



Date of Council Meeting: February 23, 2016

**TOWN OF LEESBURG  
TOWN COUNCIL REGULAR MEETING**

**Subject:** Agreement with Panda Stonewall, LLC for Water Pollution Control Facility Upgrades

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

**Council Action Requested:** Approval of an Agreement with Panda Stonewall, LLC for upgrades to the Town's Water Pollution Control Facility.

**Staff Recommendation:** Approval

**Commission Recommendation:** Not applicable.

**Fiscal Impact:** None. The cost of the WPCF upgrades continues to be borne by Panda Stonewall, LLC.

**Work Plan Impact:** Not applicable.

**Executive Summary:** As part of the Reclaimed Waterline Agreement ("RWA") dated October 23, 2013, between the Town and Panda Stonewall, LLC (the successor in interest to Green Energy Partners/Stonewall LLC ("GEP") who originally entered into the RWA with the Town), upgrades to the WPCF were contemplated in order to connect the reclaimed waterline (referred to in the RWA as the "purple line"). Under the terms of the RWA, the Town was to construct the upgrades and once completed, obtain reimbursement of the cost of the upgrades from GEP. Now that Panda Stonewall, LLC ("Panda") is constructing the purple line (and the green energy power plant), Panda desires that its contractor Garney Companies, Inc., ("Garney") construct the upgrades as well as the purple line. An agreement is needed to effectuate this change and memorialize the terms of the upgrade construction.

**Background:** Panda through its contractor, Garney, has begun construction of the purple line between the Town's WPCF and its green energy power plant ("power plant"). The purple line is due for completion on or about June 1, 2016. Under the terms of the RWA, (Section 3.2) and as part of the construction of the purple line, certain upgrades to the WPCF are necessary to connect the purple line and to operate the purple line from the WPCF. Under the original terms of the RWA, the Town was to complete these upgrades, but the cost of the upgrades would be borne by GEP. Panda has requested that Garney not only construct the purple line, but also construct the WPCF upgrades. The Agreement in Relation to Water Pollution Control Facility Upgrades sets forth this change to the RWA

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and outlines the particulars of the construction of the upgrades. The upgrades are insured and bonded by Garney and Panda.

**AGREEMENT IN RELATION TO  
WATER POLLUTION CONTROL FACILITY UPGRADES**

THIS AGREEMENT IN RELATION TO WATER POLLUTION CONTROL FACILITY UPGRADES (this “WPCF Agreement”) is entered into this \_\_ day of February, 2016 by and between PANDA STONEWALL LLC, a Virginia limited liability company (“Panda” or “Generator”) and the TOWN OF LEESBURG, a Virginia municipal corporation (the “Town”).

**RECITALS:**

**WHEREAS:**

- A. Panda and the Town are parties to the Agreement for the Delivery and Use of Reclaimed Water (the “RWA”). Under the RWA, the Town is responsible for making any necessary upgrades to the Town’s Water Pollution Control Facility (“WPCF”) that will be necessary to enable the Town to supply Panda from the WPCF through the “Purple Line” being constructed by Garney Companies, Inc. (“Garney”) to the Panda electric generating facility, but Section 3.2 of the RWA requires that Panda shall reimburse the Town for the costs and expenses incurred by the Town in doing such upgrades.<sup>1</sup>
- B. The design of the Purple Line requires that certain changes be made to the WPCF. Based on initial discussions with the Town, Panda and the Town have agreed that Panda would undertake the upgrades under its existing contract with Garney. Panda has engaged Garney as its subcontractor for the construction of the Purple Line. In furtherance thereof, Panda has negotiated a change order to the existing contract with Garney (in relation to which the Town has third party beneficiary rights), pursuant to which Garney has agreed to make changes to the WPCF.

**NOW, THEREFORE**, the Town and Panda, each pursuant to due and proper authority, do hereby agree as follows:

- 1. The Town agrees to:
  - Allow for Garney, Panda and their Contractors or Subcontractors to make specific changes to the WPCF needed for the Purple Line as described in the approved plans and specifications separately submitted to the Town;
  - Grant Garney and Panda controlled access to the WPCF and the surrounding area to the extent necessary to make the changes to the WPCF; and

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<sup>1</sup> Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set out in the RWA.

- Waive its right to reimbursement from Panda for the changes to be made to the WPCF (as those costs shall be borne directly by Panda).
2. To the extent related specifically to the WPCF upgrades, Panda agrees to prepare, and ultimately secure approval from the Virginia DEQ, of an Operations and Maintenance Manual in accordance with the requirements of the VAC. The Town shall use best efforts to review the Operations and Maintenance Manual to support the work on the WPCF.
  3. Panda acknowledges that the Town shall not be responsible for any of the costs or expenses associated with the specific changes to the WPCF as represented on approved engineered plans.
  4. Panda acknowledges that the Town shall not be responsible for any errors and omissions associated with the engineering design of changes to the WPCF, which are to be completed by Panda or their Subcontractors. The engineering design shall be completed by a licensed engineer in the State of Virginia. The Town shall not be responsible for any additional expense that may occur as a result of changes to the design that may arise during construction or changes that are necessary after the Town's inspection as a result of an error or omission by Panda in failing to comply with the approved engineering plans.
  5. Panda acknowledges that the Town shall not be responsible for any material operational hardships above those acknowledged and planned for at the beginning of construction or otherwise contemplated in connection with the RWA.
  6. Panda acknowledges that the Town shall not be responsible for any faulty construction associated with the construction of changes to the WPCF.
  7. Panda and its Contractors shall adhere to all generally applicable requirements imposed by the Town for work of the type performed by Garney and Panda for the project (e.g. safety requirements, construction hours, etc.).
  8. Panda agrees that the work done on the WPCF shall be done in accordance with Prudent Utility Practices and further that any damages to the WPCF and its related facilities incidental to the work to plant improvements shall be repaired to the Town's reasonable satisfaction.
  9. Panda agrees that the Town shall have reasonable opportunity to review and approve all materials and equipment to be installed as a part of the changes to the WPCF. Approval of materials and equipment by the Town, or an Agent of the Town, does not absolve Panda or their Subcontractor from their licensed engineer responsibilities.
  10. Panda agrees to comply with the three-year factory service and calibration contracts requirement as set forth in Section 3.1 of the RWA.
  11. Panda agrees that the Town shall be provided with reasonably suitable spare parts and equipment, as required to operate the changes to the WPCF. Spare parts and equipment shall include, but not be limited to, computer software, computer hardware and lubricants associated with the changes to the WPCF.

12. The Town acknowledges and agrees that portions of the WPCF will be taken offline to allow the execution of the work described herein. This includes the necessary tie-ins or service transfers associated with removing an existing unit from operation while initiating the new installation. Panda (through its Contractor) agrees to provide the Town with notice reasonably in advance of the anticipated date that work shall begin on a specific area and to reasonably coordinate the outage. The required notice shall contain a schedule for all work to be completed including the total time the affected piping shall be offline (out of service) and the number of personnel scheduled to be present.
13. Panda agrees that piping, valves and equipment removed shall remain the property of the Town and any procured excess new materials shall be transferred to the Town. All items to be salvaged during the course of the WPCF upgrade shall be cleaned and delivered by Panda to a storage location at the WPCF site as directed by the Town.
14. Panda and Garney shall perform testing and calibration of all piping and equipment installed as part of the changes to the WPCF using water in the Purple Line and already available to Panda.
15. Consistent with the RWA, the Town shall provide required chemicals as needed during the construction and commissioning efforts.
16. Consistent with the RWA, the Town shall provide operational support (if required) to assist with the construction and commissioning of the WPCF upgrades. Such support shall be in a timely manner so as to minimize delay to construction and commissioning activities.
17. The Town shall provide for inspection services as it deems necessary. Panda will provide construction inspection services in support of the Town's Certificate to Operate through KPA (Purple Line/associated WPCF upgrades facility design engineering firm).
18. Panda agrees to provide the Town or a third-party designated by the Town with a reasonable opportunity to provide a final inspection of the WPCF changes prior to them being operated. The Town will be given an opportunity to develop a list of items that must be addressed by Panda, the Contractor or their Subcontractors prior to operations beginning, provided they are consistent with this WPCF Agreement and the RWA or with Good Utility Practice.
19. The Town shall provide guidance and divisions of responsibilities outlining the associated needs for their application of the Certificate to Operate. Panda shall provide reasonable support (reporting, testing results and technical support) to aid with their application.
20. Consistent with the RWA, the Town shall provide access to reasonable temporary power at its cost for utilization during the construction and commissioning effort.
21. Consistent with Section 2.3.4 of the RWA, the Town and Panda shall use best efforts to reasonably support the work on the WPCF with the intent of achieving completion of the WPCF work, the Purple Line and all other necessary work to provide for the supply of Reclaimed Water on or before June 1, 2016.

22. Articles 21, 22, 24, 27, 29, 30, and 31 of the RWA shall be deemed incorporated herein, with all adjustments as the context requires.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first above written.

**Panda Stonewall LLC:**

\_\_\_\_\_  
BY:

TITLE:

**Town of Leesburg, Virginia:**

\_\_\_\_\_  
BY: David S. Butler

TITLE: Mayor

DRAFT

PRESENTED February 23, 2016

RESOLUTION NO. 2016-

ADOPTED \_\_\_\_\_

A RESOLUTION: AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH PANDA STONEWALL, LLC, IN RELATION TO WATER POLLUTION CONTROL FACILITY UPGRADES FOR THE RECLAIMED WATER LINE

WHEREAS, Panda Stonewall, LLC, through its contractor, Garney Companies, Inc. (“Garney”), has begun constructing the reclaimed waterline between the Town’s Water Pollution Control Facility (“WPCF”) and it’s green energy power plant (“power plant”) to supply reclaimed water to the power plant; and

WHEREAS, this reclaimed water line is referred to as the “purple line” in the Reclaimed Waterline Agreement (“RWA”) entered into between the Town and Panda Stonewall, LLC’s predecessor in interest, Green Energy Partners/Stonewall, LLC dated October 23, 2013; and

WHEREAS, under the terms of the RWA, as part of the construction of the purple line, certain upgrades to the WPCF are necessary to connect the purple line and operate the purple line from the WPCF; and

WHEREAS, contemplation of these upgrades are contained within Section 3.2 of the RWA, however, the Town was to perform the upgrades with the cost of the same to be reimbursed by Green Energy Partners/Stonewall LLC; and

WHEREAS, the parties have agreed to allow Garney to complete these necessary upgrades on behalf and instead of the Town and the Agreement in Relation to Water Pollution Control Facility Upgrades sets forth this change in the RWA, and any and all additional steps necessary to complete the upgrades; and

A RESOLUTION: AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH PANDA STONEWALL, LLC, IN RELATION TO WATER POLLUTION CONTROL FACILITY UPGRADES FOR THE RECLAIMED WATER LINE

WHEREAS, the Town Attorney has negotiated the Agreement on behalf of the Town and she, along with the Director of Utilities, believes it contains adequate protection to the WPCF.

THEREFORE, RESOLVED, by the Council of the Town of Leesburg in Virginia that the Mayor is authorized to execute the Agreement in Relation to Water Pollution Control Facility Upgrades with Panda Stonewall, LLC, so long as the Town Attorney approves the Agreement.

PASSED the \_\_\_\_ day of February, 2016.

\_\_\_\_\_  
David S. Butler, Mayor  
Town of Leesburg

ATTEST:

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Clerk of Council