



Date of Council Meeting: August 12, 2014

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: License Agreement between the Town of Leesburg (“Town”) and Loudoun County Sanitation Authority (“Loudoun Water”) to allow Loudoun Water’s Raw Water Intake Transmission line to cross certain town streets.

Staff Contact: Calvin Grow, Transportation Engineer
Barbara Notar, Deputy Town Attorney

Recommendation: The Town Manager should be authorized to execute a License Agreement to allow Loudoun Water’s Raw Water Intake Transmission line to cross certain town streets.

Issue: Should the Town Council pass a resolution authorizing the Town Manager to execute a License Agreement between the Town and Loudoun Water to allow Loudoun Water’s Raw Water Intake Transmission line to cross certain town streets?

Fiscal Impact: There are no direct costs to the Town for this license agreement.

Background: Loudoun Water’s Raw Water Intake Transmission Line will run from the Potomac River (near the Town’s Water Treatment Plant) to the Loudoun Water’s retired quarries near Luck Stone. A portion of the line is proposed to cross three (3) town streets: Russell Branch Parkway (intersection at Crosstrail Blvd.), Belleville and Menlo Drive (near River Creek Parkway in the Riverpoint Subdivision). A license agreement is needed by Loudoun Water to allow the line to cross these streets. As required by the Code of Virginia, the term of the License Agreement is forty (40) years. The project is slated to begin in the fall of 2014. A Commission Permit for the Raw Water Transmission Intake Line was approved by the Leesburg Planning Commission in 2013.

Attachment: Resolution
Proposed License Agreement between Town and Loudoun Water

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made this _____ day of _____, 2014, by and between the **TOWN OF LEESBURG, VIRGINIA**, a municipal corporation (“Town”), and **LOUDOUN COUNTY SANITATION AUTHORITY d/b/a LOUDOUN WATER**, (“Loudoun Water”).

WITNESSETH

WHEREAS, Loudoun Water, licensed to do business in the Commonwealth of Virginia, desires to extend its raw water transmission facilities through the Town by installing a raw water transmission main that will cross the public streets within the Town to a certain extent; and

WHEREAS, the general location and description of the raw water transmission facilities to be installed within the Town’s rights-of-way (the “Facilities”) shall be in accordance with certain drawings approved by the Town labelled “Loudoun Water 42” Raw Water Transmission Main Crossing of Menlow Drive Exhibit A”, “Loudoun Water 42” Raw Water Transmission Main Crossing of Belleville Drive Exhibit B” and “Loudoun Water 42” Raw Water Transmission Main Crossing of Russell Branch Parkway Exhibit C” all attached hereto; and

WHEREAS, Loudoun Water acknowledges that the primary use of the Town’s rights-of-way is for street purposes and that the construction and operation of the Facilities shall not adversely affect such property’s primary use for street purposes; and

WHEREAS, the Town acknowledges that the raw water transmission line is critical infrastructure essential to supply Loudoun Water’s primary water treatment facility. Pursuant to a Town permit, Loudoun Water previously installed casing pipes for the future installation of the raw water transmission line to avoid disturbance of the Town streets; and

WHEREAS, the Town is willing to allow Loudoun Water to use the subject rights-of-way on the terms and conditions set forth herein.

NOW, THEREFORE, the Town and Loudoun Water, for and in consideration of the sum of One Dollar (\$1.00), the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants hereinafter contained, hereby agree and the Town hereby grants unto Loudoun Water for the term and upon the conditions, covenants and agreements hereinafter set forth, permission to use the subject rights-of-way for the purpose of installing, operating, and maintaining the Facilities.

A. Conditions. The Facilities shall be, at all times, maintained, operated and repaired by Loudoun Water as provided herein in a safe manner satisfactory to the Town.

The rights and privileges herein granted to Loudoun Water shall be subject to the rights or interests held by others, if any, in and to the subject rights-of-way as of the date of this Agreement. The Town makes no representations or warranties, express or implied, concerning the extent of such rights held by others and shall have no responsibility for conflicts with others

as a result of this Agreement. The Town makes no warranties with respect to the subject rights-of-way but gives Loudoun Water permission to use such rights as are herein provided.

B. Terms. Unless terminated in accordance with the provisions herein, the term of the Agreement shall be forty (40) years from the date hereof. Upon expiration of the initial term of this Agreement, the Town shall negotiate in good faith to extend this Agreement as needed by Loudoun Water.

Should Loudoun Water abandon or remove the Facilities without an intention to resume use thereof within a six (6) month period of time, this Agreement shall terminate forthwith at the election of the Town.

The Town may unilaterally terminate the Agreement upon one hundred twenty (120) days notice in the event the Town determines, in the exercise of its reasonable good faith judgment, that the maintenance and/or operation of the Facilities and the continuation of such License shall materially adversely affect such property's primary use for street purposes. During such notice period, the Town shall provide Loudoun Water an opportunity to cure any such asserted adverse effect. In the event of such termination, the Town also agrees to cooperate with Loudoun Water to attempt to find other suitable space in the public rights of way of the Town for placement of the Facilities. Loudoun Water agrees, in such cases to relocate its Facilities at its own expense unless otherwise provided by applicable law of the Commonwealth of Virginia and/or by an ordinance of the Town.

Termination of this Agreement shall not relieve or release Loudoun Water or the Town from any liability or obligation, which may have been incurred or assumed by Loudoun Water or the Town hereunder prior to termination.

Loudoun Water hereby agrees that the roadway or vehicular traffic shall not be significantly hindered or disturbed during installation, maintenance or operation of the facilities. Prior to construction or repair, other than "Routine Maintenance" as defined below, Loudoun Water shall notify the Town, obtain a right-of-way permit, and, if necessary, proper traffic controls approved by the Town shall be installed.

C. Right-of-Way Use Fee. Loudoun Water shall pay no right-of-way use fee or other fee to the Town in accordance with Section 56-468.1 of the Code of Virginia.

D. Construction Plans and Specifications. Construction of the Facilities shall be performed in accordance with the approved construction plans approved in connection with the right-of-way permit.

E. Confining Construction Activity. During construction, Loudoun Water and its contractors and subcontractors shall confine all construction activity, including access and storage, within the applicable areas specified on the approved Plans.

F. Excavation. Loudoun Water shall not make or begin any excavation or other subsurface activity within the subject rights-of-way without first obtaining a right-of-way permit

and 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.

G. Inspection of Construction. The construction of the Facilities is subject to the Town's inspection at all places and all reasonable times to ensure strict compliance with the terms of this Agreement. Such inspections shall be performed in a timely manner so as not to delay the installation of the Facilities.

H. Maintenance and Operation. Routine maintenance shall be defined as any work which can be accomplished utilizing mechanical equipment and/or vehicles operated from a location which is entirely behind the back of curb and in such a manner as to not encroach into the traffic lanes or disrupt traffic flow.

Prior to commencement of any maintenance that is more extensive than routine maintenance, Loudoun Water shall submit a proposed maintenance plan and schedule to the Town for approval. The plan and schedule, at 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 estimated as to the length of time required to perform the work, and such other information as the Town may need to order to evaluate the proposed maintenance or operation activity.

Loudoun Water shall confine all such extensive maintenance and operation activities, including access and storage, within the applicable areas specified in the approved maintenance and operation plans.

The Town may charge Loudoun Water reasonable cost-based permitting fees and may impose upon Loudoun Water reasonable bonding requirements consistent with the scope of the particular project for which the bond is sought.

I. Restoration. Loudoun Water shall, as soon as practicable after the completion of any extensive 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 Loudoun Water performing such maintenance activities, and shall be restored to the reasonable satisfaction of the Town.

J. General Responsibilities of Licensee.

1. Compliance with Applicable Laws and Regulations. Loudoun Water shall construct, operate, and maintain its facilities and improvements in accordance with all applicable federal, state, county and Town laws, orders, rules and regulations existing on the date of this Agreement or enacted thereafter, affecting the installation, maintenance and use of the Facilities.

2. Liability. The Town and Loudoun Water enter into this Agreement with the understanding that all financial and legal liability associated with Loudoun Water's activities as

contemplated herein will be borne solely by Loudoun Water. For that reason, Loudoun Water expressly retains or assumes all risk of loss of any type resulting from its construction, maintenance and operation of the Facilities, provided, however, neither party waives any defense of sovereign immunity. Furthermore, the Town shall not be liable for damage to the Facilities caused by future road improvements except where the damage to the Facilities is caused by the negligence, gross negligence, or willful misconduct of the Town.

3. Disclaimer of Consequential Damages. Notwithstanding any other provision of this Agreement, in no event shall either party be liable for consequential, incidental, punitive, exemplary, or similar damages under this Agreement.

K. Insurance. Loudoun Water shall maintain general liability insurance in the amount of One Million Dollars (\$1,000,000) and shall provide to the Town simultaneously with the execution hereof, a certificate of insurance for such policy, which shall name the Town as an additional insured thereon.

L. Notices. Notices under the Agreement shall be deemed to be properly served if delivered in person or in writing by certified mail, with return receipt requested, to the following addresses or such other places as the parties reasonably designate:

To the Town:

Director of Public Works
The Town of Leesburg
P. O. Box 88
Leesburg, Virginia 20178

With a copy to:

Town Manager
Town of Leesburg
P. O. Box 88
Leesburg, VA 20178

To Licensee:

General Manager
Loudoun Water
PO Box 4000
44865 Loudoun Water Way
Ashburn, VA 20146

With a copy to:

Jonathan P. Rak
McGuireWoods LLP

1750 Tysons Boulevard
McLean, VA 22102

In addition to the foregoing, Loudoun Water will provide the name and contact person and an emergency telephone number for maintenance of the Facilities.

M. No Waiver. Nothing contained in the Agreement shall be deemed to waive the requirement of the various codes, regulations, resolutions, and statutes regarding permits, fees to be paid, or manner of construction, operation, or maintenance, including without limitation, the Town's right-of-way permit requirements to work within the right-of-way.

N. Assignment. No assignment of this Agreement or any rights hereunder shall be made without the prior written consent of the Town. However, the Town shall not unreasonably delay, condition, or refuse its consent to any such assignment by Loudoun Water, upon written request by Loudoun Water.

O. Entire License. This Agreement (and the Exhibits) embodies the entire agreement between the Town and Loudoun Water. It is not to be modified or terminated except as provided herein or by any written agreements signed by the authorized representatives of both parties. If any provision herein is invalid it shall be considered deleted and shall not invalidate the remaining provisions.

P. Applicable Law. The parties agree that this License Agreement will be governed by the laws of the Commonwealth of Virginia and shall be binding upon the parties and their respective-successors and/or assigns.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the date and year first written above.

LOUDOUN COUNTY SANITATION
AUTHORITY

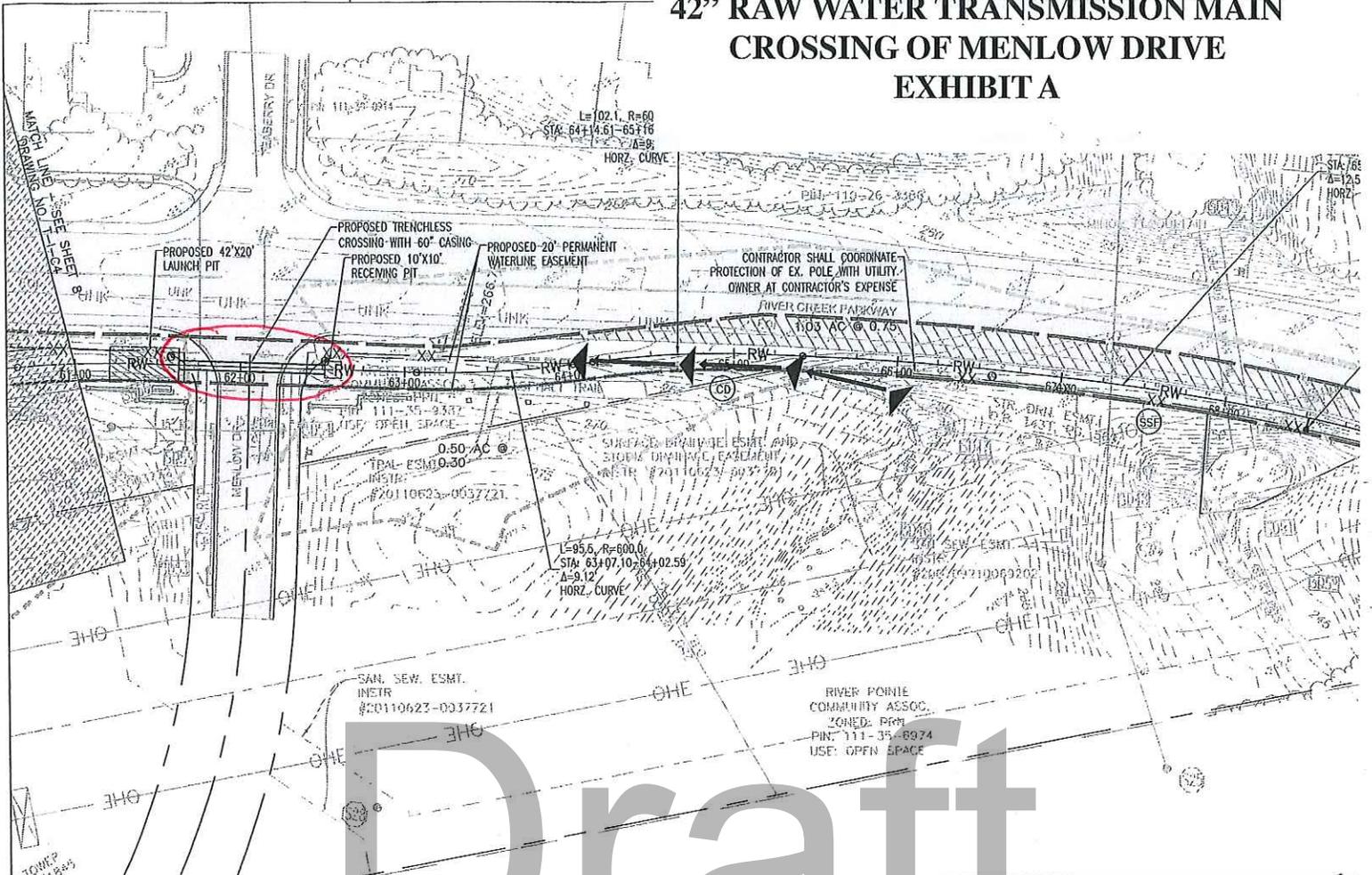
By [Signature]
Name FRED JENNINGS
Title GENERAL MANAGER
Date July 25 2014

THE TOWN OF LEESBURG

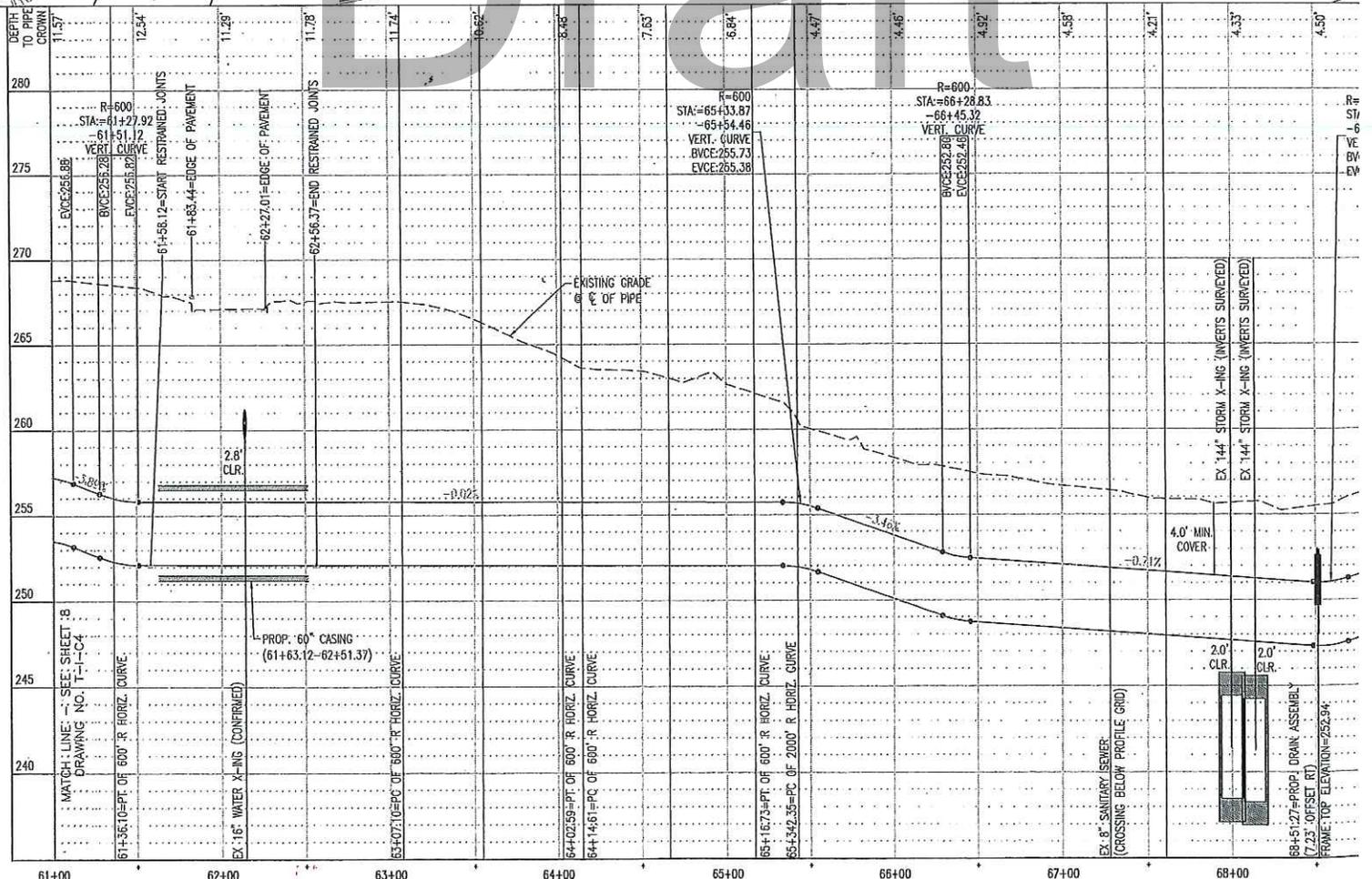
By _____
Name _____
Title _____
Date _____



LOUDOUN WATER 42" RAW WATER TRANSMISSION MAIN CROSSING OF MENLOW DRIVE EXHIBIT A



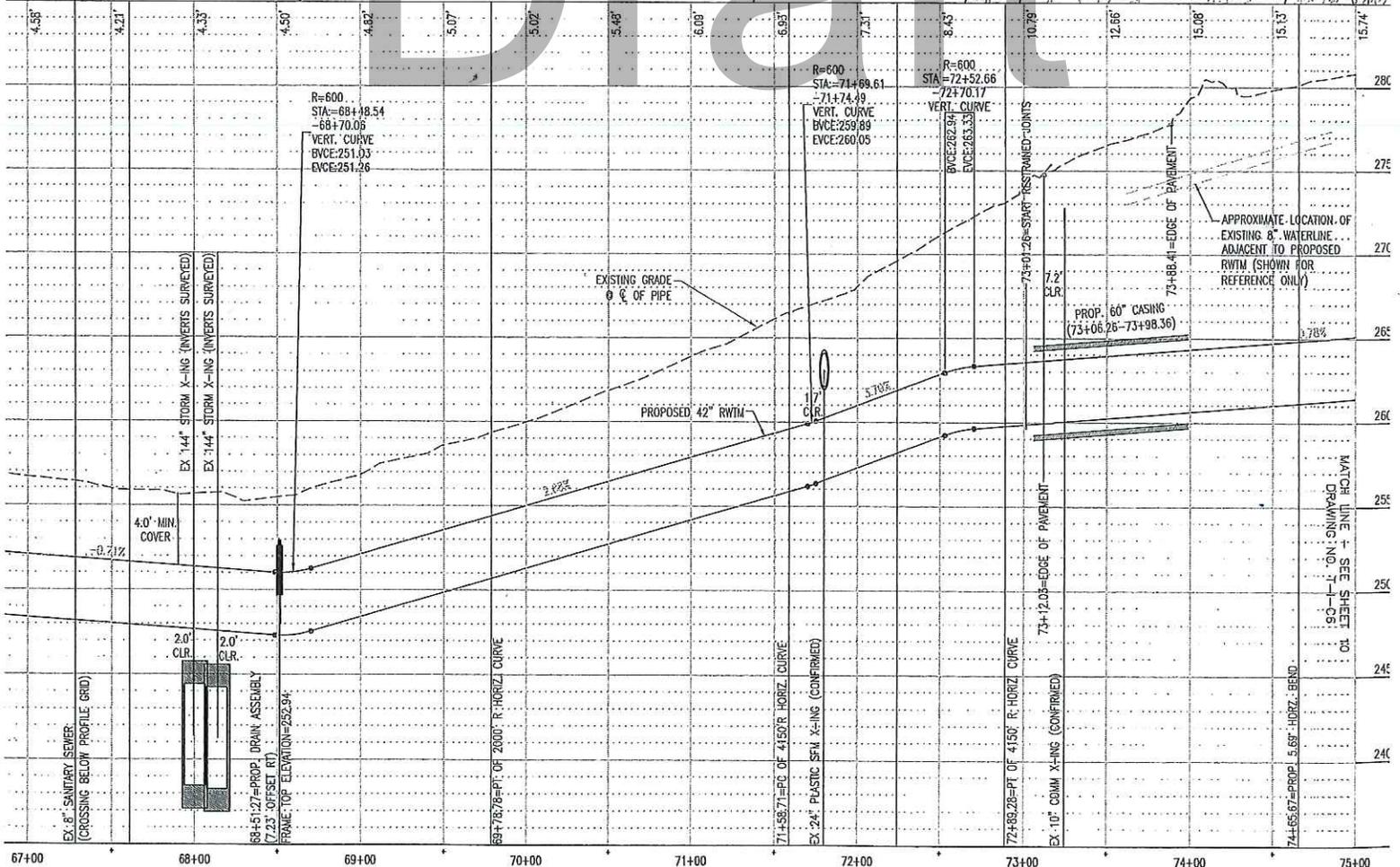
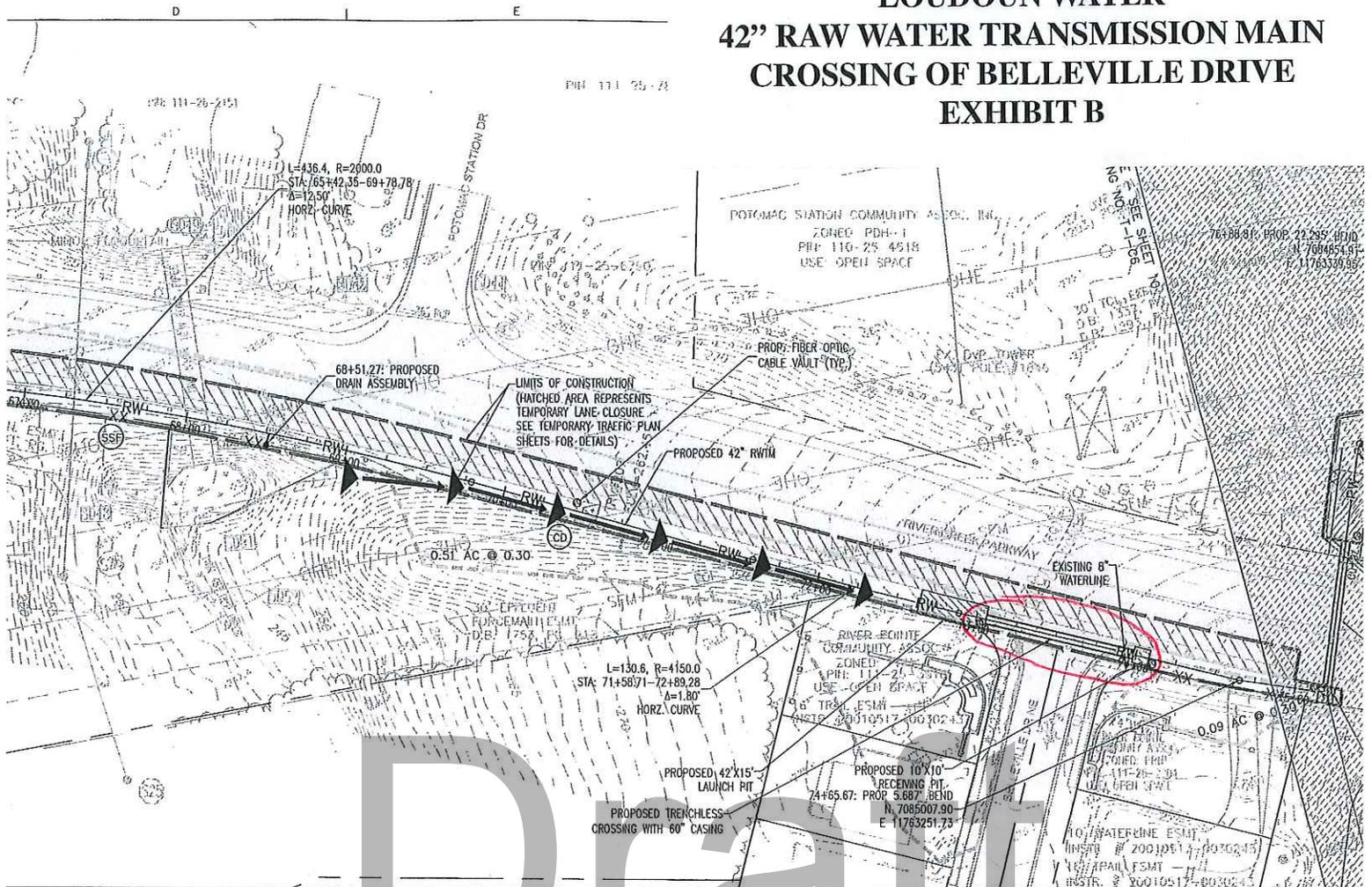
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SCALE NOTE

LOUDOUN WATER 42" RAW WATER TRANSMISSION MAIN CROSSING OF BELLEVILLE DRIVE EXHIBIT B

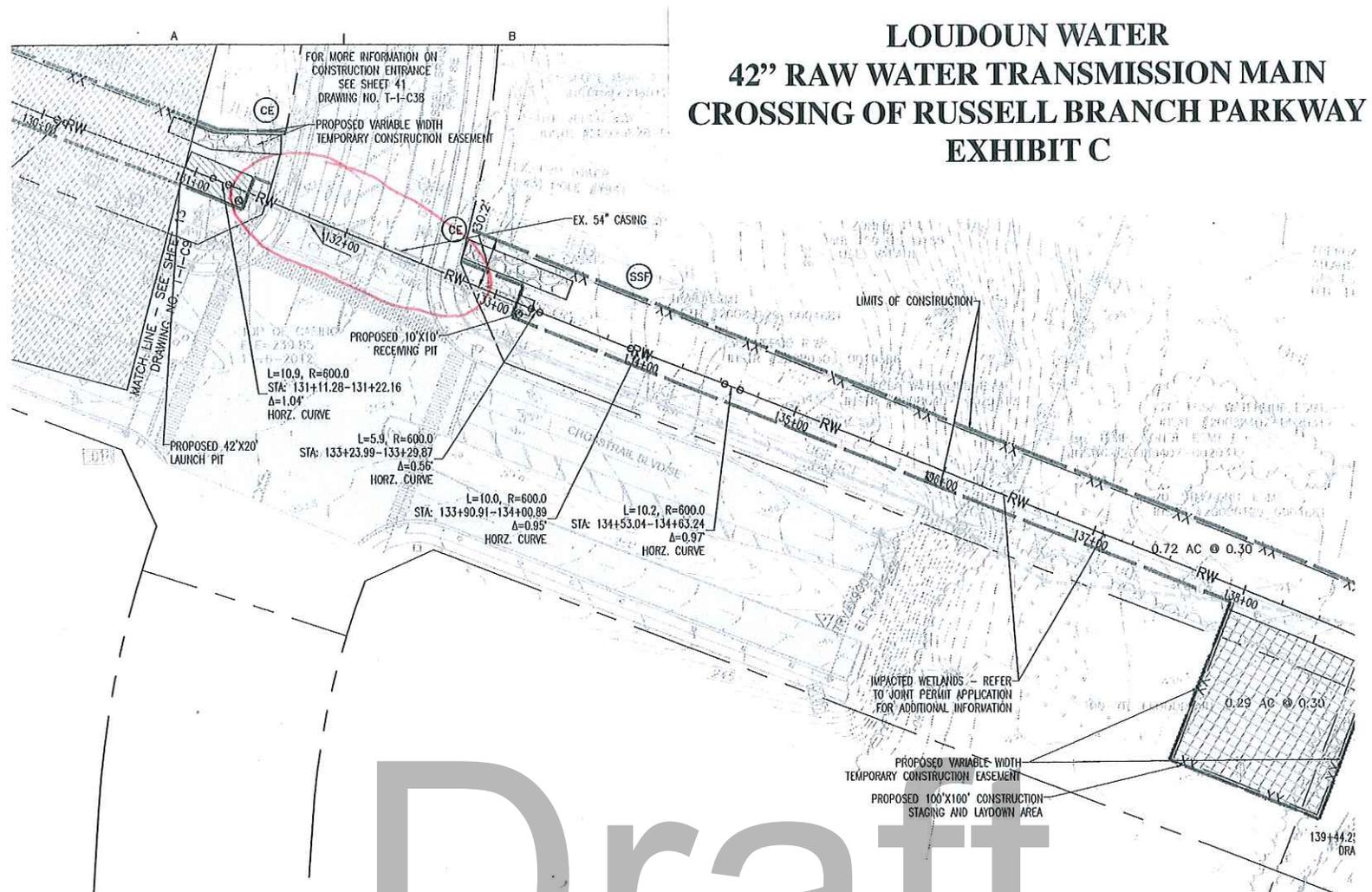


SCALE NOTE

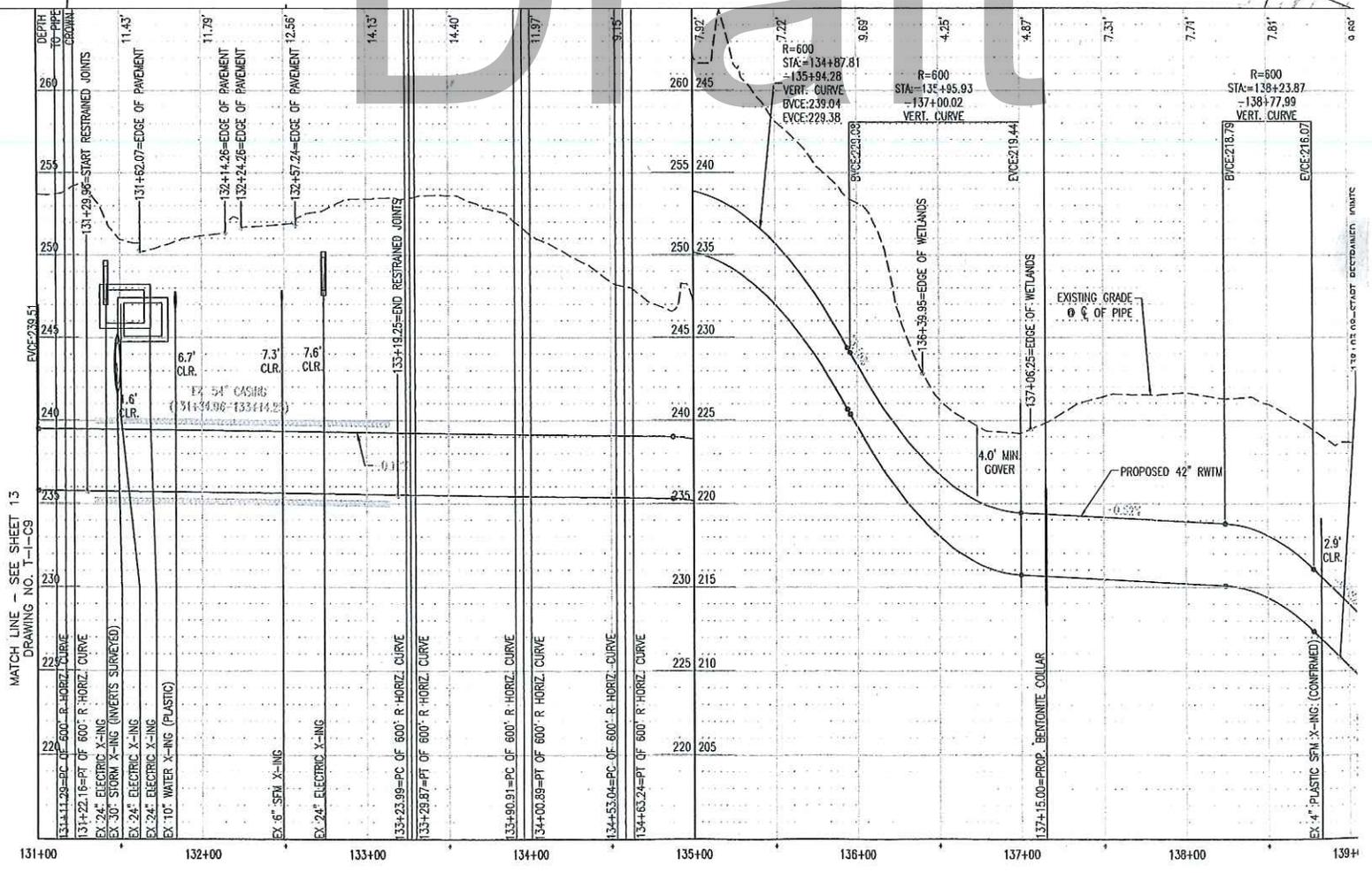
LOUDOUN WATER

T - RAW WATER TRANSMISSION

LOUDOUN WATER 42" RAW WATER TRANSMISSION MAIN CROSSING OF RUSSELL BRANCH PARKWAY EXHIBIT C



Draft



MATCH LINE - SEE SHEET 13
DRAWING NO. 1-I-C9

CERTIFICATE OF COVERAGE

Rev. 07/07/05



Producer:
VML INSURANCE PROGRAMS
 P.O. Box 3239, Glen Allen, VA 23058
 1-800-963-6800 (Phone); 1-804-968-4662 (Fax)
 www.vmlins.org

This Certificate is issued as a matter of information only and confers no rights upon the Certificate Holder. This Certificate does not amend, extend or alter the Membership Agreement afforded by the policies below, nor guarantees the solvency of VML Insurance Programs.

COMPANIES AFFORDING COVERAGE

VML Insurance Programs

Named Insured:
 Loudoun County Sanitation Authority
 44865 Loudoun Water Way
 Ashburn, VA 20146

COVERAGES

This is to certify that the coverage listed below has been issued to the Member named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this Certificate may be issued or may pertain, the coverage afforded by the policies described herein is subject to all the terms, exclusions and conditions of the Member Agreement and the policy forms. Limits shown may have been reduced by paid claims.

Type of Coverage	Policy Number	Effective Date	Expiration Date	Limits	
General Liability Damage to Premises Rented to You Medical Payments	P-2014-2015-VML-0256-1	07/01/2014	07/01/2015	Each Occurrence	\$1,000,000
				Any One Fire	\$1,000,000
				Any One Person	\$10,000
Excess Liability	P-2014-2015-VML-0256-1	07/01/2014	07/01/2015	Per Occurrence	\$10,000,000

Description of Operations/Locations/Vehicles/Special Items

Evidence of Coverage. Raw water transmission main installation to include crossings of Menlow Drive, Belleville Drive and Russell Branch Parkway.

CERTIFICATE HOLDER
 Town of Leesburg
 25 West Market Street
 Leesburg, VA

CANCELLATION: Should the above described Member Agreement be cancelled before the expiration date thereof, VML Insurance Programs will endeavor to mail written notice within 30 days to the Certificate Holder named to the left, but failure to mail such notice shall impose no obligation of any kind upon VML Insurance Programs, its agents or representatives.

By: *Ann Chandler*

Date: 07/18/2014

Draft

THIS ENDORSEMENT CHANGES THE COVERAGE DOCUMENT.
PLEASE READ IT CAREFULLY.

AMENDATORY ENDORSEMENT - ADDITIONAL INSURED

This endorsement modifies coverage provided under the following:

LOCAL GOVERNMENT LIABILITY COVERAGE FORM

It is agreed that:

The "Who Is A Covered Person" provision is amended to include as a covered person

1. The person or organization named below but only with respect to liability arising out of operations performed by or on behalf of the named member or entity.
2. The applicable limit of the Pool's liability for the coverage afforded under this endorsement forming a part of this coverage document shall be reduced by any amount paid as damages, or any attorney' fees or other expenses associated herewith, under this endorsement on behalf of the person or organization named below.

Town of Leesburg.

AUTHORIZED BY

NAMED MEMBER OR ENTITY

Loudoun County Sanitation Authority

DATE

7/1/14

ENDORSEMENT LGL 1 P

Revised 5/99

PRESENTED August 12, 2014

RESOLUTION NO. 2014-

ADOPTED _____

A RESOLUTION: AUTHORIZING THE TOWN MANAGER TO EXECUTE A LICENSE AGREEMENT BETWEEN THE TOWN OF LEESBURG AND LOUDOUN COUNTY SANITATION AUTHORITY (“LOUDOUN WATER”) TO ALLOW LOUDOUN WATER’S RAW WATER INTAKE TRANSMISSION LINE TO CROSS CERTAIN TOWN STREETS

WHEREAS, Loudoun County Sanitation Authority (d/b/a Loudoun Water) has received a Commission Permit from the Leesburg Planning Commission to install a raw water intake transmission line (“raw water line”) within the Town of Leesburg (“Town”) limits; and

WHEREAS, the raw water line is designed to run from the Potomac River to the abandoned quarries south east of the Town; and

WHEREAS, a portion of the raw water line is designed to cross certain town streets, to wit: Menlo Drive, Belleville Drive and Russell Branch Parkway; and

WHEREAS, the Town requires that a License Agreement be executed by Loudoun Water to allow the raw water line to cross Town streets; and

WHEREAS, the Town Attorney has reviewed the License Agreement; and

WHEREAS, construction of the raw water line will benefit the residents of the Town in that future plans call for expanded capabilities by Loudoun Water to share the raw water with the town in the event of an emergency.

THEREFORE, RESOLVED, by the Council of the Town of Leesburg in Virginia that the Town Manager is authorized to execute the license agreement with Loudoun Water so long as the Town Attorney approves the License Agreement.

A RESOLUTION: AUTHORIZING THE TOWN MANAGER TO EXECUTE A LICENSE AGREEMENT BETWEEN THE TOWN OF LEESBURG AND LOUDOUN COUNTY SANITATION AUTHORITY (“LOUDOUN WATER”) TO ALLOW LOUDOUN WATER’S RAW WATER INTAKE TRANSMISSION LINE TO CROSS CERTAIN TOWN STREETS

PASSED the ____ day of August, 2014.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council