



Date of Council Meeting: April 8, 2014

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Authorizing the Town Manager to execute a License Agreement between the Town of Leesburg, Green Energy Partners (“GEP”) and the Northern Virginia Regional Park Authority (“NVRPA”) to allow the GEP/TOL reclaimed water line to cross NVRPA-owned property.

Staff Contact: Barbara Notar, Deputy Town Attorney
Amy Wyks, Director of Utilities

Recommendation: To authorize the Town Manager to execute a License Agreement between the Town of Leesburg (“Town”), GEP and the Northern Virginia Regional Park Authority (NVRPA) to allow the GEP/TOL reclaimed water line to cross NVRPA property.

Issue: Should the Town Council authorize the Town Manager to execute a License Agreement between the Town, GEP and NVRPA to allow the Town/GEP reclaimed waterline to cross NVRPA property?

Fiscal Impact: There are no direct costs to the Town for this agreement with GEP and NVRPA.

Background: GEP is currently in the process of acquiring the necessary land rights from property owners whose land is located in the path of the reclaimed water line (a/k/a “purple line”). The purple line will be constructed by GEP but will be eventually owned and maintained by the Town. All land rights will be acquired by GEP on behalf of the Town.

A portion of the purple line crosses the W&OD Trail which is owned by the Northern Virginia Regional Park Authority (“NVRPA”). A license agreement is needed by the Town and GEP from NVRPA to allow the reclaimed water line to cross the W&OD Trail. The Town will be the last entity to execute after GEP and NVRPA. The Town Attorney’s Office has reviewed and approved the License Agreement.

Attachment: Proposed License Agreement between Town, GEP and NVRPA

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), made this 17th day of MARCH, 2014, by and between the NORTHERN VIRGINIA REGIONAL PARK AUTHORITY, a body corporate and politic (the "Authority"), the TOWN OF LEESBURG (the "Licensee"), and GREEN ENERGY PARTNERS/STONEWALL LLC ("GEP").

WHEREAS, the Authority owns certain real property (the "Property"), consisting of a trail extending from Arlington County to Purcellville, Virginia, on which the Authority operates and maintains a Park, including related facilities, for the public's use and enjoyment, also known as the W&OD Railroad Regional Park; and

WHEREAS, Licensee and GEP desire to construct and maintain certain Facilities and Improvements on a portion of the Authority's Property (the "Licensed Premises"); and

WHEREAS, Licensee and GEP acknowledge that the paramount use of the Property is for the public's use and enjoyment and that the construction and operation of Licensee's and GEP's Facilities and Improvements on the Property must not adversely affect the Property's paramount use for park purposes; and

WHEREAS, the Authority is willing to license to Licensee and GEP use of portions of the Property on the terms and conditions set forth herein.

NOW THEREFORE, the Authority, Licensee, and GEP in consideration of payments hereinafter stipulated and the mutual covenants hereinafter contained, hereby agree as follows:

1. Definitions

As used in this Agreement:

"Licensed Premises" means that portion of the Property as shown on the plans prepared by Gordon titled "NVRPA Application, Green Energy Partners Water Reuse Line, Loudoun County, Virginia", Sheet 1 of 1, dated January 2, 2014, hereby incorporated as Exhibit A, on which Licensee is authorized, pursuant to this Agreement, to construct, install, operate, and maintain certain Facilities and Improvements specified herein and GEP is authorized pursuant to this Agreement to construct and install said facilities on behalf of Licensee.

“Park” means that portion of the W&OD Railroad Regional Park Property on which the Authority maintains and operates recreational facilities and related improvements, whether existing as of the date of this Agreement or established thereafter, for the public’s use and enjoyment.

“Property” means that property owned by the Authority, extending from Arlington County to Purcellville, Virginia, on which the Authority operates and maintains a public park, including trails and related facilities for the public’s use and enjoyment, a portion of which is shown on Exhibit A hereto.

“Trail” means that portion of the Property as shown on Exhibit A hereto, which the Authority maintains and operates as a trail or path, both paved and unpaved, for the public’s use and enjoyment, including barricades, bridges, signs, benches, fountains, and related improvements.

“Facilities and Improvements” means one 24" water reuse line enclosed within a 42" steel casing.

“Reused Water” means non potable treated wastewater water. Also referred to as “reclaimed water” or “effluent water” in other documents outside of this Agreement.

2. License Grant

a. Authority hereby grants a nonexclusive license to Licensee, for the term and upon the conditions, covenants, and agreements hereinafter set forth, to use the Licensed Premises for the purposes of constructing, installing, operating and maintaining its Facilities and Improvements for the Facilities and Improvements across the Property described on Exhibit A and at the location described on Exhibit A, hereby incorporated into this Agreement by reference. Authority also hereby grants to GEP authorization pursuant to this Agreement to construct and install said facilities described on Exhibit A on behalf of the Licensee.

b. It is a specific prerequisite to Licensee’s and GEP’s use of the Licensed Premises pursuant to this Agreement that the Property at all times shall be used and maintained in a safe and reasonable manner satisfactory to the Authority.

c. The rights or privileges herein granted to Licensee and GEP shall be subject to the rights and or interests held by others in and to the Property as of the date of this Agreement. The Authority makes no representations or warranties, express or implied, concerning the extent of such outstanding rights held by others and shall have no responsibility for conflicts with others as a result of this Agreement. The Authority makes no warranties with respect to the Property but gives Licensee a license to use such rights in the Property that the Authority has in the Property.

d. Nothing contained in this Agreement shall be interpreted to create anything other than a license and this Agreement shall specifically not create any right, title or interest in the Property, nor shall it create an easement or a leasehold interest.

3. Term

a. The term of this License shall begin on the date hereof and shall continue through December 31, 2104, at which time this License shall automatically expire and terminate, unless earlier terminated in accordance with paragraph 3b or c. Upon completion of construction and installation of Licensee's Facilities and Improvements, and upon the full satisfaction of the Construction Deposit requirements set forth in paragraph 5 below, GEP shall have no further rights or privileges under this License Agreement and shall be released from further obligations to the Authority hereunder, except with respect to any then existing or future liability or claim arising out of GEP's operations on the Property or acts or omissions under this Agreement.

b. Should Licensee abandon or remove its Facilities and Improvements constructed on the Licensed Premises this License shall terminate forthwith at the election of the Authority.

c. The Authority may terminate this Agreement for the Licensee's or GEP's failure to comply with the terms hereof, provided the Authority gives the Licensee and GEP written notice of the violation and a reasonable time, not to exceed thirty (30) days, to rectify it to the satisfaction of the Authority.

d. Licensee shall, within three (3) months after the expiration or earlier termination of this Agreement remove or abandon and fill Licensee's Facilities and Improvements within the Licensed Premises. Licensee shall assume full responsibility for all costs and expenses incurred in connection with such removal or abandonment and fill of its Facilities and Improvements. Licensee shall leave the Property in a clean condition acceptable to the Authority and plans and specifications for removal or abandonment and fill shall be approved in writing by the Authority. In the event Licensee does not, within the required period of time, remove or abandon and fill its Facilities and Improvements, then the Authority may remove or fill the same at the cost and expense of Licensee, or the Authority may, at its option, allow said Facilities and Improvements to remain on the Property, in which event Licensee shall be deemed to have abandoned such Facilities and Improvements and relinquished to the Authority all right, title and interest thereto and said Facilities and Improvements shall be and become the property of the Authority.

e. Expiration or earlier Termination of this License shall not relieve or release Licensee or GEP from any liability or obligation that may have been incurred or assumed by Licensee or GEP hereunder prior to such expiration or termination.

4. Payments

a. GEP has placed on deposit with the Authority a license administration fee of One Thousand Dollars (\$1,000.00). The parties hereto agree that the administration fee shall be adjusted, whether upward or downward, to reflect the Authority's actual costs in administering this License. Said adjustments shall be made monthly until the time of final Construction Deposit return pursuant to paragraph 5 hereof, and any outstanding fees shall be refunded or billed, as appropriate, to GEP. GEP agrees to pay such bills within thirty (30) days of receipt of appropriate documentation from the Authority.

b. As further compensation, GEP shall pay Authority a one-time use fee of Two Thousand Seven Hundred Dollars (\$2,700).

c. Licensee and GEP agree and covenant to pay all taxes including, but not limited to, leasehold interest taxes, assessments, use and occupancy taxes, charges for public utilities, excises and levies, levied on the Licensed Premises that arise out of Licensee's and GEP's construction, maintenance, or operation of any facilities or improvements on the Licensed Premises.

5. Construction Deposit or Letter of Credit

Upon execution of this Agreement, GEP shall place on deposit with the Authority a cash deposit (the "Construction Deposit") in the amount of Five Thousand Dollars (\$5,000). The purpose of said Construction Deposit shall be to provide reimbursement to the Authority for any and all expenditures including, but not limited to, attorney's fees, restoration costs and, if applicable, Liquidated Damages, as defined in Paragraph 9 of Exhibit B attached hereto, necessary to enforce the terms of this Agreement. The Authority may withdraw and expend such funds from the Construction Deposit as it may deem necessary to enforce GEP's obligations under this Agreement, and if the funds shall become exhausted, GEP will immediately replenish the Construction Deposit. The Authority will hold the Construction Deposit for six months following completion of construction (as determined by the Authority) of Licensee's Facilities and Improvements on the Licensed Premises and restoration to the Authority's satisfaction of any of the Property disturbed during such construction. Upon satisfaction of all requirements under this Section 5, the Authority will return to GEP the Construction Deposit less any amounts used by the Authority pursuant hereto of the Property disturbed during such construction.

6. Notices

Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given at the time of personal

delivery, the first business day after deposit with an overnight delivery service or as of the date of first attempted delivery if sent by registered or certified mail. For purposes of this Section, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the Commonwealth of Virginia. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

To AUTHORITY:

Northern Virginia Regional Park Authority
5400 Ox Road
Fairfax Station, Virginia 22039
Attention: Director of Planning and Development

To LICENSEE:

Town of Leesburg
25 W. Market St.
Leesburg, VA 20176
Attention: John C. Wells, Town Manager

To GEP:

Green Energy Partners/Stonewall
4100 Spring Valley Suite 1001
Dallas, TX 75244
Attention: Ross Metersky, Vice President

7. Terms Incorporated by Reference

The General Terms and Conditions for License Agreements, Part B, dated December 2, 2009, is attached hereto as Exhibit B and is hereby incorporated into this Agreement by reference.

8. Special Conditions

Notwithstanding any other provisions of this Agreement to the contrary, the following special conditions shall apply:

a. It is a specific prerequisite to the Authority's grant of this License that the Licensee and GEP maintain the continuity, safety, and convenience of public use of the W&OD Trail through the Licensed Premises at all times during construction.

b. Excavated areas, temporary construction zones, stockpiles, material storage and staging areas shall be appropriately protected by temporary construction safety fencing or other suitable barriers in order to confine construction activities to the approved

work areas, to protect Trail users and other park patrons from construction activities and to prevent GEP's encroachment onto the surface of the Property.

c. GEP shall provide regular inspection, observation and supervision of its contractors as needed to maintain control over the contractors and to ensure their full compliance with all conditions of this License, with the approved construction plans, schedules and restriction, and with the Park rules.

d. The parties hereto agree that GEP shall construct and install the water line under and across the Trail by means of a trenchless crossing underneath the Property. Unless the Authority's prior written approval is obtained, no equipment, tools or material shall be placed on the Property, nor shall vehicles, equipment and personnel of GEP and its contractors operate on the Property outside of the construction areas shown on Exhibit A.

e. GEP shall install permanent sleeves beneath the surface of the Property to contain the pipes, in order to permit their future removal or replacement from outside the limits of the Property.

f. No manholes, handhold, pedestals, closures or similar facilities which require access from above the ground surface for normal operation or maintenance, shall be placed on the Property under this License.

g. GEP shall give full-time supervision to backfill and compaction operations, where applicable on or adjacent to the Property, to ensure that backfill of excavated areas is compacted in 6 inch lifts to 95% density.

h. GEP shall provide all contractors on the project with a copy of this License Agreement and shall ensure that all construction personnel abide by the restrictions of access and other provisions contained herein.

i. A pre-construction meeting with GEP's contractors and the Authority shall be held prior to any work on the Property. GEP shall involve the Authority in pre-construction and other information/coordination meetings with governmental agencies, contractors and utility companies throughout the project.

j. In order to preserve existing vegetation within the Park, it is a specific prerequisite to the Authority's grant of this License that no excavation shall occur within the limits of the area labeled "Variable Width Access Easement for Maintenance and Construction" on Exhibit A.

k. In any discrepancy between the approved construction drawings and this License Agreement, the License Agreement prevails with respect to the Authority's Property.

1. GEP shall provide erosion and sediment controls, as well as temporary drainage facilities necessary to maintain proper storm drainage on the Property. Licensee's and GEP's activities shall not cause areas on the Property to hold water.

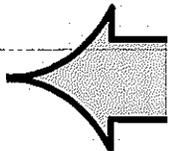
m. Failure of GEP to comply with any provision of paragraphs 8 a, b, d, h, and i above shall be deemed to be a violation of this Agreement subjecting GEP to the Liquidated Damages provided for in Paragraph 9 of Exhibit B and to such other remedies as may be available to the Authority. In addition, the Authority shall have the right to correct any conditions that pose a safety hazard to users of the Trail, and the costs of such corrective actions shall be paid by GEP to the Authority within thirty (30) days of receipt of appropriate documentation from the Authority.

IN WITNESS WHEREOF, the parties hereto for themselves and their successors and assigns have executed this License Agreement on the date and year first written above.

LICENSEE:

TOWN OF LEESBURG

By: _____
Name: _____
Title: _____



GEP:

GREEN ENERGY PARTNERS/STONEWALL LLC

By: *RM*
Name: ROSS METERSKY
Title: DEVELOPERS MANAGER
SE

AUTHORITY:

NORTHERN VIRGINIA REGIONAL PARK AUTHORITY

By: _____
Name: Todd E. Hafner
Title: Director of Planning and Development

EXHIBIT B

NORTHERN VIRGINIA REGIONAL PARK AUTHORITY

GENERAL TERMS AND CONDITIONS FOR LICENSE AGREEMENTS

December 2, 2009

1. Definitions

All capitalized terms in this General Terms and Conditions shall have the same meaning as set forth in the License Agreement (“Agreement”).

2. Construction

a. Construction Plans and Specifications

(1) Construction of Licensee’s Facilities and Improvements on the Property shall be restricted to the Licensed Premises and shall be performed strictly in accordance with plans and specifications approved in writing by the Authority. GEP shall not deviate from or make changes to the construction plans and specifications approved by the Authority without the Authority’s prior written approval. Only those Facilities and Improvements reflected on the approved construction plans and specifications shall be established on the Property. GEP shall strictly adhere to any limitations or restrictions on construction methods or techniques as set forth in the approved construction plans and specifications, in the License Agreement, and any Exhibits thereto. After completion of the initial construction of the Facilities and Improvements on the Property, Licensee and GEP shall not construct additional Facilities and Improvements on the Property without specific written approval of the Authority, which written approval, if given, may constitute a separate license or an amendment to the Agreement.

(2) Licensee and GEP are hereby placed on notice of an existing agreement between Virginia Electric and Power Company (“VEPCO”) and the Authority which provides, in part, that the Authority shall not grant any right to use the Property for certain purposes without Virginia Power’s prior written approval. GEP shall be responsible for obtaining Virginia Power’s approval, and shall not enter or commence any work on the Property until such written approval is obtained and a copy of said approval is provided to the Authority by GEP. The license granted by this Agreement shall be contingent until the written approval of VEPCO is obtained and provided to the Authority.

(3) Failure of GEP to comply with any provision of subparagraphs 2a(1) or (2) above shall be deemed to be a violation of the Agreement subjecting GEP to the

Liquidated Damages provided for in Paragraph 9 hereof and to such other remedies as may be available to the Authority.

b. Construction Schedule

(1) GEP shall submit to Authority for approval a proposed construction schedule, indicating when construction will begin and be completed and construction milestones. GEP also shall provide Authority a list of the names of all contractors and subcontractors who will work on the Licensed Premises.

(2) GEP shall perform construction only in accordance with the approved construction schedule. GEP shall notify Authority immediately of any changes to the approved schedule. Such changes shall be subject to the prior written approval of the Authority.

(3) GEP shall provide notice to Authority at least two (2) business days before entering the Property to perform any construction.

(4) Failure of GEP to comply with any provision of subparagraphs 2b(1) (2) or (3) above shall be deemed to be a violation of this Agreement subjecting the GEP to the Liquidated Damages provided for in Paragraph 9 hereof and to such other remedies as may be available to the Authority.

c. Confining Construction Activity. During construction, GEP and its contractors and subcontractors shall confine all construction activity, including access and storage, within the applicable areas specified on the approved plans and any exhibits thereto. Failure of GEP to comply with any provision of this subparagraph shall be deemed to be a violation of the Agreement subjecting GEP to the Liquidated Damages provided for in Paragraph 9 hereof and to such other remedies as may be available to the Authority.

d. Excavation

(1) Licensee or GEP shall not make or begin any excavation or other subsurface activity on the Property without first obtaining information concerning the possible location of any underground facility from each and every public utility, municipal corporation, or other person having the right to bury underground facilities on the Property.

(2) Licensee or GEP shall not make or begin any excavation or other subsurface activity on the Property without having all underground facilities located by suitable markers or other means by the owners of such underground facilities or other qualified or authorized persons.

(3) Obtaining the information required by subparagraphs (1) and (2) of this paragraph does not excuse Licensee or GEP from making all excavation or other subsurface activity in a careful and prudent manner.

(4) In the event of any damage to or dislocation of any underground

facility in connection with the excavation or other subsurface activity, Licensee or GEP, as the case may be, shall immediately notify the owner of such facility and shall immediately cease all work in the affected area until repairs are complete. Any such incident shall be reported immediately to the Authority, and no further excavation or subsurface activity shall be done until permission is granted by the Authority.

(5) All excavation or other subsurface activity made by Licensee or GEP shall be properly safeguarded for the prevention of accidents. All excavated or tunneled areas shall be filled in or adequately secured at the end of each work day.

(6) Failure of Licensee or GEP to comply with any provision of subparagraphs 2d(1), (2), (3), (4) or (5) above shall be deemed to be a violation of the Agreement subjecting the GEP to the Liquidated Damages provided for in Paragraph 9 hereof and to such other remedies as may be available to the Authority.

e. Inspection of Construction.

(1) The construction of Licensee's Facilities and Improvements is subject to the Authority's inspection at all places and all reasonable times to ensure strict compliance with the terms of the Agreement.

(2) Authority inspections are for the sole benefit of the Authority and do not constitute or imply acceptance of any work as conforming with the requirements of the Agreement. The presence or absence of an Authority inspector does not relieve Licensee or GEP from any contract requirement, nor is the inspector authorized to change any term or requirement of this Agreement without the written authorization of the Authority's representative.

3. Maintenance and Operation

a. Licensee shall be responsible for maintaining and operating all Facilities and Improvements established by it on the Property, and shall perform such maintenance and operations in a manner and at such frequency as necessary to keep the Property safe and to protect against damage to the Property and adjoining properties.

b. Prior to commencement of any scheduled maintenance, or of any operation activity that requires entry onto the Property, Licensee shall submit a proposed maintenance or operation plan and schedule to the Authority for approval. The plan and schedule, as a minimum, shall provide a description of work to be performed, a description of equipment, vehicles, work techniques and methods to be used in connection with the maintenance or operation activity, a schedule of when maintenance or operation work will occur with an estimate as to the length of time required to perform the work, and such other information as the Authority may need in order to evaluate the proposed maintenance or operation activity.

c. Licensee shall perform maintenance and operation of the Facilities and Improvements strictly in accordance with plans and schedules that have been approved in writing by the Authority. Licensee shall not deviate from or make changes to the maintenance or

operation plans and schedules approved by the Authority without the Authority's prior written approval.

d. Licensee shall provide notice to Authority at least forty-eight (48) hours before entering the Property to maintain or operate Licensee's facilities; except in the case of an emergency where Licensee cannot provide the required advance notification, Licensee shall notify Authority as soon as practicable.

e. Licensee shall confine all maintenance and operation activities, including access and storage, within the applicable areas specified in the approved maintenance and operation plans.

f. Licensee shall avoid disturbing the Property and any improvements thereon while maintaining or operating Licensee's Facilities and Improvements. To the extent any disturbance does occur, Licensee shall restore such disturbed areas in accordance with the requirements set forth in Paragraph 4.

g. The Authority agrees to consider and, at its discretion, grant appropriate blanket approvals for scheduled maintenance or operation activities. In such event, Licensee shall be required only to provide the required advanced notification prior to commencing scheduled maintenance or operations for which the Authority previously has granted a blanket approval.

h. In addition to any other condition which the Authority may require in consideration for approval of any maintenance or operation plan, if any maintenance or operation activity of Licensee would disturb or disrupt the land or any improvement on the Property, or would interfere with the Authority's or public's use and enjoyment of the Property, the Authority may impose upon Licensee reasonable charges and construction deposits (over and above any other payments or construction deposits required under the License Agreement) to cover its costs of reviewing, approving, administering, overseeing and inspecting the maintenance or operation activity, and to ensure the safety and well being of the public and the proper and timely restoration of the Property.

4. Restoration

a. Licensee or GEP, as the case may be, shall, as soon as practicable after the completion of any construction, operation or maintenance activities, restore all areas disturbed during such activities. These areas shall be restored in kind to a condition substantially the same as that which existed prior to Licensee's or GEP's performing such activities, and shall be restored to the satisfaction of the Authority, taking into consideration aesthetics as well as structural or design integrity.

b. Disturbed areas must be backfilled and compacted consistent with the original conditions. Where subsoil is tamped, the disturbed area will be filled to a level in kind. Disturbed areas will be reseeded or sodded in kind. Seeding required for restoration shall be of a mixture approved by the Authority. Any subsequent settling of disturbed areas will be repaired

in kind. Licensee or GEP, as the case may be, shall be responsible for any erosion which may occur as a result of Licensee's or GEP's use of the Licensed Premises, and Licensee or GEP shall restore any eroded area until stabilized.

c. In the event any asphalt paths on the Trail are cut or are otherwise damaged or disturbed, repairs shall be made in accordance with the following minimum requirements:

- (1) pavement shall be saw cut and shall have straight, clean edges;
- (2) all debris shall be hauled from the Property;
- (3) the disturbed area shall be backfilled with approved material compacted to ninety-five percent (95%) of theoretical density as determined by standard proctor.
- (4) a minimum of six inches (6") of VDOT type 21-A aggregate base shall be placed and compacted;
- (5) base shall be prime coated at the rate of .3 gallons per square yard with VDOT type MC-70 or RC-250 liquid asphalt; all existing asphalt edges shall be cleaned and tack coated;
- (6) a minimum of two inches (2"), or the depth of the existing asphalt, whichever is greater, of VDOT type SM-9.5 hot-mix asphalt shall be placed and properly compacted;
- (7) all adjacent stone or turf shoulder shall be backfilled flush with the pavement edge and said turf areas seeded in accordance with the requirements in subparagraph 4b above; and
- (8) the standard minimum dimensions for patched or replaced asphalt shall be a square the width of the Trail by an equal length.

d. If the disturbed area is on a part of any path in use by the public, Licensee or GEP, as the case may be, shall immediately restore the disturbed area with a temporary patch until the asphalt can be permanently restored in accordance with the requirements of this paragraph 4. Failure of GEP to comply with any provision of this subparagraph shall be deemed to be a violation of this License Agreement subjecting GEP to the Liquidated Damages provided for in paragraph 9 hereof and to such other remedies as may be available to the Authority.

e. The Authority may restore any areas in case of neglect by Licensee or GEP. Licensee or GEP shall pay the cost of such restoration, including the cost of inspection and supervision.

5. Approvals

Whenever the License Agreement requires Licensee or GEP to submit plans, specifications, schedules or other items to the Authority for approval, the Authority shall review and approve, disapprove, or take other appropriate action with reasonable promptness after receipt of the required submittal. The Authority's approval of any submittal shall not be deemed to be a waiver of any requirement of the Agreement unless such waiver is explicit and in writing and specifically references the requirement of this Agreement that is being waived.

6. Access

Licensee and GEP shall enter and exit the Property during the term of the License Agreement only at those places and by those means specified on the approved construction plans and specifications and in the Agreement, including the attached exhibits. Failure of GEP to comply with any provision of this Paragraph shall be deemed to be a violation of this Agreement subjecting GEP to the Liquidated Damages provided for in Paragraph 9 hereof and to such other remedies as may be available to the Authority.

7. General Responsibilities of GEP and Licensee

a. Compliance with Applicable Laws and Regulations. Licensee and GEP shall construct, operate, and maintain its Facilities and Improvements in accordance with all applicable federal, state, and county laws, orders, rules, and regulations existing on the date of the Agreement or enacted thereafter affecting Licensee's and GEP's use of the Property, and Licensee and GEP shall assume all costs, expense, and responsibility in connection therewith.

b. Manner of Performance. Licensee and GEP shall construct, operate, and maintain its Facilities and Improvements in an orderly and workmanlike manner. The safety of the general public, Licensee's and GEP's employees and all property shall be of paramount importance whenever or wherever Licensee or GEP operates on the Licensed Premises.

c. Permits. Prior to commencement of any work Licensee or GEP shall secure and pay for all permits and government fees, licenses, and inspections necessary for the proper construction, operation, and maintenance of Licensee's Facilities and Improvements.

d. Storage of Hazardous Materials. Licensee or GEP shall not store flammable, explosive, or other hazardous materials on the Property, and no materials shall be piled higher than fifteen (15) feet above ground level.

e. Interference. Licensee's Facilities and Improvements shall be constructed, operated, and maintained in a safe and proper manner so as not to endanger the general public, interfere with the public's use and enjoyment of the Park, Trail and Property, or interfere with any improvements on the Property.

f. Licensee's and GEP's Personnel. Except as otherwise specifically authorized in the Agreement, employees of Licensee and GEP and their agents and contractors shall comply with all regulations governing the use of the Trail and Property in effect as of the date of the Agreement or enacted thereafter.

g. Vehicles. Licensee and GEP shall operate on the Property only vehicles and equipment approved by the Authority. No vehicles or other equipment shall be operated on any trail, whether paved or unpaved, unless prior written approval has been granted by Authority.

h. Failure of GEP to comply with any provision of subparagraphs 7a, b, c, d, e, f or g above shall be deemed to be a violation of this License Agreement subjecting GEP to the Liquidated Damages provided for in paragraph 9 hereof and to such other remedies as may be available to the Authority.

8. Warranty

Licensee and GEP warrant that they have inspected the Property and accept it in its present "as is" condition. The Authority makes no representation or warranties, express or implied, concerning the condition of the Property and shall have no responsibility for repairs and maintenance during the term of the Agreement.

9. Liquidated Damages

a. At the sole and absolute discretion of the Authority, if GEP fails to comply with ANY requirement of paragraphs 2a(1) or (2); 2b(1), (2) or (3); 2c; 2d(1), (2), (3), (4) or (5); 4d; 6; or 7a, b, c, d, e, f or g hereof, GEP shall, in place of actual damages, pay to the Authority, as fixed, agreed, and liquidated damages for each day such failure to comply continues, the sum of Five Hundred Dollars (\$500.00) (the "Liquidated Damages"); provided, however, that the Authority will not assess Liquidated Damages for any violation beyond the control of GEP, its employees, agents, contractors, invitees or representatives. GEP shall pay any Liquidated Damages promptly upon receipt from the Authority of a written notice assessing such damages.

b. The assessment of Liquidated Damages pursuant to this Paragraph, (or the Authority's election not to assess Liquidated Damages), does not restrict the Authority's power to terminate the Agreement or otherwise enforce its terms.

c. On the third anniversary of the Agreement and every three years thereafter during the term of the Agreement, the Liquidated Damages shall be increased by five percent (5%).

10. Authority's Use of the Property

Nothing in the License Agreement shall be construed to prevent the Authority from repairing, altering, relocating, or constructing existing and additional Trails or other facilities on the Property. The Authority shall do such work, insofar as practicable, in a manner not to obstruct, injure, or prevent the free use and operations of Licensee's Facilities and Improvements. If any property of the Licensee shall interfere with Authority's planned alteration, relocation, or construction, Licensee shall remove such property at such time and in a manner as shall reasonably be directed by the Authority so that such property shall not interfere

with the work of the Authority. Such removal or replacement of Licensee's property shall be at the expense of Licensee. Authority agrees to cooperate with Licensee and to use its best efforts to accomplish any alterations, relocations, or construction of the Trail and Property in a manner least intrusive to the privileges of Licensee under this License Agreement.

11. Authority's and Licensee's Representatives

a. The Authority, Licensee, and GEP shall each designate a representative who shall have the duty to coordinate all aspects of Licensee's and GEP's use of the Licensed Premises and have the authority to render decisions and bind the parties upon matters which necessitate input or decisions. Any change of a party's representative shall be made in writing, and any such change shall not be effective until receipt of the writing by the other party. The Authority hereby designates its Director of Planning and Development as its representative.

b. The Authority's representative shall, at all times, have access to Licensee's and GEP's construction, operation, and maintenance work whenever and wherever it is in preparation or progress.

12. Maintenance of Records

Licensee and GEP shall keep accurate maps and records, including the approved as-built construction plans and specifications, of its Facilities and Improvements located on the Property and shall make available to the Authority such maps and records when requested.

13. Safety

a. Licensee and GEP shall take adequate precautions (i) to insure the safety of the general public as well as Licensee's, GEP'S and Authority's employees, (ii) to protect the Property, and (iii) to assure safe operation of Licensee's Facilities and Improvements including, but not limited to, marking any temporary changes to the Trail and providing snow fences and other barricades.

b. Whenever Licensee's or GEP'S Facilities and Improvements or related construction, operation, or maintenance activities of Licensee or GEP create a serious hazard to public safety or welfare, Licensee or GEP, as the case may be, shall take all reasonable actions to abate immediately the hazard and shall immediately notify the Authority and any other affected parties of such incidents. The Authority shall have the right to direct Licensee or GEP to halt any construction, operation, or maintenance activity for noncompliance with the provisions of this Agreement or when the Authority believes it to be necessary to protect the public's welfare or safety.

c. The Authority shall have the right, without notice to Licensee or GEP, to correct any condition in case of an emergency.

14. Indemnification

To the extent allowed by law, and without waiving Licensee's defense of sovereign immunity, Licensee and GEP assume full responsibility for injuries to or death of any person, for damages to its property, property of the Authority and the property of third parties, and for expenses arising out of Licensee's or GEP'S operations on the Property. Licensee and GEP agree to be responsible, in accordance with applicable law, for the acts and negligence of its officers, agents and employees which cause injury to persons or damage to property. Notwithstanding the provisions of this clause, Licensee and GEP shall not be liable for property damage or personal injuries caused solely by the negligence or willful misconduct of the Authority.

15. No Waiver

Nothing contained in the Agreement shall be deemed to waive the requirements of the various codes, regulations, resolutions and statutes regarding permits, fees to be paid, or manner of construction, operation, or maintenance.

16. Assignment

No assignment, conveyance, apportionment, transfer or sublicense by Licensee or GEP of the Agreement or any rights hereunder as to any other parties (other than to its customers in the regular course of business) shall be made without the prior written consent of the Authority, which consent may be given or withheld in the Authority's sole discretion.

17. Entire Agreement

The Agreement (and any exhibits hereto) embodies the entire agreement between Authority, Licensee, and GEP. It is not to be modified or terminated except as provided herein or by any written agreements signed by the authorized representatives of the parties. If any provision herein is invalid, it shall be considered deleted herefrom and shall not invalidate the remaining provisions.

18. Attorney's Fees

In the event the Authority retains counsel to enforce its right or protect its interests pursuant to the Agreement, whether or not any formal action is instituted, GEP shall, in addition to and not in lieu of Liquidated Damages, be responsible for all such fees and related costs incurred by the Authority.

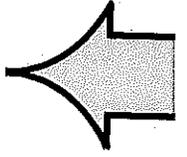
19. Applicable Law

The parties agree that the laws of the Commonwealth of Virginia will govern the License Agreement.

LICENSEE:

TOWN OF LEESBURG

By: _____
Name: _____
Title: _____



GEP:

GREEN ENERGY PARTNERS/STONEWALL LLC

By: Ru VA
Name: ROSS METELSKY
Title: DEVELOPERS MANAGER
SDE

AUTHORITY:

NORTHERN VIRGINIA REGIONAL PARK AUTHORITY

By: _____
Name: Todd E. Hafner
Title: Director of Planning and Development

PRESENTED April 8, 2014

RESOLUTION NO. 2014-

ADOPTED _____

A RESOLUTION: AUTHORIZING THE TOWN MANAGER TO EXECUTE A LICENSE AGREEMENT BETWEEN THE TOWN OF LEESBURG, GREEN ENERGY PARTNERS AND THE NORTHERN VIRGINIA REGIONAL PARK AUTHORITY TO ALLOW THE RECLAIMED WATER LINE TO CROSS THE W&OD TRAIL

WHEREAS, Green Energy Partners (“GEP”) is in the process of acquiring land rights necessary to construct a reclaimed water line to serve the GEP clean energy power plant also known as the “purple line” ; and

WHEREAS, once constructed by GEP, the purple line will be owned, operated and maintained by the Town of Leesburg; and

WHEREAS, a portion of the purple line route crosses the W&OD Trail which is owned and operated by the Northern Virginia Regional Park Authority (“NVRPA”); and

WHEREAS, a License Agreement is necessary to allow construction, operation and maintenance of the purple line within NVRPA owned property; and

WHEREAS, the Town Attorney has negotiated a License Agreement with NVRPA to allow GEP and the Town to install and operate the purple line; and

WHEREAS, the term of the License Agreement will run for ninety (90) years; and

WHEREAS, the NVRPA Board of Directors and the principals of GEP have approved the License Agreement and all fees will be borne by GEP; and

WHEREAS, the terms contained in the License Agreement are reasonable and equitable and will benefit the Town and the citizens of Leesburg.

A RESOLUTION: AUTHORIZING THE TOWN MANAGER TO EXECUTE A LICENSE AGREEMENT BETWEEN THE TOWN OF LEESBURG, GREEN ENERGY PARTNERS AND THE NORTHERN VIRGINIA REGIONAL PARK AUTHORITY TO ALLOW THE RECLAIMED WATER LINE TO CROSS THE W&OD TRAIL

THEREFORE, RESOLVED by the Council of the Town of Leesburg in Virginia that the Town Manager is authorized to execute the License Agreement with the Northern Virginia Regional Park Authority and GEP for the reclaimed water line.

PASSED this _____ day of April, 2014.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council