



**Date of Council Meeting: October 13, 2015**

**TOWN OF LEESBURG  
TOWN COUNCIL MEETING**

**Subject:** Memorandum of Agreement with the Exeter Homeowners Association for repair of the Exeter sink hole.

**Staff Contact:** Keith Markel, Deputy Town Manager  
Renée M. LaFollette, P.E., Director, Public Works and Capital Projects  
Barbara Notar, Town Attorney  
Clark Case, Director, Finance and Administrative Services

**Council Action Requested:** Authorizing the Town Manager to enter into a Memorandum of Agreement with the Exeter Homeowners Association, and to enter into a contract with Madigan Construction for repair of the Exeter sink hole.

**Staff Recommendation:** That the Town Council authorize the Town Manager to execute a Memorandum of Agreement with the Exeter Homeowners Association, and also enter into a contract with Madigan Construction in the amount of \$101,380.87 for repair of the Exeter sink hole.

**Commission Recommendation:** Not applicable.

**Fiscal Impact:** The full costs for the repair of the Exeter sink hole will be borne by the Exeter Homeowners Association (HOA) as described in the Memorandum of Agreement (MOA) between the HOA, and the Town of Leesburg (Town). To date, the cost for the repair work is \$40,766.46. The estimated costs for the permanent repairs are \$109,422.29. This includes the construction contract with Madigan in the amount of \$106,922.29 and the geotechnical contract with GeoConcepts in the amount of \$2,500.00.

The intent of the MOA is for the Town to front these costs, and be reimbursed by the Exeter HOA. The initial repair costs were voted and approved by the HOA at their August 27, 2015 board meeting where the Board endorsed the emergency actions taken by the Town and the HOA President. The HOA also voted at their September 24, 2015 meeting to authorize a budget not to exceed \$125,000 for the final repairs.

**Work Plan Impact:** Since the sinkhole was unexpected, and located on private property owned by the Exeter Homeowners Association, Town staff time was not included in the work plan for the Town departments involved in the matter. The sinkhole issue did require significant Town resources to respond to the initial emergency situation, to monitor the site, to communicate with the residents, and to coordinate all repairs. Going forward with the permanent repairs, the repairs will be staffed with minimal impact to the overall work load of Town staff.

**Executive Summary:** On August 16, 2015, a sink hole developed on Currant Terrace at the intersection with Clove Terrace in the Exeter community. The Town responded to the emergency

situation that day, and was able to coordinate with Madigan Construction to be on site the following Monday morning. On August 17, Madigan started the excavation work of the area, in order to assist the Town's Utility Department in providing temporary sanitary and water connection to several homes, and to secure the site.

At that time, the Exeter Homeowners Association (HOA) acknowledged that the sinkhole was on private HOA property, and that the HOA would be responsible for the repair costs (both temporary and permanent). The Exeter HOA board has held three meetings at which they voted to pay for the costs associated with the sink hole repairs.

**Background:** On August 16, 2015, a sink hole developed at the intersection of Currant Terrace and Clove Terrace in the Exeter Community. These private roads are on the Exeter Homeowners Association (HOA) land, and are not maintained by the Town. The sink hole did impact both the water and sanitary sewer services to approximately 15 town homes. Fortunately, this sink hole was not a catastrophic collapse, but it did not sever the utilities, and required significant Town response to assist in the situation.

On Monday, August 17, 2015, Madigan Construction was brought to the site at the request of the Town to excavate the area of the sinkhole to allow for the repair and installation of temporary sanitary connection along with temporary repairs to the waterline. The excavation extended into Tuesday and a geotechnical engineer was brought in to evaluate the area. On Wednesday, the temporary fill material was placed back in the hole due to impending weather. The initial geotechnical engineering company was unable to perform the non-invasive testing in a timely manner so the Town contracted with GeoConcepts to be on site on Friday, August 21.

The non-invasive testing was completed, and the results were reviewed by the Town. It was determined that drilling would need to be done to confirm the results of the non-invasive, electrical resistivity investigation (ERI). The air drilling was performed a week later on August 31. The drilling did confirm the ERI testing and showed that there is an air filled void approximately 25-30 feet down, and the void itself is approximately 10-12 feet in height.

Recommendations for the permanent repair were made in a final report provided by GeoConcepts Engineering. Those recommendations were discussed with the Exeter HOA board at their September 15 meeting, and pricing was requested by the Town from Madigan Construction for the permanent repair.

Procurement for the services that were performed for the temporary repair and for the permanent repair are through the rideable Loudoun County Job Order Contract for Madigan Construction and through the Civil Engineering Continuing Services contract for GeoConcepts services. Once the construction contract is approved, Madigan has indicated that they would be on site in approximately 3-4 weeks to complete the work. The Memorandum of Agreement (MOA) with the Exeter HOA will provide the formal mechanism for Exeter to reimburse the Town for the expenses incurred to date and for the permanent repairs. The MOA will be prepared by the Town Attorney, and reviewed by the Exeter HOA attorney prior to formal signatures.

**MEMORANDUM OF AGREEMENT**  
**BETWEEN THE TOWN OF LEESBURG, VIRGINIA**  
**AND**  
**EXETER HOMEOWNERS ASSOCIATION**  
**FOR THE REPAIR OF THE AUGUST 16, 2015, SINKHOLE**

This Memorandum of Agreement (“Agreement”), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between EXETER HOMEOWNERS ASSOCIATION, (referred to as “Exeter”), and THE TOWN OF LEESBURG, VIRGINIA, (“Town”), a municipal corporation with a principal place of business located at 25 W. Market St., Leesburg, Virginia. Exeter and the Town are collectively referred to as “the Parties”:

WHEREAS, on August 16, 2015, a sinkhole developed on Currant Terrace at the intersection with Clove Terrace, private residential streets belonging to Exeter and not maintained by the Town; and

WHEREAS, Exeter acknowledged the sinkhole was on its private property and would be responsible for the repair costs of Exeter property, both temporary and permanent; and

WHEREAS, the Town requested Madigan Construction Company, within 24 hours of the incident, to excavate the sinkhole to allow for the temporary, emergency repair of sanitary and water lines and the temporary, emergency repair of the private streets affected by the sinkhole ; and

WHEREAS, at an August 27, 2015, Board meeting, Exeter endorsed the emergency, temporary action taken by the Town and Exeter . By that endorsement, Exeter agreed to cover the costs associated with the temporary repairs to Exeter property; and

WHEREAS, in furtherance of future permanent repairs to the sink hole and Town utilities, the Town contracted GeoConcepts, a geotechnical engineering firm to complete non-invasive testing, whose results were reviewed by the Town; and

WHEREAS, required air drilling testing confirmed the existence of an air-filled void approximately 25-30 feet deep into the ground, with the void measuring approximately 10-12 feet in height. Recommendations for the permanent repair of the sinkhole were discussed with Exeter on September 15, 2015; and

WHEREAS, at a September 24, 2015, Board meeting, Exeter voted to approve funding in an amount not to exceed \$125,000 for the permanent repair of Exeter property; and

WHEREAS, the total cost for the temporary repair (Madigan Construction and GeoConcepts) is \$59,752.48, of which \$18,986.02 is for the temporary repairs to the Town's utilities and \$40,766.46 is for the temporary repair of Exeter property; and

WHEREAS, the estimated cost for the permanent repair of the sinkhole is \$109,422.00, of which \$5,500 is for the repair of Town utilities , and the balance to be paid to Madigan Construction and GeoConcepts for monitoring the site during excavation and backfill; and

WHEREAS, for the aforementioned reasons, the parties have determined that it is mutually beneficial for the Town to complete the permanent repairs to the sinkhole and for Exeter to reimburse the Town for the temporary repairs to Exeter property made and the permanent repairs to be made to Exeter property under the terms set forth below.

**WITNESSETH:**

NOW THEREFORE, WITNESSETH: the Recitals set forth above being incorporated herein by reference and in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. The Town intends to contract with Madigan Construction in the amount of \$106,922.29 and GeoConcepts in the amount of approximately \$2500.00 for the permanent repair of the Exeter sinkhole;
2. Exeter will reimburse the Town for the temporary repairs made to property of Exeter, not to exceed \$40,766.46.
  - a. Payment shall be made to the Town within forty-five (45) days of Exeter's receipt of the Town's invoice for same.
3. Once permanent repairs are complete, the Town will provide Exeter with a cost invoice. Exeter will reimburse the Town for the final repairs made to property of Exeter, not to exceed \$125,000.
  - a. Payment shall be made to the Town within forty-five (45) days of Exeter's receipt of the Town's invoice for same.
4. In no event shall Exeter be required to pay for temporary or permanent repairs to Town utility infrastructure.
5. In the event that the cost of the permanent repairs to Exeter property exceed \$125,000, Exeter agrees to seek additional approval from its Board to reimburse the Town for this additional cost and will reimburse the Town for any additional cost incurred by the Town as invoiced by Madigan Construction.
6. Any notices required or permitted to be given under this Agreement shall be provided in writing by mailing first class postage or delivered in person and notice shall be effective upon receipt of such mailing or delivery. Notices shall be provided to:

For Exeter:

Chadwick, Washington, Moriarty, Elmore & Bunn, P.C.  
Attn: Bruce H. Easmunt, Esq.  
3201 Jermantown Road, Suite 600  
Fairfax, Virginia 22030

For the Town:

Town Manager  
Town of Leesburg, Virginia  
25 W. Market St.  
Leesburg, Virginia 20176

7. This Agreement will become effective upon execution by the Parties; a fully executed copy of the Agreement will be delivered or mailed to both Parties at the addresses set forth above;
8. The signatories to this Agreement affirm that they have the authority to execute this Agreement on behalf of their respective entities;
9. This Agreement may be amended at any time by mutual consent of the Parties, in writing;
10. This Agreement is binding upon the Parties' successors in interest and assigns;
11. The Parties agree that this 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. The parties further agree that any dispute that may occur as a result of the terms of this Agreement will be resolved in the Loudoun County Circuit Court or Loudoun County District Court. In the event of such dispute, each Party shall be responsible for its own attorney's fees and costs incurred as a result of such dispute;
12. Each section of this Agreement shall stand independently and severally, and the invalidity of any one section or portion thereof shall not affect the validity of any other provision. In the event any provision shall be construed to be invalid, no other provision of this Agreement shall be affected hereby.

IN WITNESS WHEREOF, the Parties have caused this document to be executed as of the date of the last signature shown on the following pages:

(SIGNATURE PAGES TO FOLLOW)

DRAFT

EXETER HOMEOWNERS ASSOCIATION

Approved as to Form

By: \_\_\_\_\_  
Without personal recourse

By: \_\_\_\_\_  
, Esq.

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that \_\_\_\_\_, as \_\_\_\_\_, of EXETER HOMEOWNERS ASSOCIATION, whose name is signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Notary registration number: \_\_\_\_\_

TOWN OF LEESBURG, VIRGINIA

Approved as to Form

By: \_\_\_\_\_  
Kaj Dentler  
Title: Town Manager

By: \_\_\_\_\_  
Barbara Notar,  
Town Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Kaj Dentler, as Town Manager, of THE TOWN OF LEESBURG, whose name is signed to the foregoing Deed, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

My commission expires:  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public

Notary registration number: \_\_\_\_\_

PRESENTED October 13, 2015

RESOLUTION NO. 2015-

ADOPTED October 13, 2015

A RESOLUTION: APPROVAL OF A MEMORANDUM OF AGREEMENT WITH THE EXETER HOMEOWNERS ASSOCIATION AND AWARD OF A CONSTRUCTION CONTRACT FOR THE PERMANENT REPAIR OF THE EXETER SINK HOLE.

WHEREAS, the Exeter sink hole was an emergency repair that occurred on August 16, 2015; and

WHEREAS, the sink hole occurred on private property within the Exeter Homeowners Association; and

WHEREAS, the Town responded to the emergency situation on the same day, and was able to coordinate with Madigan Construction to arrive on site within 24 hours to begin excavating the site in order for the Town to complete temporary repairs to the water and sewer service lines; and

WHEREAS, GeoConcepts was hired to provide a geotechnical investigation that included both non-invasive and invasive drilling; and

WHEREAS, based on the geotechnical investigation, a repair solution was designed that was acceptable to both the Exeter Homeowner's Association and the Town of Leesburg; and

WHEREAS, the Exeter Homeowners Association President agreed to reimburse the Town of Leesburg for the costs associated with the temporary and permanent repairs; and

WHEREAS, the Exeter Homeowners Association held a board meeting on August 27, 2015 and formally endorsed the emergency action that the Town and the HOA President had taken and agreed by that endorsement to cover the costs associated with the temporary repairs; and

WHEREAS, the Exeter HOA held a board meeting on September 24, 2015 and voted to approve funding in an amount not to exceed \$125,000 for the permanent repairs; and

A RESOLUTION: APPROVAL OF A MEMORANDUM OF AGREEMENT WITH THE EXETER HOMEOWNERS ASSOCIATION AND AWARD OF A CONSTRUCTION CONTRACT FOR THE PERMANENT REPAIR OF THE EXETER SINK HOLE.

WHEREAS, the Town Attorney will prepare a Memorandum of Agreement for consideration by the Exeter Homeowner's Association Attorney prior to formal signature by the Town of Leesburg and the Exeter Homeowner's Association; and

WHEREAS, Madigan Construction has a contract with Loudoun County as a Job Order Contract that is rideable by local jurisdictions; and

WHEREAS, Madigan has provided a cost of \$106,922.29 to repair the sink hole and to fully restore the water and sanitary sewer connections; and

WHEREAS, GeoConcepts Engineering is a sub-contractor to civil engineering firms that are under our current continuing services contract; and

WHEREAS, procurement requirements are met by the Job Order Contract through Loudoun County and the Continuing Services Civil Engineering Contract; and

WHEREAS, the cost for the temporary repair is \$40,766.46; and

WHEREAS, the estimated cost for the final repair is \$109,422.29 for Madigan Construction and the geotechnical engineer time for monitoring the site during excavation and backfill.

THEREFORE, RESOLVED by the Council of the Town of Leesburg in Virginia that:

- I. The Town Manager is authorized to execute a Memorandum of Agreement with the Exeter Homeowners Association stating the terms of reimbursement for the temporary and permanent repairs in an amount not to exceed \$165,766.46 (not to exceed amount of \$125,000 for final repairs plus costs to date of \$40,766.46), in a form approved by the Town Attorney.

A RESOLUTION: APPROVAL OF A MEMORANDUM OF AGREEMENT WITH THE EXETER HOMEOWNERS ASSOCIATION AND AWARD OF A CONSTRUCTION CONTRACT FOR THE PERMANENT REPAIR OF THE EXETER SINK HOLE.

- II. The Town Manager is authorized to execute a contract in a form approved by the Town Attorney with Madigan Construction in the amount of \$106,922.29 for the repair of the Exeter sink hole.

PASSED this 13<sup>th</sup> day of October, 2015.

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Kristen C. Umstattd, Mayor  
Town of Leesburg

ATTEST:

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Clerk of Council