
248 Burruss Hall
Blacksburg, Virginia 24060
Attention: Sherwood G. Wilson, Vice President of Business
Affairs

NRV Regional Water Authority
P.O. Box 10006 (Blacksburg 24062-0006)
3515 Peppers Ferry Road
Radford, Virginia 24141
Attention: Gerard W. Higgins, P.E.

Section 6.5. Headings.

Section and subsection headings in this Agreement are for convenience only and are not to be construed as a part hereof or in any way limiting or amplifying the provisions hereof.

Section 6.6. Entire Agreement; Modification.

This Agreement and the Water Agreement constitute and contain the entire agreement of the Parties hereto and supersede any and all prior negotiations, correspondence, understandings, and agreements between the Parties respecting the subject matter hereof and may not be modified, altered or changed in any manner whatsoever except by written agreement between the Parties hereto.

Section 6.7. Counterparts.

This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 6.8. Successors and Assigns.

This Agreement will inure to the benefit of and be binding upon the successors of any Party hereto, but no right or liability or obligation arising hereunder may be assigned or transferred by any Party except by operation of law.

Section 6.9. Governing Law.

This Agreement and the transactions contemplated hereby will be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia.

Section 6.10. Survival of Representations, Warranties and Agreements.

The representations, warranties and continuing agreements of the Parties made in this Agreement and in the documents delivered pursuant hereto will survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

Section 6.11. Integration.

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not affect any other provision thereof.

Section 6.12. Liquidation Rights; Rights of Withdrawal.

At such time as it shall become necessary to determine the respective interest of the Public Bodies and any other public body who is a Member at such time for the purpose of distributing or otherwise disposing of the assets of the Authority, the interest of each Public Body and each such other public body shall be determined by the ratio of a) the amount paid by each Member for water purchased from the Authority to b) the total amount paid by all Members

for water purchased from the Authority during the immediately preceding twenty (20) years. Rights of a Member to withdraw from the Authority shall be governed by the Virginia Water and Waste Authorities Act.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Joinder Agreement to be executed in their names by their duly authorized officers as of the date first above written.

TOWN OF BLACKSBURG

ATTEST:

_____, Town Clerk

By _____
_____, Mayor

TOWN OF CHRISTIANSBURG

ATTEST:

_____, Town Clerk

By _____
_____, Mayor

**VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY**

ATTEST:

_____, Secretary

By _____
_____, Rector

MONTGOMERY COUNTY

ATTEST:

_____, Secretary,
Board of Supervisors

By _____
_____, Chair,
Board of Supervisors

BLACKSBURG-CHRISTIANSBURG-
V.P.I. WATER AUTHORITY

ATTEST:

_____, Secretary

By _____
_____, Chair

APPROVED AS TO FORM:

APPROVED AS TO EXECUTION:

Town Attorney, Blacksburg

Town Attorney, Blacksburg

APPROVED AS TO FORM:

APPROVED AS TO EXECUTION:

Town Attorney, Christiansburg

Town Attorney, Christiansburg

APPROVED AS TO FORM:

APPROVED AS TO EXECUTION:

University Counsel

University Counsel

APPROVED AS TO FORM:

APPROVED AS TO EXECUTION:

County Attorney

County Attorney

APPROVED AS TO FORM:

APPROVED AS TO EXECUTION:

Authority Counsel

Authority Counsel

IN CONFIRMATION WHEREOF, the Authority has re-executed this Joinder Agreement this ____ day of _____, 2012.

NRV REGIONAL WATER AUTHORITY

ATTEST:

_____, Secretary

By _____
_____, Chair

APPROVED AS TO FORM:

APPROVED AS TO EXECUTION:

Authority Counsel

Authority Counsel

LIST OF EXHIBITS

- Exhibit A Amended and Restated Articles of Incorporation of the Blacksburg-Christiansburg-V.P.I. Water Authority
- Exhibit B Amended and Restated Water Agreement

Exhibit A

**Amended and Restated Articles of Incorporation of the
Blacksburg-Christiansburg-V.P.I. Water Authority**

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF THE
BLACKSBURG-CHRISTIANSBURG-V.P.I. WATER AUTHORITY**

The Board of Visitors of Virginia Polytechnic Institute and State University, the Town Council of the Town of Blacksburg, the Town Council of the Town of Christiansburg, and the Board of Supervisors of Montgomery County, Virginia, have, by concurrent resolutions, adopted the following Amended and Restated Articles of Incorporation of the Blacksburg-Christiansburg-V.P.I. Water Authority, pursuant to the Virginia Water and Waste Authorities Act (Chapter 51, Title 15.2 of the 1950 Code of Virginia, as amended)(“Act”).

ARTICLE I

The name of the Authority shall be the NRV Regional Water Authority and the address of its principal office is 3515 Peppers Ferry Road, Radford, Virginia 24141.

ARTICLE II

The names of the political subdivisions participating in the NRV Regional Water Authority (the “Authority”) are Virginia Polytechnic Institute and State University, the Town of Blacksburg, the Town of Christiansburg, and Montgomery County, Virginia (collectively, the “Members”), each of which hereby acknowledges, covenants, and agrees that these Amended and Restated Articles of Incorporation shall not be further amended or changed without the express agreement of each of the governing bodies of each of the participating political subdivisions.

ARTICLE III

The Board of the Authority shall consist of six board members. The names, addresses, and terms of office of the initial board members of the reconstituted Board of the NRV Regional Water Authority are as follows:

	Name	Address	Term of Office beginning	ending
1.				
2.				
3.				
4.				
5.				
6.				

The governing body of each participating political subdivision has initially appointed the number of board members set forth opposite its name below:

Montgomery County – One, for a term of 4 years

Virginia Polytechnic Institute and State University – One, for a term of 3 years

Town of Blacksburg – One, for a term of 2 years

Town of Christiansburg - One, for a term of 1 year

The fifth and sixth initial Board Members have been chosen by the initial four Board Members for initial terms of one (1) year. In the event either of the fifth and sixth Board Members chosen by the initial four Board Members retires or otherwise vacates his seat as a Board Member, the number of Board Members shall be reduced to five.

Upon the expiration of the term of any initial Board Member chosen by the initial four Board Members, the remaining Board Members shall elect a successor. Upon the expiration of the term of any of the initial four Board Members chosen by one of the participating political subdivisions, such political subdivision shall promptly choose a successor.

The participating political subdivision will appoint successors to fulfill the terms of Board Members appointed by such participating subdivision who die, resign, or are disqualified.

After the initial terms, each Board Member shall be appointed for a four-year term and shall serve until a successor is appointed and qualified. Each Board Member shall have a vote and when required by law or when requested by any Board Member, such vote shall be recorded by “yeas” or “nays.”

Each board member shall be reimbursed by the Authority for the amount of actual expenses incurred in the performance of Authority duties.

ARTICLE IV

The purposes for which the Authority is being reorganized are to exercise all the powers granted to the Authority to acquire, finance, construct, operate, manage, and maintain a wholesale water treatment and transmission system and related facilities for the purpose of selling water wholesale to its Members pursuant to the Virginia Water and Waste Authorities Act, Chapter 51, Title 15.2 of the 1950 Code of Virginia, as amended (the “Act”). The Authority shall have all of the rights, powers, and duties of an authority under the Act.

It is not practicable to set forth herein information regarding preliminary estimates of capital costs, proposals for specific projects to be undertaken, or initial rates for the proposed projects.

ARTICLE V

The Authority shall provide water to its Members.

ARTICLE VI

The Authority shall cause an annual audit of its books and records to be made by the State Auditor of Public Accounts or by an independent certified public accountant at the end of

each fiscal year and a certified copy thereof to be filed promptly with the governing body of each of the incorporating political subdivisions.

ARTICLE VII

The term of existence of the Authority shall be 50 years from the effective date of the Members' resolutions authorizing these Amended and Restated Articles.

IN WITNESS WHEREOF the Board of Supervisors of Montgomery County, the Town Council of the Town of Blacksburg, Virginia, the Town Council of the Town of Christiansburg, Virginia, the Board of Visitors of Virginia Polytechnic Institute and State University, and the Board of Directors of the Blacksburg-Christiansburg-V.P.I. Water Authority have caused these Amended and Restated Articles of Incorporation to be executed in their respective names, and their respective seals have been affixed hereto and attested by the respective secretaries and clerks of each.

BLACKSBURG-CHRISTIANSBURG-V.P.I.
WATER AUTHORITY

TOWN OF BLACKSBURG, VIRGINIA

By: _____
Chairman

By: _____
Mayor

WITNESS: _____(SEAL)
Secretary

WITNESS: _____(SEAL)
Clerk

MONTGOMERY COUNTY, VIRGINIA

TOWN OF CHRISTIANSBURG,
VIRGINIA

By: _____
Chairman, Board of Supervisors

By: _____
Mayor

WITNESS: _____(SEAL)
Secretary

WITNESS: _____(SEAL)
Clerk

VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY

By: _____
Rector, Board of Visitors

WITNESS: _____(SEAL)
Secretary

Exhibit B

Amended and Restated Water Agreement